

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF NADEGE DORZEMA *ET AL.* v. DOMINICAN REPUBLIC

**JUDGMENT OF OCTOBER 24, 2012
(*Merits, reparations and costs*)**

In the case of *Nadege Dorzema et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court,”), composed of the following judges:¹

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

also present,

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

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and to Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court² (hereinafter “the Rules of Procedure”), delivers this Judgment structured as follows:

¹ In accordance with Article 19(1) of the Rules of the Inter-American Court applicable to this case (*infra* note 2), which established that “[i]n the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case,” Judge Rhadys Abreu Blondet, a Dominican national, did not take part in the processing of this case or in the deliberation and signature of this Judgment.

² The Court’s Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

CASE OF NADEGE DORZEMA ET AL. v. THE DOMINICAN REPUBLIC

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *Submission and synopsis of the case:* On February 11, 2011, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Court, under Articles 51 and 61 of the Convention, case No. 12,688 against the State of the Dominican Republic (hereinafter “the State” or “the Dominican Republic”), based on what it described as “*the excessive use of force by soldiers against a group of Haitians, in which seven persons lost their life and several more were injured.*” The Commission stated the following:

a) “The facts were submitted directly to the military justice system which, after proceedings lasting several years and despite the request of the next of kin of those executed to have the case submitted to the ordinary jurisdiction, acquitted the soldiers who were involved.”

b) “Some of the surviving victims suffered violations of their personal liberty and violations of judicial guarantees and judicial protection, because they were expelled from Dominican Republic, without receiving the guarantees due to their condition as migrants.”

c) At the domestic level, there has been “a denial of justice since the acts were committed to the detriment of the victims who were executed and the survivors, and due to the consequent impunity.”

d) “The facts of this case occurred within a context of more general discrimination against Haitians or persons of Haitians origin in the Dominican Republic, as well as deportations of Haitians from the Dominican Republic.”

2. The Commission asked the Court to declare the violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment) 7 (Right to Personal Liberty), 8 (Judicial Guarantees), 25 (Right to Judicial Protection) and 24 (Equality before the Law) of the Convention, in relation to Article 1(1) thereof. In addition, the Commission requested the Court to order the State to adopt certain measures of reparation.

3. *Proceedings before the Commission.* The proceedings before the Inter-American Commission were as follows:

a) The initial petition was presented on November 28, 2005, by the *Grupo de Apoyo a los Repatriados y Refugiados* [Support Group for Refugees and Repatriates] (represented by Chérubin Tragelus) and by the Dominican-Haitian Cultural Center (represented by Antonio Pol Emil). On October 23, 2006, the International Clinic for the Defense of Human Rights of the *Université du Québec à Montréal* (UQAM) (represented by Bernard Duheime and Carol Hilling) were accredited as co-petitioners;³

b) On December 22, 2008, the Commission approved Admissibility Report No. 95/08;

c) On November 2, 2010, the Commission issued Merits Report No. 174/10, under Article 50 of the American Convention (hereinafter “Merits Report”). In this report, the Commission concluded that Dominican Republic was responsible for the violation of the rights to life, personal integrity, personal liberty, non-discrimination,

³ These three persons will hereafter be referred to as “the representatives.”

judicial guarantees and judicial protection established in Articles 2, 4, 5, 7, 24, 8 and 25 of the American Convention, in relation to the obligations established in Articles 1(1) of this instrument, to the detriment of the individuals identified throughout the report, and

d) The Merits Report was notified to the Dominican Republic in a communication of November 11, 2010, which granted the State two months to report on compliance with the recommendations; an extension of this time frame was subsequently granted. The Commission indicated that the time frame and its extension had expired without the State complying with the recommendations and, consequently, it submitted the case to the Court given the need to obtain justice and just reparation. The Inter-American Commission appointed Rodrigo Escobar Gil, Commissioner, and its then Executive Secretary Santiago A. Canton, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, Karla Quintana Osuna, and Isabel Madariaga Cuneo, lawyers of the Executive Secretariat, as legal advisors,.

II PROCEEDINGS BEFORE THE COURT

4. *Notification of the State and the representatives.* The submission of the case by the Commission was notified to the State and the representatives on May 24, 2011.

5. *Brief with pleadings, motions and evidence.* On July 26, 2011, the representative organizations submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") to the Court, pursuant to Articles 25 and 40 of the Rules of Procedure. The representatives agreed substantially with the Commission's arguments and asked the Court to declare the international responsibility of the State for the violation of the same articles alleged by the Commission and, in addition, asked the Court to declare the violation of Articles 3 (Right to Juridical Personality) and 22(9) (Freedom of Movement and Residence) of the American Convention. Lastly, they asked the Court to order the State to adopt various measures of reparation and reimburse specific costs and expenses. The representatives also indicated that they were empowered to represent 28 next of kin of the seven deceased presumed victims⁴ and nine of the 14 surviving presumed victims.⁵

6. *Time-barred presentation of the State's answer.* On February 14, 2012, the State submitted to the Court its brief answering the submission of the case and with observations on the pleadings and motions brief (hereinafter "answering brief"). In a note of the Secretariat of February 23, 2012 (Ref: CDH-12,688/029), the State was informed that the records in the file of this case revealed that the representatives' brief with pleadings, motions, and evidence had been notified by electronic mail to the State on November 24, 2011, and that, the same day, it had also been sent by courier, together with all the annexes, and had been received by the State on November 28, 2011, the date as of which the non-extendible two-month period for the submission of the answering brief began, which would expire on January 28, 2012. Consequently, given the 17-day delay in the submission

⁴ Illiodor Dorzema, Rose Fortilus, Nathalie Guerrier, Antoniette Saint Phar, Loubens Fortilus, Lifaite Alcé, Franceau Alcé, Jacques Wana Maxime, Ecléus Maxime, Wilson Lamour, Tinacie Jean, Lamercie Estimable, Rose Dol, Rosulma Mireil Florvilien, Rony Beauvil, Jheffly Alcé, Louna Beauvil, Génecline Felizor, Jolina George, Lona Beauvil, Kernelus Guerrier, Roseline Jean Mary, Wikenson Franco, Stephanie Franco, Jose Radhames Peralta Espinal, Jose Leonel Peralta Espinal, Amariliz Mercedes Peralta Espinal and Carmen Rosa Peralta Espinal (file of annexes to the pleadings and motions brief, tome V, folios 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2637, 2639, 2640, 2641, 2643, 2644, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2656 and 2659, respectively).

⁵ Sonide Nora, Rose-Marie Petit-Homme, Sylvie Felizor, Renaud Tima, Joseph Desravine, Selafoi Pierre, Joseph Pierre, Josier Maxime and Noclair Florvilien (file of annexes to the pleadings and motions brief, tome V, folios 2638, 2639, 2642, 2645, 2646, 2647, 2655, 2657 and 2658, respectively).

of the answering brief, the Court in plenary determined, based on Article 41(1) of the Court's Rules of Procedure, that the said brief was inadmissible because it was time-barred.

7. *Access to the Victims' Legal Assistance Fund.* In an Order of December 1, 2011, the President of the Court declared admissible the request filed by the presumed victims, through their representatives, to access the Victims' Legal Assistance Fund, and approved the award of the necessary financial assistance for the presentation of a maximum of three statements, either by affidavit or at the public hearing, and the appearance of one of the representatives at the hearing.⁶

8. *Public hearing.* In an Order of May 31, 2012, the President convened the parties to a public hearing, which was held on June 21 and 22, 2012, during the Court's ninety-fifth session, which took place at its seat.⁷ At the hearing, the statements of two presumed victims were received, as well as the observations and final oral arguments of the Inter-American Commission, the representatives, and the State. During this hearing, the Court asked the parties and the Commission to submit certain helpful documentation and clarifications. The President also ordered, among other matters, the reception of various affidavits in the instant case⁸ (*infra* para. 25).

9. *Amici curiae.* The Court also received *amicus curiae* briefs from the following institutions:⁹ the "Bartolomé de las Casas" Human Rights Institute of the *Universidad Carlos III* of Madrid;¹⁰ the Human Rights Clinic of the Loyola Law School of Los Angeles;¹¹ the Equal Rights Trust;¹² the Asylum and Human Rights Clinic of the Boston University School of Law,¹³ and the *Consejo Latinoamericano de Estudiantes de Derecho Internacional y Comparado* [the Latin American Council of International and Comparative Law Scholars], Dominican Republic chapter (COLADIC-RD).¹⁴

⁶ Cf. Order of the President of the Court of December 1, 2011. *Case of Nadege Dorzema et al. v. Dominican Republic.* Victims' Legal Assistance Fund. Available at: http://www.corteidh.or.cr/docs/fondo_victimas/nadege_fv_11.pdf.

⁷ There appeared at the hearing: (a) for the Inter-American Commission: Rosa María Ortiz, Commissioner, Karla Quintana Osuna, Secretariat specialist; (b) for the representatives: Bernard Duhaime, International Clinic for the Defense of Human Rights of the *Université du Québec a Montréal* (CIDDHU); Natalia Lippman Mazzaglia, CIDDHU; Christopher Campbell-Durufflé, CIDDHU; Colette Lespinasse, *Grupo de Apoyo a los Repatriados y Refugiados* (GARR); Antonio Pol Emil, Dominican-Haitian Cultural Center (CCDH); Roberto Antuan, CCDH; Amarilis Espinal, CCDH, and Manuel de Jesús Dandre, interpreter, and (c) for the State: Néstor Cerón Suero, Ambassador of the Dominican Republic to Costa Rica, Adviser; Bernardo Ureña Bueno, Deputy Attorney General of the Armed Forces, Agent; Jose Marcos Iglesias Iñigo, Permanent Agent of the Dominican Republic before the Inter-American Court, Deputy Agent, and Jose Casado-Liberato, Lawyer, Human Rights Analyst for OAS matters, Adviser.

⁸ Cf. Order of the President of the Court of May 31, 2012. *Case of Nadege Dorzema v. Dominican Republic.* Available at: http://www.corteidh.or.cr/docs/asuntos/nadege_31_05_12.pdf.

⁹ The brief of the *Centro de Estudios Legales and Sociales* (CELS) was declared time-barred, owing to late presentation.

¹⁰ Signed by Miguel Angel Ramiro Avilés,

¹¹ Signed by Cesare Romano, Juan Pablo Albán, Juan M. Amaya Castro, Donald K. Anton, Freya Baetens, Caroline Bettinger-López, Nerina Boschiero, Matthew E. B. Brotmann, Bartram S. Brown, David James Cantor, Gabriella Citroni, Niccolò A. Figà-Talamanca, Stefan Kirchner, Konstantinos D. Magliveras, Nathan Miller, Jacqueline M. Nolan-Haley, Manfred Nowak, Belén Olmos Giupponi, Jordan J. Paust, Cristina Ponce, Miguel Ángel Ramiro Avilés, Margherita Salvadori, Jaume Saura, Tullio Scovazzi, Anna Spain and Matthew Zagor.

¹² Signed by Dimitrina Petrova, Catherine Casserley, Schona Jolly, Christopher Milsom and Catriona Stirling.

¹³ Signed by Guy S. Goodwin-Gill, Caroline Bettinger-López, David Abraham, Perveeen Ali, David C. Baluarte, Jon Bauer, Faisal Bhabha, Lauren Carasik, Jessica Chicco, George E. Edwards, Martin S. Flaherty, Mary M. Gundrum, Anjum Gupta, Barbara E. Harrell-Bond, Chester D. Hooper, Cornelius Hurley, Deena R. Hurwitz, Francisco J. Rivera Juaristi, Daniel Kanstroom, Harvey Kaplan, Gil Loescher, Karen Pita Loo, Miram H. Martom, Michelle McKinley, Fabiano L. de Menezes, Jennifer Moore, Karen Musalo, Salima Namusobya, Obiora Chinedu Okafor, Aaron Marr Page, Marselha Gonçalves Margerin, Robert D. Sloane, Tom Syring and Deborah M. Weissman.

¹⁴ Signed by Boris de León Reyes, President of COLADIC-RD, Paola C. Pelletier Quiñones, Coordinator from December 2011 to March 2012, and Ansel Patricia Sierra Ferreira, Coordinator from April to June 2012, and with

10. *Final written arguments and observations.* On July 23 and 24, 2012, the State and the representatives, respectively, forwarded their final written arguments, and on July 23, 2012, the Inter-American Commission submitted its final written observations. The representatives and the State responded to the Court's requests for useful information, documentation and explanations (*supra* para. 8).

11. *Observations of the representatives and the State.* The briefs with pleadings and motions and with final written observations were forwarded to the parties and to the Inter-American Commission on August 1, 2012. The President gave the representatives and the State a time frame for submitting any observations they deemed pertinent on the useful evidence requested by the Court, as well as on the information and annexes submitted by the representatives and the State. On August 14 and 15, 2012, the representatives and the State, respectively, forwarded their observations on the final written arguments of the other party and on the annexes (*infra* paras. 21 to 24).

III COMPETENCE

12. The Inter-American Court is competent to hear this case, in accordance with Article 62(3) of the Convention, because the Dominican Republic has been a State Party to the American Convention since April 19, 1978, and accepted the contentious jurisdiction of the Court on March 25, 1999, while the facts of the case occurred after those dates.

IV EVIDENCE

13. Based on the provisions of Articles 46, 47, 50 and 57 of the Rules of Procedure, as well as in the Court's case law regarding evidence and its assessment,¹⁵ the Court will examine and assess the documentary evidence forwarded by the parties on different procedural occasions, the statements and testimony provided by affidavit and at the public hearing before the Court, as well as the useful evidence requested by the Court (*infra* para. 15). To this end, the Court will abide by the rules of sound judicial discretion, within the corresponding legal framework.¹⁶

A. Documentary, testimonial, and expert evidence

14. The Court received different documents presented as evidence by the Inter-American Commission, the representatives, and the State, attached to their main briefs (*supra* paras. 4, 5 and 10). The Court also received the affidavits made by the presumed victims Joseph Pierre, Sonide Nora and Joseph Desravine, and the witness Pedro Ureña. Regarding the evidence presented at the public hearing, the Court received the statements of the presumed victims Noclair Florvilien and Josier Maxime. In addition, the following expert witnesses proposed by the Commission were summoned to the public hearing, Doudou Diène, former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and

collaboration from and drafting by Emmanuel Adolfo Moreta Fermín, Fernando Roedán Hernández, Francisco José Battle Pérez, Joey Nuñez, Mariel Ortega de los Santos and Raimy Ivonne Reyes Reyes.

¹⁵ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of the Rio Negro Massacres v. Guatemala.* Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012. Series C No. 250, para. 40..

¹⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra*, para. 76, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 40.

related intolerance of the United Nations, and Gay McDougall, Independent Expert on minority issues of the United Nations; however, the Commission withdrew the presentation of the said expert opinions.¹⁷

B. Admission of the evidence

1. Admission of the documentary evidence

15. In this case, as in others, the Court admits those documents presented by the parties at the appropriate procedural moment (*supra* paras. 4 and 5) that were not contested or opposed and the authenticity of which was not questioned.¹⁸ The documents requested by the Court during the public hearing, which were provided subsequently by the parties, are incorporated into the body of evidence in application of the provisions of Article 58 of the Rules of Procedure.

16. Regarding the newspaper articles,¹⁹ this Court has considered that they can be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case. The Court decides to admit the documents that are complete or that, at least, allow verification of their source and date of publication. It will assess them, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.²⁰

17. Also, with regard to some documents indicated by electronic links by the parties and the Commission, the Court has established that if a party provides, at least, the direct electronic link to the document that it cites as evidence and it is possible to access the said document, neither legal certainty nor procedural balance is impaired, because it can be found immediately by the Court and by the other parties.²¹ In this case, neither the other parties nor the Commission opposed or made any observations on the content or authenticity of such documents.

18. Regarding the procedural opportunity for the presentation of documentary evidence, under Article 57(2) of the Rules of Procedure, in general, it must be presented together with the briefs submitting the case, with pleadings and motions, or answering the submission, as appropriate. The Court recalls that evidence submitted outside the proper procedural occasion is inadmissible, unless it is covered by the exceptions established in Article 57(2) of the Rules of Procedure: namely, *force majeure*, serious impediment, or if it refers to an event that occurred after the said procedural occasions.

19. In this regard, in relation to the effects of the inadmissibility of the State's answer, because it was presented 17 days after the time frame had expired (*supra* para. 6), it should be noted that according to Article 41(3) of its Rules of Procedure, "[t]he Court may consider those facts that have not been expressly denied and those claims that have not been expressly contested as accepted." Nevertheless, this does not mean that it will accept them

¹⁷ The purposes of these statements was established in the Order of the President of the Court of May 31, 2012, *supra* note 8.

¹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 40.

¹⁹ Pleading and motions brief and brief with final written arguments (merits file, folios 293 to 296 and 1100 to 1107).

²⁰ Cf. *Case of Velásquez Rodríguez. Merits, supra* note 10, para. 146, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 62.

²¹ Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 63.

automatically in all cases where there is no opposition from a party in that regard, and without an assessment of the specific circumstances of the case and of the existing body of evidence. The silence of the defendant or its obscure or ambiguous answer can be interpreted as an acknowledgment of the facts of the Merits Report, while the contrary is not revealed by the proceedings or as a result of judicial conviction.²² However, the Court may allow the parties to participate in certain procedural actions, taking into account the stages that have expired owing to the opportune procedural moment.

20. Thus, the State has had the procedural opportunity to participate in the public hearing by questioning the deponents, and was able to respond to the questions posed by the judges of the Court and to present its final oral and written arguments. Accordingly, the Court considers that, in view of the absence of an answer to the submission, it will not assess any State arguments or evidence that contests the facts of the case, their admissibility, and the accreditation of presumed victims, because they were not submitted at the appropriate procedural moment (Article 41(1) of the Rules of Procedure). Thus, the Court will only assess disputes regarding statements provided by affidavit and during the public hearing, the legal arguments presented during the hearing, and the final written arguments related to arguments made during the hearing, together with answers and evidence strictly related to the questions posed by the judges during the hearing.

21. Moreover, the State asked that the final written arguments presented by the representatives on July 24, 2012, be declared inadmissible because they were time-barred, since the non-extendible period expired on July 23, 2012. In this regard, the Court observes that, according to the record of the Internet server of the Secretariat of the Court, the reception of the electronic message from the representatives announcing the submission of the final written arguments and included the list of annexes began at 11.35 p.m. on July 23, 2012. Subsequently, another 30 annexes were received between that time and 2.16 a.m. on July 24, 2012. The brief with final arguments was received electronically at 00.24 a.m. the same day. In this regard, the Court considers that, since this is an international proceedings, and required the transmission of a considerable volume of information by electronic means, in accordance with Articles 28 and 33 of the Court's Rules of Procedure which permit documents to be submitted by this means, and since the Court began to receive the documents within the allotted time frame and the transmission continued without interruption until 2.16 a.m., on this occasion, it will admit the brief with final arguments of the representatives and the annexes, considering that they were received within the time frame established in Article 28 of the Court's Rules of Procedure.²³

22. Regarding the requests of the representatives and the State concerning the inadmissibility of additional arguments and evidence included in the final written arguments of the other party, the Court recalls that the final arguments are essentially an opportunity to systematize the factual and legal arguments presented opportunely and not an occasion to present new facts and/or additional legal arguments because they cannot be answered by the other parties. Consequently, the Court finds that it will only consider in its decision the final written arguments that are strictly related to evidence and legal arguments already provided at the appropriate procedural opportunity (*supra* para. 18), or helpful evidence requested by a judge or the Court and, as appropriate, the circumstances set forth in Article 57 of the Court's Rules of Procedure, which, if this is necessary, will be indicated in the relevant section

²² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* note 18, para. 138 and *Case of González Medina v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 73.

²³ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra*, paras. 37 and 39; *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 117; *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 12; *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009, Series C No. 197, para. 13, and *Case of Escué Zapata v. Colombia*. Order of the Inter-American Court of Human Rights of December 20, 2006, tenth considering paragraph.

of the Judgment. To the contrary, any new argument presented in the final written arguments will be inadmissible, because it is time-barred.²⁴ Thus, the Court will take into account the observations of the parties and the body of evidence as a whole to assess the said brief, according to the rules of sound judicial discretion.

23. In particular, with its final written arguments, the State forwarded specific documents to answer the questions posed by the judges, as well as several testimonies and judicial decisions. The representatives also submitted documents to answer the questions posed by the judges during the hearing, together with additional evidence, and they made new legal pleadings and claims for reparations. Consequently, regarding the said documents and arguments, the Court will only admit those provided to answer the questions posed by the judges during the hearing.

24. The Court also observes that the representatives forwarded with their final written arguments, vouchers for expenses related to the litigation of this case. In this regard, it will only consider those expenses that relate to requests for costs and expenses incurred following the presentation of the pleadings and motions brief.

2. Admission of the statements of the presumed victims and of the testimonial evidence

25. Regarding the statements of the presumed victims and of the witness provided by affidavit and during the hearing, the Court finds them pertinent only to the extent that they are in keeping with the purpose defined by the President of the Court in the Order requiring them (*supra* para. 8). Moreover, according to this Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but rather together with all the evidence in the proceedings, since they are useful insofar as they can provide further information on the alleged violations and their consequences.²⁵

V

PRIOR CONSIDERATION REGARDING THE PRESUMED VICTIMS

26. The Court will now assess the following requests made by the representatives: (a) to increase the number of surviving presumed victims; (b) to increase the number of next of kin of the deceased presumed victims, and (c) to include next of kin of the surviving victims as presumed victims, in order to establish in advance who will be considered presumed victims in this case. The Court notes that both the Commission and the representatives used different names or pseudonyms interchangeably to refer to the presumed victims in this case. Consequently, Annex A to this Judgment contains the names used by the Court in the Judgment, as well as the other names or pseudonyms that may have been used in the documents provided by the parties.

A. Arguments

27. In its Merits Report, the Commission individualized as presumed victims seven deceased persons,²⁶ 13 survivors,²⁷ and 51 next of kin of those deceased. Furthermore, the

²⁴ Unless covered by the exceptions under Article 43 of the Court's Rules of Procedure.

²⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 43.

²⁶ "Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ifaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema" (merits file, tome I, folio 34).

²⁷ "Joseph Pierre, Selafoi Pierre, Silvie Therméus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithome/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, Honorio Winique and Joseph

Commission indicated in its Merits Report that “the representatives provided a list of injured victims on which they included the names of Noclair Florvilien, Rose Marie Petit-Homme Estilien, Joseph Dol and Silvie Felizor, as well as seven persons “whose name is unknown.” Nevertheless, the Commission had no “information in the case file on the said victims, or on the facts and violations alleged with regard to them. Consequently, the Commission was not [able] to analyze the circumstances applicable to them in the [...] Merits Report.” Subsequently, when submitting the case to the Court, the Commission indicated that “when approving Report No. 174/10, it had defined the universe of victims, leaving open in its recommendations the State’s obligation to locate the other victims of the events. Following the approval of the Merits Report, the petitioners had provided the Commission with a list of persons who they considered were survivors and next of kin of the victims who had been executed.” Finally, in addition to the 51 next of kin of the deceased who were identified, the Commission indicated, indeterminately, a series of children, siblings and a companion as presumed victims.²⁸

28. The representatives indicated as presumed victims the same seven deceased persons named by the Commission,²⁹ 14 survivors,³⁰ eight individuals referred to as “other victims (persons unidentified in the case, but named *ab initio* by the State)”³¹ and 104 individualized next of kin of the survivors and/or the deceased.³² In addition, regarding the survivors, the representatives clarified that there was some confusion regarding three of the four persons mentioned by the Commission in its Merits Report who were not included as victims owing to the alleged lack of information (see *supra* para. 27). In this regard, the representatives clarified that Rose Marie Petit-Homme Estilien is also known as Cecilia Petithomme/Estilien or Cecilia Petit-Homme; Silvie Felizor is also known as Silvie Therméus, and Joseph Dol is also known as Joseph Desravine or Maudire Felizor. They also accredited Noclair Florvilien as a presumed victim survivor. Regarding the next of kin of the deceased victims announced by the Commission as children, siblings, and companion, the representatives also individualized four siblings of Máximo Rubén de Jesús Espinal³³ and a sister of Pardis Fortilus.³⁴ In addition, they indicated that Silvie Felizor is both a surviving victim and a sister of deceased victim Roselene Therméus. Lastly, the representatives clarified that Sonide Nora, presumed surviving victim, who had initially been identified as a minor, had attained her majority at the time of the facts.

Devraine (also known as Maudire Felizor)” (merits file, tome I, folio 34). In addition, it should be noted that the presumed victim Michel Francoise was considered by the Commission as one of the persons who suffered a violation of his personal integrity; however, it failed to include him as a victim in the concluding paragraphs on the violations of Articles 7, 5(1), 5(2), 8 and 25 of the American Convention, without providing any justification in this regard (merits file, tome I, folios 6, 20, 23, 59 and 65).

²⁸ In the case of Iflaudia Dorzema, Jacqueline Maxime, Nadege Dorzema and Pardis Fortilus, the Commission referred to an indeterminate number of “children.” Similarly, in the case of Máximo Rubén de Jesús Espinal, Nadege Dorzema and Pardis Fortilus, the Commission referred to “siblings” without determining their name or number. Lastly, in the case of Roselene Therméus, the Commission referred to a permanent companion without determining the name (merits file, tome I, folios 34 and 35). See also briefs of the representatives before the Commission of September 17, 2010 (presented by e-mail on September 21, 2010) and of October 20, 2010 (file of annexes to the merits report, folios 101 to 1004 and 1055 to 1064).

²⁹ “Jacqueline Maxime, Fritz Alice (Gemilord), Roselene Therméus, Iflaudia Dorzema, Máximo Rubén Jesús Espinal, Pardis Fortilus and Nadege Dorzema” (merits file, tome I, folio 192).

³⁰ “Joseph Pierre, Celafoi Pierre, Joseph Desravine, Renaud Tima, Noclair Flor Vilien, Sylvie Felizor, Roland Israel, Rose Marie Petit-Homme, Sonide Nora, Josué Maxime, Alphonse Oremis, Honorio Winique, Rose Marie Dol and Michel Forentin (or Françoise)” (merits file, tome I, folios 192 and 193).

³¹ Cf. Note of the Head of the National Police of June 20, 2000: “Favio Patra, Ninaza Popele, Antonio Torres, Michel Marilin, Alfonso Ajise, Jose Luis, Manuel Bldimir and Zuñidla Neiba” (merits file, tome I, folio 193; file of annexes to the pleadings and motions brief, tome III, folios 2778 and 2779).

³² Pleadings and motions brief (merits file, folios 193 to 196).

³³ “Amarilis Mercedes, Carmen Rosa, Jose Leonel and Jose Radhames” (merits file, tome I, folio 194).

³⁴ “Rose Fortilus” (merits file, tome I, folio 194).

B. Considerations of the Court

1. Request to increase the number of surviving presumed victims

29. The Court emphasizes that, under Article 35(1) of its Rules of Procedure, the report referred to in Article 50 of the Convention must contain “all the facts that allegedly violate the Convention, including the identification of the presumed victims.” Thus, it is the Commission and not the Court that must identify, precisely and at the appropriate procedural moment, the presumed victims in a case before the Court.³⁵ Nevertheless, Article 35(2) of the Rules of Procedure establishes that “[w]hen it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims.”

30. In this regard, the Court notes that the facts of the case relate to the presumed violations of the human rights of migrants, some of whom lost their life, others were injured and others were supposedly detained and expelled from the country. This allows it to be considered that, on the one hand, the facts of the case relate to presumed collective violations and, on the other hand, that the migratory condition of the presumed victims allegedly expelled and their situation of vulnerability and marginalization may, in this case, make their effective identification and determination more complex. Therefore, the Court observes that, at the Commission’s request, in a communication of September 21, 2010, the representatives sent it a brief indicated that they were attaching a list of victims and their next of kin. In this brief, they stated that, owing to the expulsion, some of the victims were obliged to move frequently and that the earthquake that occurred in Haiti on January 12, 2010, resulted in a series of technical complications to locate and communicate with the victims, so that it was impossible to provide a complete and updated list of the said persons. Consequently, they asked the Commission to take this special situation into account and, based on *force majeure*, allow them to present an updated list of victims at a future date.³⁶

31. Accordingly, the Court finds that this case falls within the context of Article 35(2) of the Rules of Procedure. Consequently, the Court will consider as presumed victims those persons included by the Commission in its Merits Report (*supra* para. 27), derived from the list forwarded by the representatives in the proceedings before the Commission (*supra* para. 30).

32. Thus, with regard to Noclair Florvilien, Rose Marie Petit-Homme Estilien, Joseph Dol and Silvie Felizor, the Commission noted that it had received the representatives’ list that included their names (*supra* para. 270). However, without any specific reason, it stated that it had no further information to declare them as victims. In addition, at the request of the representatives, Mr. Florvilien testified in the hearing before the Court without the State or the Commission opposing this. Thus, in addition to the said testimony during the hearing, the Court has sufficient probative evidence to determine that Noclair Florvilien was involved in the facts of this case and, as such, he will be considered a presumed victim.³⁷

³⁵ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Furlan and family members. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 277.

³⁶ Brief of September 21, 2010 (file of annexes to the merits report, folios 1001 and 1002).

³⁷ Cf. Statement made by Noclair Florvilien during the public hearing of this case held on June 21, 2012. See also: Sworn statement by Noclair Florvilien of July 8, 2011; medical evaluation of Noclair Florvilien of July 9, 2011; psychological evaluation of Noclair Florvilien of July 9, 2011, and sworn statement of Noclair Florvilien of July 9, 2011 (file of annexes to the pleadings and motions brief, folios 2687, 2969, 2986 and 3095, respectively).

33. Furthermore, the Court observes that the representatives clarified that Rose Marie Petit-Homme Estilien, Joseph Dol and Silvie Felizor correspond to the pseudonyms of these individuals identified by the Commission in its Merits Report³⁸ (*supra* para. 27) and, as such, the situation does not increase the number of surviving presumed victims.

34. Regarding the eight persons announced by the representatives and the Commission as “other unidentified victims in the case, but supposedly named *ab initio* by the State” (*supra* para. 28),³⁹ the Court notes that it has insufficient information to identify these individuals at this procedural stage, because there is no document among the evidence submitted by the parties that would allow the Court to determine clearly the name and other relevant details of the presumed victims, and their relationship to the facts of the case. Therefore, they will not be considered presumed victims in this Judgment.

35. Based on the above, the Court declares that the 13 people identified by the Commission⁴⁰ and Noclair Florvilien will be considered as surviving presumed victims.

2. Request to increase the number of next of kin of the deceased presumed victims

36. The Court observes that, in addition to the 51 next of kin of those deceased individualized by the Commission in paragraph 104 of its Merits Report, the latter referred to a number of indeterminate and unnamed “children, siblings, and partners,” together with the names of the individualized next of kin. Specifically, in the case of Ilfaudia Dorzema, Jacqueline Maxime, Nadege Dorzema and Pardis Fortilus, the Commission referred to “children.” In the case of Máximo Rubén de Jesús Espinal, Nadege Dorzema and Pardis Fortilus, the Commission referred to “siblings.” Lastly, in the case of Roselene Therméus, the Commission referred to “companion.” Meanwhile, the representatives specified that Silvie Felizor, who is also a surviving presumed victim, is a sister of Roselene Therméus, deceased presumed victim. In this regard, the Court notes that a comparison of this information with the list of next of kin presented by the representatives reveals that the representatives individualized four siblings of Máximo Rubén de Jesús Espinal⁴¹ and a sister of Pardis Fortilus.⁴² However, in the case of Mrs. Fortilus, they also added her step-mother,⁴³ without this hypothesis having been referred to in the list of next of kin in paragraph 104 of the Merits Report. Therefore, since the said persons were not duly individualized by the Commission in its Merits Report, the Court can only consider as presumed victims in the instant case the 51 next of kin who were identified by the Commission precisely and at the appropriate procedural occasion (*infra* Annex A).

3. Request to include the next of kin of the surviving victims as presumed victims

37. The representatives included on the list of presumed victims that they presented with their pleadings and motions brief 53 additional next of kin of some surviving presumed

³⁸ Also known as Cecilia Petithomme/Estilien, Joseph Desravine or Maudire Felizor and Silvie Therméus, respectively.

³⁹ “Favio Patra, Nianza Popele, Antonio Torres, Michel Marilin, Alfonso Ajise, Jose Luis, Manuel Bladimir and Zuñidla Neiba.”

⁴⁰ Joseph Pierre, Selafoi Pierre, Sylvie Felizor, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Françoise, Rose-Marie Petit-Homme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, Honorio Winique and Joseph Devraine (merits file, tome I, folio 34).

⁴¹ Amarilis Mercedes, Carmen Rosa, Jose Leonel and Jose Radhames (merits file, tome I, folio 194).

⁴² Rose Fortilus (merits file, tome I, folio 194).

⁴³ Antoniette Sainphar (merits file, tome I, folio 194).

victims, to be considered as victims in their own right and as beneficiaries of eventual reparations. However, since the next of kin of the survivors were not considered presumed victims by the Commission and were not alleged to be holders or beneficiaries of any right in dispute in the instant case, in application of Article 35(1) of the Court's Rules of Procedure and its case law (*supra* para. 29), they will not be considered presumed victims in this case.

VI PROVEN FACTS

A. Context

38. This Court has found that the first major migrations of Haitians to the Dominican Republic took place during the first third of the 20th century, when around 100,000 people moved to that country's sugar plantations. At first, the Dominican sugar mills were controlled by private companies, and then most of them passed into the control of the State Sugar Council. Many Haitian migrants came to live permanently in the Dominican Republic; they started families in this country, and now live with their children and grandchildren (second and third generation Dominicans of Haitian origin), who were born and live in the Dominican Republic.⁴⁴

39. According to different estimates, between 900,000 and 1.2 million Haitians and Dominicans of Haitian origin live in the Dominican Republic.⁴⁵ The total population of the Dominican Republic is approximately 8.5 million and, according to the Caribbean Migrants Observatory, in 2011, the foreign population registered in the country consisted of 292,737 persons, of whom 247,468 were Haitians and 45,269 of other nationalities.⁴⁶ The Haitian migration is mainly due to the environmental degradation and poverty in Haiti and the hope of job opportunities and better socio-economic conditions in the Dominican Republic. Nevertheless, many of the Haitians in Dominican Republic suffer from poverty and marginalization resulting from their legal status and lack of opportunities.⁴⁷

40. In the instant case, both the Commission and the representatives argued that the events occurred in a context of discrimination against Haitians in the Dominican Republic. For its part, the State maintained that it cannot be inferred from the facts of the case that discriminatory treatment existed. In this regard, the Court considers that, in order to decide this case, it is not necessary to make a ruling on the alleged context of structural discrimination that might exist in the Dominican Republic towards Haitians or persons of Haitian origin. Nevertheless, in Chapter VII-5, the Court will analyze whether, in this case, there was discrimination owing to the condition as migrants of the presumed victims, in accordance with Article 1(1) of the Convention.

B. Facts of the case

⁴⁴ *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of September 8, 2005. Series C No. 130, para. 109.1.

⁴⁵ *Cf.* National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, UN Doc A/HRC/WG.6/6/DOM/1, 27 August 2009 (file of annexes to the pleadings and motions brief, tome VI, folio 3319).

⁴⁶ *Cf. Informe sobre la cuestión de la migración internacional en la República Dominicana para el año 2011.* Caribbean Migrants Observatory, April 2012. Available at: [http://www.obmica.org/noticias/resena/b896d7/Informe Anual Obmica 2011.pdf](http://www.obmica.org/noticias/resena/b896d7/Informe%20Anual%20Obmica%202011.pdf) (last consulted on October 20, 2012).

⁴⁷ *Cf. Case of the Yean and Bosico Girls v. Dominican Republic, supra*, paras. 109.2 and 109.3. See also, *Unwelcome Guests: A Study of expulsions of Haitians and Dominicans of Haitian Descent from the Dominican Republic to Haiti.* International Human Rights Law Clinic, Boalt Hall School of Law, University of California at Berkeley, 2002 (file of annexes to the pleadings and motions brief, tome VI, folio 3500).

1. Pursuit and incident

41. On June 16, 2000, a group of Haitian nationals arrived at the town of Ouanamithe (Wanamant) in Haiti, where they spent the night. The next day, they crossed the Massacre River and some scrubland, entering Dominican territory⁴⁸ until they reached a place in the region of Santa Maria where they were received by a Dominican, about whom there is no information, and spent the night and were given food in his home.⁴⁹ In the early morning hours of June 18, 2000, a yellow Daihatsu truck,⁵⁰ driven by Felix Antonio Nuñez Peña, accompanied by Máximo Ruben de Jesus Espinal, both Dominican nationals, set out for Santiago de los Caballeros in Dominican Republic,⁵¹ transporting about 30 Haitian nationals,⁵² including the minor Roland Israel⁵³ and a pregnant woman, Sylvie Felizor.⁵⁴ The Haitian nationals were squatting or sitting in the back of the truck covered by a tarpaulin.⁵⁵

42. The truck drove through the first checkpoint without being stopped.⁵⁶ Upon arriving at a second checkpoint, in Botoncillo, at approximately 3 a.m., the soldiers there made signs for the truck to stop; however, the truck took a detour and continued on its way to the town of Copey.⁵⁷

⁴⁸ Cf. Testmony of Sylvie Felizor given on September 22, 2007 (file of annexes to the merits report, tome II, folio 1584); Testmony of Rose Marie Dol given on September 22, 2007 (file of annexes to the merits report, tome II, folio 1585); Testmony of Renaud Tima given on September 21, 2007 (file of annexes to the merits report, tome II, folio 1586); Testmony of Selafoi Pierre given on September 22, 2007 (file of annexes to the merits report, tome II, folio 1587); Testmony of Joseph Pierre given on September 22, 2007 (file of annexes to the merits report, tome II, folio 1588); Affidavit prepared by Joseph Pierre on June 14, 2012 (merits file, tome II, folio 564) and Affidavit prepared by Joseph Desravine on June 14, 2012 (merits file, tome II, folio 567).

⁴⁹ Cf. Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose Marie Dol, *supra*, folio 1585; Testmony of Renaud Tima, *supra*, folio 1586, and Testmony of Selafoi Pierre, *supra*, folio 1587.

⁵⁰ Cf. Interrogation of Bernardo de Aza Núñez on June 19, 2000 (file of annexes to the merits report, tome II, folio 1659); Interrogation of Wilkins Siri Tejada on June 19, 2000 (file of annexes to the merits report, tome II, folio 1672); Interrogation of Ferison LaGrange Vargas on June 19, 2000 (file of annexes to the merits report, tome II, folio 1653); Interrogation of Santiago Florentino Casilla on June 19, 2000 (file of annexes to the merits report, tome II, folio 1668) and Interrogation of Pedro María Peña Santos on July 17, 2000 (file of annexes to the merits report, tome II, folio 1699).

⁵¹ Cf. Affidavit prepared by Félix Antonio Núñez Peña on April 15, 2009 (file of annexes to the merits report, tome II, folio 1549) and Interrogation of Félix Antonio Núñez Peña on July 17, 2000 (file of annexes to the merits report, tome II, folio 1572).

⁵² Communication from the Attorney General of the Armed Forces to the Secretary of State for the Armed Forces of May 24, 2007 (file of annexes to the merits report, tome II, folio 1592), and note of the Director of Intelligence of the SEFA of June 18, 2000 (file of annexes to the merits report, tome II, folio 1646).

⁵³ Cf. note of the Commander of the 10th Infantry Battalion of June 18, 2000 (file of annexes to the merits report, tome II, folio 846).

⁵⁴ Cf. Testmony of Sylvie Felizor, *supra*, folio 1584 and Affidavit prepared by Joseph Desravine, *supra*, folio 567.

⁵⁵ Cf. Interrogation of Félix Antonio Núñez Peña, *supra*, folio 1573; Interrogation of Michel Françoise, *supra*, folio 1581); Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose Marie Dol, *supra*, folio 1585; Testmony of Renaud Tima, *supra*, folio 1586; Testmony of Selafoi Pierre, *supra*, folio 1587; Testmony of Joseph Pierre, *supra*, folio 1588; Testmony of Rose-Marie Petit-Homme (file of annexes to the merits report, tome II, folio 1639); Affidavit prepared by Joseph Pierre, *supra*, folio 564; Affidavit prepared by Joseph Desravine, *supra*, folio 567; Statement of Sonide Nora (merits file, tome II, folio 571), and statements made by Noclair Florvilien and Josier Maxime during the public hearing of this case held on June 21, 2012.

⁵⁶ Cf. Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Selafoi Pierre, *supra*, folio 1587, and statements made by Noclair Florvilien and Josier Maxime during the public hearing.

⁵⁷ Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000 (file of annexes to the merits report, tome II, folio 1568); Interrogation of Johannes Paul Franco Camacho on June 19, 2000 (file of annexes to the merits report, tome II, folio 1664); Interrogation of Bernardo de Aza Núñez on July 19, 2000 (file of annexes to the merits report, tome II, folio 1576); Interrogation of Wilkins Siri Tejada on July 17, 2000 (file of annexes to the merits report, tome II, folio 1636); Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folio 1672; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1653; Interrogation of Ferison LaGrange Vargas on July 17, 2000 (file of annexes to the merits report, tome II, folio 2691); Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1668; Interrogation of Félix Antonio Núñez Peña on July 17, 2000,

43. In this situation, four soldiers belonging to the Border Forces Operations Post got into their patrol vehicle and began to pursue the yellow truck. After driving between 2 and 5 kilometers, the patrol vehicle caught up with the truck and flashed its lights and hooted its horn in order to make the truck stop; however, the truck driver kept going.⁵⁸ The highway that both vehicles were on was irregular and there was poor visibility because of darkness owing to the early hour. In addition, the truck was zigzagging at a “considerable speed;” the driver of the patrol car was driving on that highway for the first time, and his vehicle was around 150 to 300 meters from the truck.⁵⁹

44. The soldiers fired numerous shots at the truck with their regulation weapons and an M16 rifle,⁶⁰ which hit the back gates and the cabin, but not the tires.⁶¹ During the shooting, the co-driver Máximo Ruben de Jesus Espinal was mortally wounded, and his body was thrown from the truck.⁶² The soldiers who were in pursuit saw Mr. Espinal’s body fall from the vehicle; nevertheless, they continued on without stopping.⁶³

45. Regarding the shots fired at the truck, there are conflicting statements. The truck driver and the surviving victims asserted that the soldiers knew that the truck was carrying

supra, folio 1572; Interrogation of Michel Françoise, *supra*, folio 1581; Testimony of Rose Marie Dol, *supra*, folio 1585; Testimony of Renaud Tima, *supra*, folio 1586; Affidavit prepared by Joseph Desravine, *supra*, folio 567 and Statement made by Josier Maxime during the public hearing.

⁵⁸ Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1568; Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folio 1664; Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1576; Interrogation of Bernardo de Aza Núñez on June 19, 2000, *supra*, folio 1659; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folio 1672; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1653; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2691, and Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1668.

⁵⁹ Cf. Interrogation of Johannes Paul Franco Camacho, July 18, 2000 (file of annexes to the merits report, tome II, folio 1569); Interrogation of Johannes Paul Franco Camacho, June 19, 2000 (file of annexes to the merits report, tome II, folio 1665); Interrogation of Bernardo de Aza Núñez, July 19, 2000 (file of annexes to the merits report, tome II, folio 1577); Interrogation of Bernardo de Aza Núñez, June 19, 2000 (file of annexes to the merits report, tome II, folio 1660); Interrogation of Wilkins Siri Tejada, July 17, 2000 (file of annexes to the merits report, tome II, folio 1636); Interrogation of Wilkins Siri Tejada June 19, 2000 (file of annexes to the merits report, tome II, folio 1672); Interrogation of Ferison LaGrange Vargas, June 19, 2000 (file of annexes to the merits report, tome II, folio 1653) and Interrogation of Ferison LaGrange Vargas, July 17, 2000 (file of annexes to the merits report, tome II, folio 2692).

⁶⁰ Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1569; Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folio 1664; Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1577; Interrogation of Bernardo de Aza Núñez on June 19, 2000, *supra*, folios 1659 and 1660; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folio 1672; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1653; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692; Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1668; Affidavit prepared by Félix Antonio Núñez Peña, *supra*, folio 1549; Interrogation of Félix Antonio Núñez Peña, *supra*, folio 1572; Interrogation of Michel Françoise, *supra*, folio 1581; Testimony of Sylvie Felizor, *supra*, folio 1584; Testimony of Rose Marie Dol, *supra*, folio 1585; Testimony of Renaud Tima, *supra*, folio 1586; Testimony of Selafoi Pierre, *supra*, folio 1587; Testimony of Joseph Pierre, *supra*, folio 1588; Testimony of Rose-Marie Petit-Homme, *supra*, folio 1639; Affidavit prepared by Joseph Pierre, *supra*, folio 564; Affidavit prepared by Joseph Desravine, *supra*, folio 567 and 568; Affidavit prepared by Sonide Nora, *supra*, folio 571, and statements made by Noclair Florvilien and Josier Maxime during the public hearing.

⁶¹ Cf. Judicial assessment decision of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 24, 2000 (file of annexes to the merits report, tome II, folio 1559).

⁶² Cf. Interrogation of Félix Antonio Núñez Peña on June 19, 2000, *supra*, folio 2666.

⁶³ Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1569; Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folio 1664; Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1577; Interrogation of Bernardo de Aza Núñez on June 19, 2000, *supra*, folio 1660; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folio 1672; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1653; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692, and Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1668.

people, because the tarpaulin that covered them moved or lifted up, the night was clear, and they were constantly crying out, asking for help.⁶⁴ For their part, the soldiers stated that the tarpaulin was fixed, the area was dark, and they never heard cries or saw movement under the tarpaulin.⁶⁵

46. Some kilometers further down the road, in the Copey section, the truck overturned at the side of the road, and some people were trapped under the vehicle.⁶⁶ According to the truck driver, the moisture from the blood from the gunshot wound suffered by Mr. Espinal, added to the nervousness of the moment, caused him to lose control of the truck on a curve and the vehicle to overturn.⁶⁷ When the soldiers entered the curve, the driver of the patrol car lost control of his vehicle, which hit the overturned truck.⁶⁸

47. The driver and the surviving victims stated that when the soldiers arrived at the site where the truck had overturned and saw that several of the people who had been in the truck were running away owing to the tenseness of the situation, they opened fire on them.⁶⁹ Specifically, Mr. Nuñez Peña stated that he still recalls the terrifying image [of the] moment when a Haitian woman who was trying to get through a barb wire fence [...] was shot, as well as two other Haitians who were attempting to flee the scene and who were killed.⁷⁰ However, according to the testimony of the soldiers, when they arrived at the site of the overturned truck, and saw that some of the people who had been in the truck were beginning to flee, they fired shots in the air.⁷¹

⁶⁴ Cf. Affidavit prepared by Félix Antonio Núñez Peña, *supra*, folio 1549; Interrogation of Félix Antonio Núñez Peña, *supra*, folio 1573; Interrogation of Michel Françoise, *supra*, folio 1581; Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose-Marie Petit-Homme, *supra*, folio 1639; Affidavit prepared by Joseph Pierre, *supra*, folio 564; Affidavit prepared by Joseph Desravine, *supra*, folio 568; Affidavit prepared by Sonide Nora, *supra*, folio 571, and statements made by Noclair Florvilien and Josier Maxime during the public hearing. See also Judicial assessment decision of the First Instance Court, *supra*, folio 1559.

⁶⁵ Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1569; Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folios 1665 and 1666; Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1577; Interrogation of Bernardo de Aza Núñez on June 19, 2000, *supra*, folios 1661 and 1662; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folios 1673; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1655 and Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692.

⁶⁶ Cf. Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1577; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1654; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692; Interrogation of Michel Françoise, *supra*, folio 1581; Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Renaud Tima (file of annexes to the merits report, tome II, folio 1586; Testmony of Selafoi Pierre, *supra*, folio 1587; Testmony of Joseph Pierre, *supra*, folio 1588; Affidavit prepared by Joseph Pierre, *supra*, folio 564 and Affidavit prepared by Joseph Desravine, *supra*, folio 568.

⁶⁷ Cf. Interrogation of Félix Antonio Núñez Peña on July 17, 2000, *supra*, folio 1573.

⁶⁸ Cf. Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folio 1665; Interrogation of Bernardo de Aza Núñez on June 19, 2000, *supra*, folio 1660; Interrogation of Wilkins Siri Tejada on June 19, 2000, *supra*, folios 1673; Interrogation of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1654; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692; Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1668.

⁶⁹ Cf. Affidavit prepared by Félix Antonio Núñez Peña, *supra*, folio 1549; Interrogation of Félix Antonio Núñez Peña, *supra*, folio 1573; Interrogation of Michel Françoise, *supra*, folio 1581; Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose Marie Dol, *supra*, folio 1585; Testmony of Renaud Timad, *supra*, folio 1586; Affidavit prepared by Joseph Pierre, *supra*, folio 564; Affidavit prepared by Joseph Desravine, *supra*, folio 568; Affidavit prepared by Sonide Nora, *supra*, folio 571 and Statement made by Noclair Florvilien during the public hearing.

⁷⁰ Affidavit prepared by Félix Antonio Núñez Peña, *supra*, folio 1549. Also, cf. Affidavit prepared by Joseph Desravine, *supra*, folio 568; Affidavit prepared by Sonide Nora, *supra*, folio 571 and Statement made by Noclair Florvilien during the public hearing.

⁷¹ Cf. Interrogation of Johannes Paul Franco Camacho on June 19, 2000, *supra*, folio 1665; Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2692 and Interrogation of Santiago Florentino Casilla on June 19, 2000, *supra*, folio 1669.

48. The evidence in the case file reveals that during the pursuit of the truck, Fritz Alce,⁷² Ilfaudia Dorzema⁷³ and Nadege Dorzema⁷⁴ all Haitian nationals, and Máximo Rubén de Jesús Espinal,⁷⁵ a Dominican national, lost their lives as a result of bullets from firearms. When the truck rolled over, Jacqueline Maxime died owing to injuries to the chest and abdomen.⁷⁶ Also, Pardis Fortilus and Roselene Therméus died from the shots fired after the truck had overturned.⁷⁷ According to the medical certificates, the cause of death of six of them was gunshot wounds, mostly to the head, chest, abdomen, and other parts of the body.

49. Similarly, the Court observes that the State indicated that it was aware of at least 13 survivors who were injured.⁷⁸ However, from the evidence provided, the Court has only been able to verify the following 10 injured survivors: Rose-Marie Petit-Homme,⁷⁹ Michel François, Noclair Florvilien, Joseph Desravine, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Josier Maxime and Sonide Nora,⁸⁰ and at least four other survivors: Roland Israel, Rose-Marie Dol, Winique Honorio and Alphonse Oremis (*infra* paras. 54 and 55).

⁷² Cf. Preliminary autopsy report on Fritz Alce prepared by the Regional Forensic Pathology Institute on June 20, 2000 (file of annexes to the merits report, tome II, folios 1612 and 1613): Fritz Alce: "Has a bullet entry hole in the left temporal region with exit in the posterior occipital region, with a large open crescent-shaped wound with loss of brain matter, with multiple fractures of the cranium. The trajectory is from left to right and from front to back; it caused a cerebral hemorrhage and diffuse cerebral laceration. Has an irregular 3.2 cms open wound in the region of the right jaw. Has dried-up abrasions on right side of left shoulder and right arm."

⁷³ Preliminary autopsy report on Ilfaudia Dorzema prepared by the Regional Forensic Pathology Institute on June 20, 2000 (file of annexes to the merits report, tome II, folios 1604 and 1605): "Has a bullet entry hole in the outer part of the right arm with exit in the left subscapular region. Trajectory from front to back and from right to left; causing laceration and perforation of both lungs and the heart, with hemothorax. Has another bullet entry hole in the left back, with exit on a posterior-axillary line with the fourth left intercostal space, following a trajectory from front to back and from right to left."

⁷⁴ Preliminary autopsy report on Nadege Dorzema prepared by the Regional Forensic Pathology Institute on June 20, 2000 (file of annexes to the merits report, tome II, folios 1606 and 1607): "Has two bullet entry holes on the right side of the back. Entry hole in the back of the left shoulder. Has an entry hole in the left side of the abdomen. Has an exit hole in the region of the right gluteal region. Has an exit hold in the right axillar region. Has an exit hole in the right arm. Has an exit hole in the right pectoral region."

⁷⁵ Preliminary autopsy report on Máximo Rubén de Jesús Espinal prepared by the Regional Forensic Pathology Institute on June 20, 2000 (file of annexes to the merits report, tome II, folios 1610 and 1611): "has extensive dried-up abrasions on [illegible] the left shoulder, chest and left side of the abdomen, both legs and back. Irregular 9 cm open wound on the right knee. A bullet entry hole in the left parietal region, with exit in the left occipital region. Trajectory from right to left and from front to back."

⁷⁶ Cf. Preliminary autopsy report on Jacqueline Maxime prepared by the Regional Forensic Pathology Institute on June 20, 2000 (file of annexes to the merits report, tome II, folio 1598): "Numerous ribs fractured on both sides, subcutaneous emphysema and hemothorax. Has abrasions and ecchymosis on left back [illegible] and left side of the abdomen."

⁷⁷ Cf. Affidavit prepared by Joseph Desravine, *supra*, folio 568; Affidavit prepared by Sonide Nora, *supra*, folio 571; Preliminary autopsy reports of the Regional Forensic Pathology Institute of June 20, 2000, *supra*, folios 1600 to 1613: Roselene Therméus: "Has a circular hole that corresponds to an entry hole of a bullet in the middle back near the spine, with no exit hole, which fractured the ribs and severed the medulla. Two metallic fragments were recovered from the spine"; Pardis Fortilus: "Has a bullet entry hole in the right chest with exit behind the right shoulder. With a trajectory from front to back, causing laceration and perforation of the upper lobe of the right lung. Has an entry hole in the back of the right hand with exit in the palm, below the thumb. Has an entry hold on the inside of the left forearm with exit on the contralateral region Has two small irregular wounds in the third distal of the right thigh, which reach the muscle layers. In one of them a flat fragment was recovered – metallic, gold. Has an entry hole in the back lumbar region that caused a fracture. A deformed bullet was recovered. A correlation was established between the perforations on the clothing and the wounds described in the chest."

⁷⁸ Cf. note of the Director of Intelligence of SEFA of June 18, 2000 (file of annexes to the merits report, tome II, folio 1646) and summary of the investigation conducted by the Joint Board into the facts that occurred in the early hours of June 18, 2000, dated June 21, 2000 (file of annexes to the merits report, tome II, folio 1690). Also, Cf. Interrogation of Ferison LaGrange Vargas on July 17, 2000, *supra*, folio 2693.

⁷⁹ Cf. Testimony of Rose-Marie Petit-Homme, *supra*, folio 1639.

⁸⁰ Cf. Medical certificate of Michel François of June 23, 2000 (file of annexes to the merits report, tome II, folio 1641); medical certificate of Noclair Florvilien of July 9, 2011 (file of annexes to the pleadings and motions brief, folio 2969); medical certificate of Joseph Desravine (file of annexes to the pleadings and motions brief, folio 2971); medical certificate of Joseph Pierre (file of annexes to the pleadings and motions brief, folio 2974); medical

2. Reaction of the authorities to the incident

50. Two soldiers went in search of medical personnel⁸¹ and, subsequently, ordered the surviving victims to lift up the overturned truck. Seeing that they were unable to raise it, the soldiers proceeded to help them.⁸² Then, the soldiers, with the help of some survivors, pulled out those who were still trapped under the vehicle and separated the dead and the wounded. The soldiers ordered the survivors to put the dead and seriously wounded into the ambulances to be taken to the José María Cabral and Baez Regional University Hospital, in Santiago.⁸³

51. Some of the people who were taken to the hospital stated that the treatment they received was "scant or non-existent."⁸⁴ In all, nine people were taken to the hospital and at least five of them were hospitalized, including Joseph Desravine, Sonide Nora, Noclair Florvilien, Josier Maxime and Michel Françoise.⁸⁵ However, their personal data was not recorded at the time of their admission or discharge from the hospital.⁸⁶

52. On June 19, 2000, the bodies of the six deceased Haitians were buried in a mass grave in Gurabo, Dominican Republic.⁸⁷ Next of kin of some of the deceased carried out the burial.⁸⁸ The information provided in this case does not reveal what happened to the Dominican victim.

certificate of Renaud Tima (file of annexes to the pleadings and motions brief, folio 2976); medical certificate of Selafoi Pierre (file of annexes to the pleadings and motions brief, folio 2979); medical certificate of Sylvie Felizor (file of annexes to the pleadings and motions brief, folio 2980); medical certificate of Josier Maxime (file of annexes to the pleadings and motions brief, folio 2974), and Affidavit prepared by Sonide Nora, *supra*, folio 572.

⁸¹ Cf. Interrogations of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1569; and on June 19, 2000, *supra*, folio 1665; Interrogation of Bernardo de Aza Núñez on July 19, 2000, *supra*, folio 1577; Interrogation of Wilkins Siri Tejada on July 17, 2000, *supra*, folio 1636; interrogations of Ferison LaGrange Vargas on June 19, 2000, *supra*, folio 1654, and on July 17, 2000, *supra*, folio 2692.

⁸² Cf. Testimony of Renaud Tima, *supra*, folio 1586; testimony and sworn statement of Joseph Pierre, *supra*, folios 1588 and 564; Affidavit prepared by Joseph Desravine, *supra*, folio 568 and Affidavit prepared by Sonide Nora, *supra*, folio 571.

⁸³ Cf. Testimony of Rose Marie Dol, *supra*, folio 1585; Testimony of Selafoi Pierre, *supra*, folio 1587; Affidavit prepared by Joseph Pierre, *supra*, folio 565; Affidavit prepared by Joseph Desravine, *supra*, folio 568 and Affidavit prepared by Sonide Nora, *supra*, folio 572.

⁸⁴ Cf. Affidavit prepared by Joseph Desravine, *supra*, folio 569; Affidavit prepared by Sonide Nora, *supra*, folio 572), and statements made by Noclair Florvilien and Josier Maxime during the public hearing.

⁸⁵ Cf. note of the Commander of the 10th Infantry Battalion of June 18, 2000, *supra*, folio 846; Affidavit prepared by Joseph Desravine, *supra*, folio 569; Statement of Sonide Nora, *supra*, folio 572; statements made by Noclair Florvilien and Josier Maxime during the public hearing, and medical certificate of Michel Françoise of June 23, 2000, *supra*, folio 1641.

⁸⁶ In this regard, the Director General of the Hospital, Ronaldo Baéz García, stated that "[the] Haitian citizens were neither received nor attended in [the] Hospital." Note of the Director General of the Jose Maria Cabral Báez Hospital, dated July 11, 2012 (file of annexes to the State's final arguments, folio 4107.1. See also, Statement made by Noclair Florvilien during the public hearing.

⁸⁷ Cf. newspaper article in the *Diario el Siglo* of June 20, 2000, entitled "*Haitianos acribillados vivían en el país; los sepultan en Gurabo*" (file of annexes to the merits report, tome II, folio 1630) and newspaper article in *Le Nouvelliste* of June 22, 2000, entitled "*Inhumation des 6 haïtienes tués*" (file of annexes to the pleadings and motions brief, folios 3194 and 3195). In this regard, the Court observes that the State presented documents in which the health authorities stated that they were unaware of the final fate of the said bodies. Cf. Notes of the Director General of the Jose Maria Cabral Báez Hospital, of the Director of the National Forensic Science Institute and of the Specialized Health Services of the Ministry of Health, dated July 11, 5 and 12, 2012, respectively (file of annexes to the State's final arguments, folios 4107.1 to 4107.22).

⁸⁸ Cf. Affidavit prepared by Sonide Nora, *supra*, folio 572; psychological evaluation of Vivandieu Dorzema, issued by the psychologist Jean Evenson Lizaïre before notary public on February 24, 2011 (file of annexes to the pleadings and motions brief, tome V, folio 2995). Also, see burial certificates issued on July 13 and 19, 2012, with regard to Fritz Alce, Roselene Therméus, Ifaudia Dorzema, Nadege Dorzema and Jacqueline Maxime (file of attachments to the representatives' final written arguments, tome II, folios 4738 and 4739).

53. On June 20, 2000, the Regional Forensic Pathology Institute issued preliminary reports on the cause of death of seven persons. The reports indicate that the case relates to “illegal Haitians.”⁸⁹

3. Detention and expulsion

54. On June 18, 2000, after the truck overturned, 11 survivors were arrested.⁹⁰ Since no official record was made of the arrest of all these persons, the Court only has information on the identification of the following seven people: Rose Marie Dol, Sylvie Felizor, Rose-Marie Petit-Homme, Renaud Tima, Selafoi Pierre, Joseph Pierre and the minor Roland Israel, who were taken to the Border Intelligence Operations Post in Montecristi.⁹¹ Some hours later, on the same June 18, 2000, the detainees were taken to a military barracks in Dejabón.

55. In the Dejabón military barracks, soldiers at the barracks threatened the detainees that they would be forced to work in the fields or they could give money to the said soldiers in exchange for being taken to the border with Haiti. In response, the detainees made a collection to give to the soldiers, who, during the afternoon of the same day transferred them to Ouanaminthe (Wanamant) in Haiti.⁹² According to statements made by the detainees, they were not formally placed under arrest, they were not informed that they had done something forbidden or illegal, and they were not allowed to contact a lawyer or the Haitian embassy or any other person.⁹³ Moreover, the Haitian men, women and the child were not separated during their detention and they did not receive differentiated treatment based of their condition.⁹⁴

4. Regarding the proceeding in the military jurisdiction

56. On June 19, 2000, the Secretary of State for the Armed Forces ordered a Joint Board of General Officers of the Armed Forces to begin a “thorough and comprehensive” investigation of the facts of the case.⁹⁵

⁸⁹ Preliminary autopsy reports of the Regional Forensic Pathology Institute of June 20, 2000, *supra*, folios 1598 to 1613.

⁹⁰ *Cf.* note of the Director of Intelligence of SEFA of June 18, 2000, *supra*, folio 1646, and note of the Commander of the 10th Infantry Battalion of June 18, 2000, *supra*, folio 846.

⁹¹ *Cf.* Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose Marie Dol, *supra*, folio 1585; Testmony of Selafoi Pierre, *supra*, folio 1587; Testmony of Joseph Pierre, *supra*, folio 1588; Testmony of Rose-Marie Petit-Homme, *supra*, folio 1639; Affidavit prepared by Joseph Pierre, *supra*, folios 565. However, according to a note of the Commander of the 10th Infantry Battalion of June 18, 2000, the persons detained were sent to the Immigration Office in Dejabón, to then be returned to their territory, *supra*, folio 846.

⁹² From the evidence provided to the case file, the Court observes that Sonide Nora and Josier Maxime, who were hospitalized, were expelled subsequently, together with those who were detained in the Dejabón military barracks. The Court has no information on what happened to Alphonse Oremis and Honorio Winique. *Cf.* Testmony of Sylvie Felizor, *supra*, folio 1584; Testmony of Rose Marie Dol, *supra*, folio 1585; Testmony of Renaud Tima, *supra*, folio 1586; Testmony of Selafoi Pierre, *supra*, folio 1587; Testmony of Joseph Pierre, *supra*, folio 1588; Testmony of Rose-Marie Petit-Homme, *supra*, folio 1639, Affidavit prepared by Joseph Pierre, *supra*, folio 565; Affidavit prepared by Sonide Nora, *supra*, folio 572, and Statement made by Josier Maxime during the public hearing. Also, no evidence was provided to the case file that Winique Honorio and Alphonse Oremis had been detained and/or expelled from Dominican Republic.

⁹³ *Cf.* Affidavit prepared by Joseph Pierre, *supra*, folio 565; Affidavit prepared by Joseph Desravine, *supra*, folio 569 and Affidavit prepared by Sonide Nora, *supra*, folio 572.

⁹⁴ *Cf.* Affidavit prepared by Joseph Pierre, *supra*, folio 565. Regarding the detention of the truck driver, the Court is aware that Mr. Núñez Peña was sent to the J-2 Department of the Secretariat of State for the Armed Forces to be investigated. See note of the Commander of the 10th Infantry Battalion of June 18, 2000, *supra*, folio 846.

⁹⁵ *Cf.* Report of the Joint Board of General Officers of the Armed Forces of June 23, 2000 (file of proceedings before the Commission, tome II, folio 837).

57. On June 23, 2000, the Joint Board of General Officers of the Armed Forces issued a report on the events, which includes the initial statements of the four soldiers who took part in them, and also of one of the survivors, the truck driver, and another witness. As a result of this report, based on article 3 of the Code of Justice of the Armed Forces (Law No. 3,483 of 1953), the soldiers Ferison LaGrange Vargas, Santiago Florentino Castilla, Bernardo de Aza Nuñez and Johannes Paul Franco Camacho were referred to the Joint Court Martial of First Instance of the Armed Forces and the National Police (hereinafter "Court Martial of First Instance") for trial. In addition, it ordered that the civilians Ruddy Jimenez Ortiz, Felix Antonio Nuñez Peña and Ramon A. Estevez Liriano, involved in presumed human trafficking, be brought before the ordinary courts. The report also emphasized that an additional investigation should be carried out into the complaint that soldiers from the area were engaged in "collecting money to allow the trafficking of undocumented [persons]." Lastly, the report recommended that no judicial or disciplinary action be taken against privates Pedro María Peña Santos, Fernando Contreras Alcantara and Wilkins Siri Tejada, because "they had not committed offenses."⁹⁶

58. On July 13, 2000, the Prosecutor of the Court Martial of First Instance presented an "originating order" before the investigating judge of the said Court Martial of First Instance, requiring the prosecution of the four soldiers "as alleged perpetrators of the crime of intentional homicide, to the detriment of the deceased, Máximo Ruben de Jesus Espinal, Dominican, and the Haitian nationals [Jacqueline Maxime, Roselene Therméus, Ilfaudia Dorzema, Nadege Dorzema, Pardis Fortilus and Fritz Alce]; and the injury of six other individuals, in violation of articles 295, 304 and 309 of the Criminal Code."⁹⁷ This originating order did not individualize the injured persons. The same day, the Prosecutor of the Court Martial of First Instance required the Secretary of State for the Armed Forces to imprison the above-mentioned indicted soldiers.⁹⁸ However, the evidence presented to the Court does not indicate that the order has been complied with.

59. On July 21, 2000, the prosecutor of the Court Martial of First Instance transferred the case to the Investigating Judge of the Court Martial of First Instance for the case to be reviewed.⁹⁹ On the same date, this judge issued an order to open the proceeding.¹⁰⁰

⁹⁶ Cf. Report of the Joint Board of General Officers of the Armed Forces, *supra*, folio 841.

⁹⁷ Cf. Originating order No. 15/2000 of the prosecutor of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 14, 2000 (file of proceedings before the Commission, tome II, folio 831). Also, Criminal Code of the Dominican Republic:

Article 295. Anyone who voluntarily kills another person is guilty of homicide.

Article 304. Anyone guilty of homicide shall be punished with 30 years' hard labor, when the act precedes, is accompanied by or follows another crime. The same punishment shall be imposed when the purpose has been to prepare, facilitate or execute a crime, or to promote the escape of the authors or accomplices of that crime, or to ensure its impunity. [...] Article 463 of this Code is not applicable to the crimes established in this paragraph; while the provisions of articles 107 and 108 are applicable. Paragraph II. In any other case, anyone guilty of homicide shall be punished with hard labor.

Article 309. Anyone who voluntarily injures, beats, commits acts of violence or assault and battery, if the victim should result with an ailment or the impossibility of working for more than 20 days, shall be punished with six months or two years' imprisonment and a fine of from 500 to 5,000 pesos. He may also be sentenced to the deprivation of the rights mentioned in article 42 for at least one year and no more than five years. When the said violations have produced mutilation, amputation or deprivation of the use of a member, blindness, loss of an eye, or other disabilities, the punishment of imprisonment shall be imposed. If the injuries or the blows inflicted voluntarily have caused the death of the victim, the punishment shall be imprisonment, even when the intention of the attacker was not to cause his or her death.

⁹⁸ Cf. Order on imprisonment No. 022-2000 of the prosecutor of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 14, 2000 (file of annexes to the merits report, tome I, folio 832).

⁹⁹ Cf. Injunction No. 13(2000) of the prosecutor of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 21, 2000 (file of annexes to the merits report, tome II, folio 826).

¹⁰⁰ Cf. Decision to open the criminal proceedings issued by the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 21, 2000 (file of annexes to the merits report, tome I, folio 828).

Subsequently, on July 24, 2000, the said court issued a "review decision" indicating that "there are serious, grave, precise and concordant indications of guilt that entail criminal responsibility" for the crime of intentional homicide attributed to the four soldiers, and ordered the transfer of the case to the prosecutor of the Court Martial of First Instance.¹⁰¹

60. On July 28, 2000 the Court Martial prosecutor withdrew the indictment against the soldiers for the death of the seven victims and the injuries caused to another 6 persons, stipulating that the following mitigating circumstances existed: (a) the agents were under the orders of a superior; (b) they had information that a vehicle would be passing by with a consignment of drugs; (c) the vehicle tried to avoid the checkpoint; (d) the soldiers observed that a person was thrown out of the truck, which made them assume that something serious was taking place, and (e) the Haitians who were "being smuggled, [...] some sitting and others lying wrapped in a tarpaulin, looked like packages."¹⁰²

61. On March 5, 2004, the Court Martial of First Instance delivered judgment in the military criminal proceedings against the agents involved in the events, in which Santiago Florentino Castilla and Bernardo de Aza Núñez were found guilty of murder, and sentenced to five years' imprisonment. In the same decision, Ferison LaGrange Vargas was found guilty of murder; however, due to "extensive mitigating circumstances," he was sentenced to 30 days' suspension from duty. Lastly, Johannes Paul Franco Camacho was found "not guilty of the facts," and was absolved "of all criminal responsibility."¹⁰³

62. The same day, the soldiers Santiago Florentino Castilla, Bernardo Aza Núñez and Ferison LaGrange lodged appeals against the guilty verdict.¹⁰⁴ By a ruling of May 27, 2005,¹⁰⁵ the Joint Court Martial Appeals Court of the Armed Forces and the National Police determined as "correct and valid" the appeals filed by Bernardo de Aza Nuñez and Santiago Florentino Castilla against the judgment of March 5, 2004, and "amend[ed] the said judgment," ordering the acquittal of the accused based on "articles 321 and 327 of the Dominican Criminal Code."¹⁰⁶ There is no evidence in the case file regarding the decision on the appeal filed by Ferison LaGrange Vargas.

¹⁰¹ Cf. Judicial assessment decision of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 24, 2000 (file of annexes to the pleadings and motions brief, tome V, folio 2756). This decision indicates that the soldiers were accused of violation articles 295 and 304(2) of the Dominican Criminal Code, and not of article 309 as proposed in the prosecutor's originating order No. 15/2000. The decision also ordered that the commitment to prison against the four soldiers would continue until a final judgment had been delivered in the case.

¹⁰² Cf. Indictment No. 07 de 2000 of the prosecutor of the Joint Court Martial of First Instance of the Armed Forces and the National Police of July 28, 2000 (file of annexes to the merits report, tome I, folio 1722).

¹⁰³ Cf. Ruling of the Joint Court Martial of First Instance of the Armed Forces and the National Police of March 5, 2004 (file of annexes to the merits report, tome II, folio 815).

¹⁰⁴ Cf. Certifications of appeals filed by Santiago Florentino Castilla, Bernardo Aza Núñez and Ferison Lagrange against the guilty verdict of March 5, 2004 (file of annexes to the merits report, tome II, folios 816 to 818).

¹⁰⁵ The Ruling is not dated, but the State, in its final written arguments, indicated that the said ruling was issued on May 27, 2005 (merits file, folio 918).

¹⁰⁶ Cf. Ruling of the Joint Court Martial Appeals Court of the Armed Forces and the National Police (file of annexes to the pleadings and motions brief, tome V, folio 2736). Also, articles 321 and 327 of the Criminal Code of the Dominican Republic in force at the time of the said decision stipulate the following:

Article 321. The homicide, the injuries and the beating are excusable if the victim has previously offered provocation or threats or committed very violent acts.

Article 327. (Repealed by Law 24-97 of January 28, 1997, Gaceta Oficial 9945). [Available at http://www.suprema.gov.do/PDF_2/codigos/Codigo_Penal.pdf].

5. Regarding the proceeding in the ordinary jurisdiction

63. On September 30, 2002, Telusma Fortilus, Rosemond Dorsala, Nerve Fortilus, Alice Gyfanord, Alce Ruteau, Mirat Dorsema and Onora Therméus, next of kin of the deceased, filed a civil suit before the Court of First Instance of the Montecristi Judicial District.¹⁰⁷ This court rejected the suit because a proceeding concerning the same facts was underway before the military jurisdiction.

64. On March 12, 2003, the same next of kin of the deceased filed an appeal before the Supreme Court of Justice of the Dominican Republic (hereinafter "the Supreme Court") requesting the transfer of the hearing of the case to the ordinary jurisdiction.¹⁰⁸ In this appeal, they alleged the slow pace of the proceeding, and the need for procedural transparency to guarantee the rights of the victims and their next of kin. In response to this appeal, the Supreme Court issued a decision on January 3, 2005, in which it "reject[ed] the appeal to appoint an ordinary judge" because the military jurisdiction had heard the case first.¹⁰⁹ This decision confirmed the military jurisdiction's competence in the case.

65. On August 2, 2007, "the victims and their representatives [were] informed of the decision of the Supreme Court of Justice regarding to the conflict of jurisdiction."¹¹⁰

VII RIGHTS AFFECTED

66. Consideration of the proven facts in light of the provisions of the Convention leads to the conclusion that, in this case, the following rights have been violated:

- VII-1: Rights to life and to personal integrity (Articles 4 and 5), in relation to the obligation to respect and guarantee rights and the obligation to adopt domestic legal provisions (Articles 1 and 2);
- VII-2: Rights to personal liberty, freedom of movement, and judicial guarantees (Articles 7, 22 and 8), in relation to the obligation to respect rights (Articles 1);
- VII-3: Rights to judicial guarantees and to judicial protection (Articles 8 and 25) in relation to the obligation to respect and guarantee rights (Article 1);
- VII-4: Obligation to adopt domestic legal provisions (Article 2), even though, following the events in this case, measures have been taken to prevent this violation in future, and
- VII-5: Obligation to respect and guarantee the rights without discrimination (Article 1(1) in relation to the above-mentioned rights).

¹⁰⁷ Cf. Formal filing of a civil action before the Court of First Instance of the Judicial District of Montecristi of September 30, 2002 (file of annexes to the pleadings and motions brief, tome V, folios 2761 to 2766).

¹⁰⁸ Cf. Request to appoint judges to hear the complaint on conflict of jurisdiction, of March 12, 2003 (file of annexes to the pleadings and motions brief, tome V, folios 2741 to 2747).

¹⁰⁹ Cf. Decision No. 25-2005 of the Supreme Court of Justice of the Dominican Republic (file of annexes to the merits report, tome I, folios 627 to 630).

¹¹⁰ The State's brief with final written arguments (merits file, folio 919).

VII-1
RIGHTS TO LIFE AND TO PERSONAL INTEGRITY

67. In this chapter, the Court will examine the facts of the case in light of the rights to life and to personal integrity, related to the obligation to respect and guarantee rights without discrimination, taking into consideration the standards on the use of force that apply in this case and the measures taken after the incident that could have violated the personal integrity of the presumed victims.

A. Arguments

68. The Commission argued that members of the armed forces can use force legitimately in the exercise of their functions, but the use of force “must be exceptional, [...] planned and limited proportionally [...] so that they will only use [it] when all other means of control have been exhausted and have failed.” Thus, the agents of the Dominican armed forces used excessive force in the events that occurred on June 18, 2000, that are the subject of the instant case, because: (i) the people in the truck never fired at or endangered the life of those who were in the patrol vehicle; (ii) the fact that the truck fled at high speed did not endanger the life of the members of the patrol or of third parties; (iii) the possibility that they were trafficking drugs and not persons did not entail an actual and imminent danger for the patrol or for third parties; (iv) all the bullet holes were found in the rear part of the truck and none in the tires, and (v) four people died from the shots fired at the truck, one when the truck turned over, and two were shot in the back.”

69. The Commission also underlined that, “historically the border between Haiti and the Dominican Republic has been and still is a crossing place for a significant flow of Haitian migrants in search of work and the Dominican authorities are aware of this practice.” The State was also aware that the truck used to transport the Haitians was utilized for this type of activity, because it had been stopped previously. For this reason, the agents should have considered that it was a reasonable possibility that the truck was transporting people and not drugs.

70. The Commission also argued that “the situation of fear and risk to life endured by the survivors of the events and those who were detained also applies to those who lost their life, [in violation] of the obligation to respect and guarantee their personal integrity, [...] owing to the fear it is reasonable to consider they felt during the pursuit, the gunshots, the extrajudicial executions, and the serious injuries caused to several of their companions [...] and owing to the wounds they suffered.” It added that the State also failed to comply with its obligation to guarantee these rights by not carrying out a serious and diligent investigation to clarify what had happened.

71. Furthermore, the Commission argued that the personal integrity of the survivors had been violated owing to the failure to return the remains of the deceased to their next of kin which caused them additional suffering and anguish. This also derived from the fear the survivors felt after the pursuit and gunshots and from having been obliged to transport the bodies of the dead and seriously wounded, as well as from having been arrested by State agents without knowing their fate, being taken to two detention centers without being informed of their rights, being threatened with forced labor, and without being provided with judicial guarantees.

72. The representatives endorsed the Commission's arguments and added that the soldiers could have known that the truck was carrying people, because they had seen them when the tarpaulin that covered them broke free and, according to the testimony of local residents, screams could be heard coming from the truck. The representatives added that “the State should have acted with greater prudence when executing the operation and when

deciding to proceed to the use force” and it should have considered other ways of stopping the vehicle. The action of the armed forces was “grossly negligent,” and revealed “despotism and abuse of power” by State agents in a climate of “xenophobia and racism at the institutional level,” which infiltrated the general context of the events that occurred. In addition, “the murder of [two people in State custody], underlines the categorization of this case as a massacre.”

73. Regarding the violation of personal integrity, the representatives argued that “following the pursuit, the actions of the State agents also violated the right to moral integrity of the survivors identified in the case.” In addition, they specified that “the victims had to obey the orders that the soldiers gave at gunpoint (which was very eloquent), accepting to carry the bodies of the dead and seriously injured to the ambulances. This type of conduct responds to the concept of abuse of authority by the soldiers concerned, because they did not even take into account that there were children and pregnant women, and that the deceased were next of kin and friends of the survivors.” In particular, the situation of “Silvie Therméus, [who] was 16 weeks pregnant at the time of the detention and despite this she [was kept] in the same place as the rest of the detainees, without receiving differentiated care due to her special state of pregnancy. Also, the way that Roland Israel was treated [...], who was 14 years old at the time of the facts, was reprehensible, because he did not receive treatment according to his particular vulnerability.”

74. The representatives also indicated that the right of the next of kin to moral integrity was violated owing to the suffering endured by their loved ones, owing to the impunity that persists in relation to the crimes committed against the victims and the consequent absence of reparations and, finally, owing to the failure to repatriate the bodies, which prevented the victims' next of kin from mourning those they lost appropriately, and the subsequent burial of the bodies in a mass grave in the Dominican Republic, at which time the State failed to facilitate the entry of the next of kin into its territory so that they could attend the burial.

75. At the public hearing, the State argued that the only interest of the members of the patrol was to stop possible drug or weapons trafficking, which, according to official sources, was expected to take place at the border that night, and they never had any intention of harming the physical integrity of the persons in the truck. This possibility “acquired greater credibility owing to the reckless attitude of the occupants of the truck, who [failed to obey] the order of the authorities to stop.” Moreover, the agents were unaware that the truck was carrying people because they were covered by a tarpaulin and this, added to the lack of illumination on the highway, the darkness of the night, and the way in which the occupants were positioned, prevented the agents from seeing the vehicle’s cargo clearly.

76. Regarding the personal integrity of the survivors, the State indicated at the public hearing that “there is no causal relationship [...] between the presumed victims’ current injuries and what could have happened to them in 2000. It is important to recall that 11 years have passed and that the supposed blindness and other health problems alleged by [...] the presumed victims in the statements [made at the public hearing], have no causal relationship with what could have happened 11 years ago or, at least, this does not appear in the case file.” In addition, it indicated that, in the absence of *animus*, it is not possible to substantiate the intention of the State agents in relation to the events.

B. Considerations of the Court

77. The Court will now analyze the facts of this case in light of its consistent case law on the right to life and personal integrity in relation to its obligations of respect and

guarantee,¹¹¹ and regarding the use of force,¹¹² in order to rule on the alleged violation of the said rights.

78. Thus, the Court takes note of the different international instruments on this matter and, in particular, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials¹¹³ (hereinafter "Principles on the Use of Force" and "Code of Conduct," respectively). On this basis, it considers that, when analyzing the use of force by State agents, three fundamental moments must be considered:¹¹⁴ (a) preventive actions, (b) actions accompanying the events, and (c) actions subsequent to the events.

1. Preventive actions: legality and exceptionality of the use of force in relation to the obligation of guarantee

79. The facts of the case and the evidence provided in the proceedings before the Court reveal that, at the time of the events, Dominican Republic had no legislation establishing the parameters for the use of force by State agents. Thus, during the public hearing, the Court asked the State to forward the regulations on the use of force and firearms by the Police and the Army or whoever exercised functions of migratory control on the border, in addition to the action protocols and procedures for border incidents, and legally authorized equipment. The Court also asked the State to provide the rules together with information on the training and practices of the Dominican armed forces in relation to the use of force and firearms.¹¹⁵ In this regard, the State forwarded some documents supposedly on the use of force and firearms, from which it cannot be inferred that there was an adequate regulatory framework on the issue at the time of the incident and even today.¹¹⁶

80. This Court has previously established that the State has an obligation to adapt its domestic legislation and "to ensure that its security forces, which are entitled to use legitimate force, respect the right to life of those who are under its jurisdiction."¹¹⁷ The State must be clear when defining domestic policies on the use of force and pursue strategies to implement the Principles on the Use of Force and the Code of Conduct.¹¹⁸ Thus, agents should be provided with different types of weapons, ammunition, and protective equipment that enable them to adapt the elements used in their reaction proportionately to the incidents in which they have to intervene, restricting the use of lethal weapons that can cause injury or death as much as possible.¹¹⁹

¹¹¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Uzcátegui et al. v. Venezuela, supra*, para. 132.

¹¹² Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, paras. 67 and ff., and *Case of Uzcátegui et al. v. Venezuela, supra*, para. 132.

¹¹³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in La Havana, Cuba, from 17 August to 7 September 1990; Code of Conduct for Law Enforcement Officials, approved by the General Assembly of the United Nations by Resolution 34/169, of 17 December 1979.

¹¹⁴ Cf. Principles on the Use of Force. Principles No. 5, 6, 7, 11(f), 22 and 23, and Code of Conduct. Articles 1 to 8.

¹¹⁵ Cf. Public hearing of this case held on June 21, 2012, *supra*.

¹¹⁶ Law creating the Code of Justice of the Armed Forces, No. 3483, published in the Gaceta Oficial of March 6, 1953 (file of annexes to the State's final arguments, tome VII, folio 4054 to 4107) and Military Regulations of the Armed Forces (file of annexes to the State's final arguments, tome VII, folio 3927 to 3954).

¹¹⁷ Cf. *Case of Montero Aranguren et al. (Reten de Catia) v. Venezuela. Merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 66, and *Case of the Barrios Family v. Venezuela, supra*, para. 49.

¹¹⁸ Cf. *Case of Montero Aranguren et al., (Reten de Catia) v. Venezuela, supra*, para. 75, and *Case of the Barrios Family v. Venezuela, supra*, para. 49.

¹¹⁹ Cf. Principles on the Use of Force, Principle No. 2.

81. The State must also train its agents to ensure that they know the legal provisions that permit the use of firearms and are properly trained so that if they have to decide on their use, they have the relevant criteria do so.¹²⁰ Moreover, in the face of administrative offenses such as migratory offenses, the State must ensure appropriate training to address the type of offense and the vulnerability of migrants.

82. Based on the above, the State did not comply with its obligation to guarantee the rights to life and personal integrity by adequate legislation on the use of force, and failed to prove that it had provided training and instruction on the matter to law enforcement officials and, specifically, to the agents involved in the events of the case (*infra* para. 87), in violation of the obligation to guarantee the rights to life and to personal integrity, in relation to Article 1(1) and of the requirement to adopt provisions of domestic law, established in Article 2 of the Convention.¹²¹

2. Actions accompanying the events: legality, necessity and proportionality in relation to the obligation of respect

83. The Court observes that, from the facts of the case it has been proved that Dominican agents opened fire indiscriminately against a yellow truck that failed to stop at a checkpoint. To this end, they pursued the truck for several kilometers, firing shots that hit those who were being transported in the truck, killing four people. Another person lost his life when the truck subsequently turned over, and several others ran for their lives; at that point the agents opened fire killing two more people. Due to this display of force, six Haitian nationals and a Dominican national died and at least 10 others were injured (*supra* paras. 48 and 49). The evidence in the case file does not give any indication that the migrants were armed or had attempted some kind of violent act against the agents, which was confirmed by the soldiers involved in the events,¹²² and the State did not contest this.

84. In this regard, the Court considers that during an incident when a display of authority is deployed, insofar as possible, the State agents should assess the situation and draw up a plan of action before intervening. Thus, the Basic Principles on the Use of Force establish that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."¹²³

a) The use of force in this case

¹²⁰ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of 29 August, 2002. Series C No. 95, para. 143.1.a, and *Case of Montero Aranguren et al. (Reten de Catia) v. Venezuela, supra*, para. 78. See also ECHR, *Case of McCann et al. v. United Kingdom*. No. 18984/91. Grand Chamber. Judgment. 27 September 1995, para. 151, and ECHR, *Case of Kakoulli v. Turkey*. No. 385/97. Fourth section. Judgment, 22 November, 2005, paras. 109 and 110.

¹²¹ Regarding the above, in light of Article 2 of the Convention, the Court has indicated that "[t]he general obligation [derived from this article] entails the adoption of measures of two types. On the one hand, the elimination of the norms and practices of any nature that imply a violation of the guarantees established in the Convention and, on the other, the enactment of norms and the implementation of practices leading to the effective observance of the said guarantees."

¹²² Cf. Interrogation of Johannes Paul Franco Camacho on July 18, 2000, *supra*, folio 1569.

¹²³ Cf. Principles on the Use of Force, Principle No. 9.

85. In order to respect the appropriate measures to take if the use of force becomes essential, this must be used in keeping with the principles of legality, absolute necessity, and proportionality:

i. Legality: the use of force must be addressed at achieving a legitimate goal; in this case, stopping the vehicle that failed to obey an order to stop at a checkpoint. The law and training should be established how to act in this situation,¹²⁴ but this was not so in this case (*supra* para.79).

ii. Absolute necessity: it must be verified whether other means are available to protect the life and safety of the person or situation that it is sought to protect, in keeping with the circumstances of the case.¹²⁵ The European Court has indicated that it cannot be concluded that the requirement of “absolute necessity” for the use of force against people who do not pose a direct threat is proved, “even when the lack of the use of force would result in the loss of the opportunity to capture them.”¹²⁶ Although, in theory, the events of this case could constitute the presumption of opposing resistance to authority and prevention of flight, the Court considers that, even when abstaining from the use of force would have allowed the individuals that were the subject of the State’s action to escape, the agents should not have used lethal force against people who did not represent a threat or a real or imminent danger to the agents or third parties. Consequently, in short, this event did not constitute a situation of absolute necessity.

iii. Proportionality: The level of force used must be in keeping with the level of resistance offered.¹²⁷ Thus, agents must apply the criteria of differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.¹²⁸

86. In this case it has been established that, although the truck did not heed the authorities’ indications, which gave rise to a reckless pursuit, at no time was there any aggression or attack from the people in the truck. To the contrary, the agents fired high caliber weapons indiscriminately, causing injuries and deaths. Some witnesses even testified having heard cries for help, and it has been proved that a body fell from the moving vehicle, without any of this curbing the action of the soldiers (*supra* para. 44).

87. In this regard, the Court finds that proportionality is also related to the planning of preventive measures, since it involves an assessment of the reasonableness of the use of force. Thus, it is useful to analyze the facts rigorously to determine: (a) whether the violations could have been avoided with the implementation of less harmful measures, and (b) whether there was proportionality between the use of force and the harm it sought to prevent.¹²⁹

88. In relation to the means used, the Court reiterates that States have an obligation to plan the actions taken by their agents adequately in order to minimize the use of force and the fatalities that may result from it (*supra* para. 81). In this regard, the Court observes

¹²⁴ Cf. Principles on the Use of Force, Principles Nos. 1, 7, 8 and 11.

¹²⁵ Cf. Principles on the Use of Force, Principle No. 4.

¹²⁶ Cf. ECHR, *Case of Kakoulli v. Turkey*, *supra*, para. 108.

¹²⁷ Cf. Principles on the Use of Force, Principles Nos. 5 and 9.

¹²⁸ Cf. Principles on the Use of Force, Principles Nos. 2, 4, 5 and 9.

¹²⁹ Cf. *Case of Montero Aranguren et al. (Reten de Catia) v. Venezuela*, *supra*, paras. 67 and 68. Similarly, see ECHR. *McCann et al. v. United Kingdom*, *supra*, para. 150, and *Erdogan et al. v. Turkey*, No. 19807/02. Fourth section. 13 September 2006, para. 68.

that, in this case, less harmful means could have been used for the traffic control sought and to avoid a violent pursuit,¹³⁰ for example, by setting up traffic controls, with barricades, speed bumps, tire puncturing devices, and/or cameras that permit the non-violent recording and identification of those involved and an improved control of the flow of traffic in the area. Mainly, measures that are in keeping with the daily transit of migrants in the area. Moreover, the body of evidence reveals that the same yellow truck that transported the presumed victims had been detained on March 28, 2000, a few months before the event, having been surprised by agents transporting 50 undocumented Haitian nationals in the section of Santa Maria, Montecristi jurisdiction.¹³¹

89. In short, the State could have established less extreme measures to achieve the same end. Even to counter the alleged trafficking of drugs or weapons, the State failed to demonstrate the implementation of an operation designed for that purpose; to the contrary, the State's actions revealed the lack of planning, training, and organization, which resulted in extremely disproportionate measures taken by military agents. In this regard, the Court has considered that "whenever the use of force [by State agents] has resulted in the death of or injuries to one or more individuals, the State has the obligation to provide a satisfactory and convincing explanation of the events and to disprove the arguments concerning its responsibility, with appropriate probative elements,"¹³² and this has not occurred in the instant case.

90. The foregoing reveals the absence of clear regulations and a public policy concerning prevention of the use of force and implementation of non-lethal means of deterrence with appropriate defensive equipment to handle this type of situation¹³³ (*supra* para. 80).

91. In conclusion, neither the legality nor the absolute necessity of the lethal use of force during the pursuit has been proved, because the State was not preventing an attack or imminent danger.¹³⁴ Consequently, the serious situation that occurred was the result, at least by negligence, of the disproportionate use of force that can be attributed to the State owing to the acts of law enforcement officials. In addition, the Court observes that, in the context of discrimination against migrants, the use of excessive force in the case revealed the failure to implement reasonable and appropriate measures to deal with this situation to the detriment of this group of Haitians.

b) Arbitrary deprivation of life

92. The Court has established that when State agents use unlawful, excessive, or disproportionate force, as in this case, leading to loss of life, it is considered an arbitrary deprivation of life.¹³⁵ Consequently, the death of four people from gunshot wounds occurring during the pursuit of the vehicle (*supra* para. 48) constituted arbitrary deprivations of life attributable to the State to the detriment of Fritz Alce, Ilfaudia Dorzema, Nadege Dorzema and Máximo Rubén de Jesús Espinal.

¹³⁰ For example, the following regulations: Law 29166 of the Republic of Peru, entitled "Law establishing rules for the use of force by members of the Armed Forces on national territory" and the "Law that regulates the use of force of public security agencies of the Federal District" of the United Mexican States. Also, the "Manual of norms and procedures for the progressive and differentiated use of force by the police" of the Bolivarian Republic of Venezuela; "A National Use of Force Framework" of Canada; and the "Use of Force by Seattle Police Officers" of the United States of America.

¹³¹ *Cf.* Record of the dispatch of a vehicle of March 29, 2000 (file of annexes to the merits report, tome I, folios 848 and 849).

¹³² *Cf. Case of Zambrano Vélez v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 108, and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela, supra*, para. 80.

¹³³ *Cf. ECHR. Case of Makaratzis v. Greece.* Judgment, 20 December 2004, paras. 66 to 70.

¹³⁴ Principles on the Use of Force, Principles Nos. 4 and 9.

¹³⁵ *Cf. Case of the Barrios Family v. Venezuela, supra*, para. 49

c) Extrajudicial executions

93. In addition, since State agents opened fire against people fleeing for their lives after the truck rolled over, the Court will examine the characteristics and consequences of the latter.

94. According to the autopsy performed on Pardis Fortilus and Roselene Therméus, they were shot in the chest, abdomen and back.¹³⁶ This was also corroborated by the testimony of several witnesses, who stated that these women were shot as they fled (*supra* paras. 47 and 48).

95. In this regard, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has indicated that intentionality exists when there is some degree of premeditation in causing a death "to the extent that a decision is taken in advance that rules out the possibility of offering or accepting an opportunity to surrender rendering such operations unlawful."¹³⁷ In other words, it can be concluded from the actions taken by the agents that the people were not allowed to surrender or, if appropriate, that gradual measures were taken to achieve their detention; rather, to the contrary, the agents proceeded to use lethal weapons that killed them.

96. The Court considers that, in this case, the action taken by the State with regard to the two people who were fleeing reveals that extrajudicial executions were committed, owing to the deliberate use of lethal weapons with the intention of depriving them of life, especially given their situation of defenseless, and without them representing any threat.

97. Based on the above, the Court concludes that, owing to the unlawful, unnecessary, and disproportionate use of force, the State violated the right to life established in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, in its dimension of respect, based on the arbitrary deprivation of life of Fritz Alce, Ilflaudia Dorzema, Nadege Dorzema, Jacqueline Maxime and Máximo Rubén de Jesús Espinal. Also, the Court finds the State responsible for the extrajudicial execution of Pardis Fortilus and Roselene Therméus, in violation of the same articles.

d) Harm to the personal integrity of the survivors

98. Similarly, the Court finds that, owing to the deployment of unlawful, unnecessary, and disproportionate use of force, at least five other survivors were injured by bullets during the events, namely: Noclair Florvilien, Joseph Desvraïne, Sylvie Felizor, Michel François and Sonide Nora. In addition, at least five people were injured as a result of the traffic accident, namely: Rose-Marie Petit-Home, Joseph Pierre, Renaud Tima, Selafoi Pierre and Josier Maxime. According to medical certificates the said victims also suffered harm to their mental and physical integrity owing to what happened (*supra* para. 51). Moreover, Honorio Winique and Alphonse Oremis also survived the pursuit and the traffic accident.¹³⁸ Therefore, the Court finds the State responsible for the violation of the obligation to respect the right to personal integrity established in Article 5(1) of the Convention, in relation to Article 1(1) thereof. In addition, even though it was aware of the situation, the State did not individualize the injured persons in the investigation, so that these facts have remained

¹³⁶ Cf. Preliminary autopsy reports of the Regional Forensic Pathology Institute of June 20, 2000, *supra*, folios 1600 to 1613.

¹³⁷ Cf. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/66/330. 30 August 2011, paras. 66 and 67.

¹³⁸ Cf. Merits file, folio 925.

unpunished (*supra* para. 61), in violation of the obligation to guarantee the right to personal integrity.

3. Actions subsequent to the events: due diligence and humane treatment in relation to the obligation to guarantee the rights to life and to personal integrity

99. The Court will now examine the arguments concerning the obligation to guarantee the rights to life and personal integrity without discrimination, in the following sections: (a) due diligence in the investigations; (b) the treatment of the survivors, and (c) the treatment of the deceased.

100. The Court observes that, according to the Principles on the Use of Force, if anyone is injured owing to the use of force, assistance and medical aid should be ensured and rendered, and relatives or close friends should be notified at the earliest possible moment.¹³⁹ In addition, the incident should be reported promptly, and reports should be subject to review by administrative and prosecutorial authorities. Similarly, the facts should be investigated in order to determine the level and means of participation of all those who intervened, either directly or indirectly, thereby establishing the corresponding responsibilities.¹⁴⁰

a) Due diligence

101. The general prohibition for State officials to arbitrarily deprive life would be ineffective if no procedures existed to verify the legality of the use of lethal force exercised by State agents.¹⁴¹ The Court has understood that the general obligation to guarantee the human rights established in the Convention, contained in Article 1(1) thereof, includes the obligation to investigate violations of the substantive right that must be safeguarded, protected or guaranteed.¹⁴² This general obligation is particularly significant in cases where lethal force has been used. As soon as the State is aware that its security agents have used firearms with deadly consequences, it is obliged to initiate *ex officio* and without delay, a serious, independent, impartial and effective investigation¹⁴³ (*infra* paras. 183 to 186). This obligation is a fundamental and conditioning element for the protection of the right to life that is negated in these situations.¹⁴⁴

102. Also, "in cases of extrajudicial executions, it is essential that the States conduct an effective investigation into the deprivation of life and punish all those responsible, especially when State officials are involved; otherwise they would be creating, in a climate of impunity, the conditions for these facts to be repeated, which is contrary to the obligation to respect and guarantee the right to life."¹⁴⁵ In addition, if acts that violate human rights are not

¹³⁹ Cf. Principles on the Use of Force, Principle No. 5, paragraphs (c) and (d).

¹⁴⁰ Cf. Principles on the Use of Force, Principles Nos. 6 and 22.

¹⁴¹ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, *supra*, para. 79, and *Case of Zambrano Vélez et al. v. Ecuador*, *supra*, para. 88.

¹⁴² Cf. *Case of the Pueblo Bello Massacres v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 142, and *Case of González et al. (Cottonfield) v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 287.

¹⁴³ Cf. *Case of Ximenes Lopes v. Brazil*. Merits, reparations and costs. Judgment of July 4, 2006. Series C No. 149, para. 148, and *Case of Uzcátegui et al. v. Venezuela*, *supra*, para. 226.

¹⁴⁴ Cf. *Case of Zambrano Vélez et al. v. Ecuador*, *supra*, para. 88, and *Case of the Barrios Family v. Venezuela*, *supra*, para. 49.

¹⁴⁵ Cf. *Case of Myrna Mack Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 156, and *Case of the Barrios Family v. Venezuela*, *supra*, para. 176.

investigated rigorously, they would, to a certain extent, be supported by the public authorities, which would give rise to the State's international responsibility."¹⁴⁶

103. The Court observes that, in response to the facts of this case, in a communiqué of the Armed Forces Secretariat, issued after the incident, it was announced that "the soldiers acted in compliance with the duty to monitor and safeguard [their] territory."¹⁴⁷ In addition, some months previously, the same yellow truck had been detained with undocumented persons. Also, according to evidence provided to the case file, on January 16, 2001, a truck that also transported Haitians was shot at, supposedly by members of the Dominican armed forces, an incident known as "the Las Coabas killing."¹⁴⁸ Additionally, the press has reported other supposed incidents of excessive use of force against Haitian migrants.¹⁴⁹ In particular, based on the context of the case, newspaper articles, different testimonies, and the complaint filed by the next of kin in the domestic jurisdiction, the State should have investigated the events, taking into account the context of violence and discrimination against this type of victim. To the contrary, the State did not give the Court any reasons that would have justified the said actions (*supra* paras. 63 and 64).

104. Furthermore, the witness and journalist Pedro Ureña stated that:¹⁵⁰

[As] a correspondent of the magazine *Suceso y Última Hora* at the time of the events, [he] was one of the first people to reach the scene. This is not the first case that has occurred between Haitian migrants and the Dominican [... armed] forces. This case is one of many cases of harassment and discrimination that occurred against Haitians. [He] saw how the head of the DOIF ordered the surviving migrants to move the bodies of the injured or deceased migrants, [...] without the presence of a prosecutor. [T]he injured and the dead were thrown into the ambulances by the soldiers, as if they were objects and despite the severity of the wounds that some of them had. [...] The attitude of the soldiers towards the victims was intimidating and repressive [...] The soldiers tried to cover up the incident [...] denying the shooting. People living in the area confirmed that the Haitian migrants were attacked with high caliber weapons. [He] realized that the Dominican authorities were not interested in preserving the crime scene and ensuring that justice was done. [...] The victims only received first aid and their wounds were cleaned minimally. [...] The investigations were conducted improperly, the victims never obtained justice, and there was never a serious investigation to examine the merits of the case. [He] wrote an article about the outrage of the families of the dead and wounded, and the indignation of the Haitian consul for the events that took place in Guayubin [...].

105. Furthermore, based on the foregoing, the effectiveness of the investigation by the competent authority acquires particular importance and significance in view of the

¹⁴⁶ *Case of the Pueblo Bello Massacres v. Colombia, supra*, para. 145, and *Case of Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209, para. 216.

¹⁴⁷ "La versión oficial de las fuerzas armadas" [The official version of the armed forces], *Diario Última Hora*, June 19, 2000 (file of annexes to the merits report, tome II, folio. 1590).

¹⁴⁸ "Une patrouille de l'armée dominicaine a mitraillé un nouveau camion transportant des sans papiers haïtiens" [A Dominican army patrol has machine gunned another truck transporting undocumented Haitians] online newspaper InfoHaiti.com, January 19, 2001 (file of annexes to the pleadings and motions brief, tome V, folio 3146).

¹⁴⁹ "Polémique entre la hiérarchie militaire et le chancelier dominicain sur la question des illégaux haïtiens" [Polemical between senior military officials and the Dominican Minister of Foreign Affairs regarding undocumented Haitians], online newspaper InfoHaiti.com, January 27, 2001 (file of annexes to the pleadings and motions brief, tome V, folio 3139); "Le chancelier dominicain promet des sanctions severes contre ceux qui commettent des exces contre les illégaux haïtiens" [The Dominican Minister of Foreign Affairs promises severe sanctions against those who commit excesses against undocumented Haitians], online newspaper InfoHaiti, January 21, 2001 (file of annexes to the pleadings and motions brief, tome V, folio 3145), and "Bulletin mensuel d'informations du Comité pour la reconnaissance des droits des travailleur haïtiens en République Dominicaine" [Monthly newsletter of the Committee for the recognition of the rights of Haitian workers in Dominican Republic], May 5, 2005 (file of annexes to the pleadings and motions brief, tome VI, folio 3227).

¹⁵⁰ Affidavit prepared by Pedro Ureña on June 16, 2012 (merits file, folio 575).

seriousness of the facts and the context of the case.¹⁵¹ This aspect is analyzed in the chapter on Articles 8 and 25 of the Convention (*infra* VII-3). Despite this, the Court reiterates that, according to its consistent case law, the impunity that persists in the case, which resulted in the denial of access to justice (*infra* para. 201) resulted in harm to the personal integrity of the next of kin of the deceased victims.¹⁵² In cases of collective deprivation of life, the Court considers that no evidence is required to prove the serious effects on the mental integrity of the next of kin of the executed victims.¹⁵³ The Court has considered that the right to mental and moral integrity of the next of kin of the victims is violated based on the additional suffering and anguish they have experienced owing to the subsequent acts or omissions of the State authorities with regard to these facts, given the absence of effective remedies,¹⁵⁴ and the prolonged impunity in the case.¹⁵⁵ Thus, in this case the Court concludes that Article 5(1) of the Convention was violated to the detriment of the next of kin of the deceased victims and the survivors.

b) Treatment of the survivors

106. The Court has observed that, following the pursuit and the truck accident, the military agents required the survivors to lift the vehicle, remove and separate the dead and the wounded, and put them into the ambulance (*supra* para. 50). Some of the survivors were taken to a hospital. According to the testimony provided, the wounded were not treated adequately or registered when being admitted to the hospital¹⁵⁶ (*supra* para. 51).

107. Josier Maxime indicated that “[while he] was in the hospital, [... they] were not attended to. [They] were placed in a vehicle with a soldier and deported.”¹⁵⁷ In addition, Noclair Florevilien indicated during the public hearing, with regard to the attention he received in the hospital, that “it appeared that, at that moment, even the dogs were more important than [they] were.”¹⁵⁸

108. The Court notes that emergency medical care must be provided at all times for irregular migrants; accordingly, the States must provide comprehensive health care taking into account the needs of vulnerable groups.¹⁵⁹ Thus, the State must ensure that goods and services related to health care are accessible to all, particularly the most vulnerable and marginalized sectors of the population, without discrimination based on the prohibited conditions set out in Article 1(1) of the Convention.¹⁶⁰

¹⁵¹ Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 157, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 220.

¹⁵² Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Radilla Pacheco v. Mexico, supra*, para. 161.

¹⁵³ Cf. *Case of the Mapiripán Massacre v. Colombia, supra*, para. 146, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 206..

¹⁵⁴ Cf. *Case of Blake v. Guatemala, supra*, para. 114, and *Case of the Río Negro Massacre v. Guatemala, supra*, para. 240.

¹⁵⁵ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, paras. 215 and 217.

¹⁵⁶ The State indicated that, in keeping with the events that had occurred, the authorities assisted and offered help to the victims, transferring them to the hospital so that would receive free specialized medical care in order to protect their life and physical integrity (merits file, tome II, folio 925). However, this contradicts testimony of the Director General of the Jose María Cabral Báez Regional University Hospital who stated that “[the] Haitian citizens were neither received nor attended to in [the] Hospital.” Note of the Director General of the Hospital of July 11, 2012, *supra*, folio 4107.1.

¹⁵⁷ Statement of Josier Maxime during the public hearing.

¹⁵⁸ Statement of Noclair Florvilien during the public hearing.

¹⁵⁹ Cf. Resolution 1509 of the Parliamentary Assembly of the Council of Europe, para. 13.2

¹⁶⁰ Cf. World Health Organization. *International Migration Health and Human Rights*. No. 4, December 2003.

109. In this case, it has been proved that nine people were transferred to the José María Cabral Báez Regional University Hospital, and at least five were hospitalized; however, according to the testimony of the Director General of this hospital, the “Haitians were not received or treated by this hospital” (*supra* paras. 50 and 51). Nevertheless, during the public hearing, the State claimed to have provided care to the wounded at this hospital. According to testimony, some of the wounded left the hospital of their own accord, without even their departure being recorded.¹⁶¹ The foregoing reveals that the failure to register the entry into and exit from the health center, the lack of medical care for five seriously injured victims, and the failure to diagnose their condition and prescribe treatment,¹⁶² denote omissions in the attention that should have been provided to the injured in order to respect and ensure their right to personal integrity, in violation of Article 5(1) in relation to Article 1(1) of the Convention.

110. Furthermore the Court observes that special protection was never provided to Roland Israel, based on his condition as a minor, or to Silvie Therméus, who was pregnant, situations that increased the violation of their physical, mental and moral integrity (*supra* paras. 54 and 73).

c) Treatment of the deceased and their corpses

111. As has been proved in this case, the surviving victims themselves were the ones who placed the bodies of their deceased comrades in the ambulance.¹⁶³ In this regard, Rose Marie Dol indicated that “they made [them] lift the dead and put them in ambulances.”¹⁶⁴ While Joseph Desravine stated that “the survivors [...] lifted the bodies of the deceased who were under the truck and aligned them on the ground.”¹⁶⁵

112. The photographic evidence in the case file shows that the corpses were laid haphazardly on the floor of a room in the morgue, with their clothing torn and in positions that could facilitate their rapid decomposition.¹⁶⁶

113. Also, the corpses of the Haitians who died were buried in a mass grave (*supra* para. 52). The Dominican national was not buried in that grave. According to the testimony of one of the victims, Sonide Nora, they themselves buried “the bodies of the dead in a mass grave in Dominican Republic.”¹⁶⁷ Also, Vivandieu Dorzema, Nadege Dorzema’s brother, indicated that “with great distress [...] he had dug the mass grave where Nadege would be buried.”¹⁶⁸

¹⁶¹ According to the testimony of the victim Noclair Florvilien, when he was in the hospital, a friend of his went to find him in order to take him to a doctor who would provide him with first aid, without anyone recording his departure, because his entry into the hospital had not been registered. *Cf.* Statement made by Noclair Florvilien during the public hearing. Similarly, Joseph Desravine indicated that once they were in the hospital, he decided to escape by a small opening to go and look for his family members. Affidavit prepared by Joseph Desravine, *supra*, folio 567.

¹⁶² In response the questions posed by the Court during the public hearing, the State referred to article 34 of the General Hospital Regulations of the Dominican Republic (Decree No. 351-99), which establish that every hospital must have a patient registration and information system that includes the following: (a) Daily record of admissions and departures; (b) Medical history of each patient; (c) Record of deaths, detailing the diagnosis on entry and the cause of death; (d) Record of admissions; (e) Record of transfers and departures (the State’s brief with final written arguments, merits file, folio 959).

¹⁶³ *Cf.* Affidavit prepared by Pedro Ureña, *supra*, folio 575.

¹⁶⁴ *Cf.* Testimony provided by Rose Marie Dol, *supra*, folio 1585.

¹⁶⁵ *Cf.* Affidavit prepared by Joseph Desravine, *supra*, folio 568.

¹⁶⁶ *Cf.* File of annexes to the pleadings and motions brief, tome IV, folios 2542 to 2548.

¹⁶⁷ *Cf.* Affidavit prepared by Sonide Nora, *supra*, folio 572

¹⁶⁸ Affidavit prepared by Vivandieu Dorzema on February 24, 2011 (file of annexes to the pleadings and motions brief, tome V, folio 2995).

114. The Court observes that the corpses have not been repatriated yet or returned to their next of kin. In response to the Court's questions during the public hearing, the representatives forwarded information on the burial records of the deceased victims in the Guaurabo II Cemetery on June 18, 2000.¹⁶⁹ The State did not provide current information on the situation of the corpses and actions for their proper return.¹⁷⁰

115. In this regard, the Court has established that the right of the victims' next of kin to know the whereabouts of the remains of their loved ones constitutes, in addition to a requirement of the right to know the truth, a measure of reparation and, therefore, gives rise to the corresponding obligation of the State to satisfy these fair expectations. The return of the bodies of those who died in the incident was of paramount importance to their next of kin, to permit their burial in keeping with their beliefs and to close the mourning process they experienced owing to the events.¹⁷¹

116. Specifically, international standards require that the return of the remains should take place when the victim has been clearly identified; in other words, once a positive identification has been made. In this regard, the Minnesota Protocol establishes that "the body must be identified by reliable witnesses and other objective methods."¹⁷²

117. This Court considers that the treatment given to the bodies of those deceased following the incident, by burial in mass graves without being clearly identified or returned to their families, reveals a demeaning treatment in violation of Article 5(1) in relation to Article 1(1) of the Convention, to the detriment of the deceased and their next of kin.

VII-2 RIGHTS TO PERSONAL LIBERTY, TO JUDICIAL GUARANTEES AND TO FREEDOM OF MOVEMENT

118. In this chapter, the Court will summarize the arguments of the parties and the Inter-American Commission on the alleged violation of the right to personal liberty of 11 Haitian migrants in Dominican Republic. To do so, the Court will consider the facts from the time the Haitian migrants were deprived of liberty until they were transferred to Haiti, some hours later (*supra* paras. 54 and 55). Subsequently, the Court will examine the alleged collective expulsion of the Haitian migrants in light of the guarantees of due process, in relation to both the condition of migrants of the presumed victims, and the deportation and expulsion procedures.¹⁷³

¹⁶⁹ Cf. Burial certificate. Fritz Alce, Roselene Therméus, Ilfaudia Dorzema, Nadege Dorzema and Jacqueline Maxime, *supra*, folios 4738 to 4755.

¹⁷⁰ Among the annexes to its final written arguments, the State attached the statement of the Director of Specialized Health Services of the Ministry of Public Health, which indicated that: "[...] during the investigation, several documents were obtained that relieve the José María Cabral and Báez University Hospital of responsibility, but which implicate the National Forensic Science Institute, which corresponds to the Attorney General's office, because, on June 18, 2000, it registered a total of seven persons, including the persons claimed in the report, but the corresponding files were damaged by the flooding suffered by the province of Santiago de los Caballeros and, in addition, it does not know the final fate of the corpses" (file of annexes to the State's final arguments, tome VII, folio 4107.22.)

¹⁷¹ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 245, and *Case of Pacheco Teruel v. Honduras*. Merits, reparations and costs. Judgment of April 27, 2012. Series C No. 241, para. 73.

¹⁷² Cf. *Case of González et al. ("Cotton field") v. Mexico*, *supra*, para. 318 and *Case of Pacheco Teruel v. Honduras*, *supra*, para. 73.

¹⁷³ In addition, the Commission alleged the violation of the guarantees under Articles 8 and 25 of the Convention in relation to the alleged arbitrary detention and expulsion. The representatives also alleged the violation of the said articles because "[t]he rapidity of the expulsion [...] reveals the factual impossibility of filing an application for *habeas corpus*, a request for refugee status, asylum or any other measure of protection [...]; in other

A. Right to personal liberty

1. Arguments

119. The Inter-American Commission stated that “the case file reveals that the Director of Intelligence reported that, on the day of the incident, there were 11 detainees” and that the Commander of the Tenth Infantry Battalion had confirmed that “they were sent to the immigration office to be returned to their territory.” However, the Commission noted that “there is no evidence that this acknowledged detention had been recorded, or that a proceeding had been opened.” In addition, it considered that it was a violation of the right to personal liberty that the migrants who had been detained were “taken by State agents to Montecristi and then to a military prison in Dejabón, where the agents told the detainees that they must pay them in order to be returned to Haiti; otherwise, they would have to work in the fields planting bananas and rice.”

120. In addition, the Commission indicated that “there is also no proof that these people were informed of the reasons for their detention, of the charges against them, of their legal rights, that they were brought before a judge or other officer authorized by law to exercise judicial power, or the date of the trial, [and] even assuming that the detainees were sent to the immigration office, its officials cannot be considered judges or officials authorized by law to exercise judicial power. In addition, there is no evidence that the detainees were informed of the remedies at their disposal or that they were allowed to explain whether they were seeking asylum or the reasons why they were in Dominican territory.” Based on these considerations, the Commission asked the Court to declare that the State had violated the right to personal liberty established in Article 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Joseph Pierre, Selafoi Pierre, Silvie Felizor, Roland Israel, Rose Marie Dol, Josier Maxime, Rose-Marie Petit-Homme, Sonide Nora, Alphonse Oremis, Renaud Tima and Honorio Winique.¹⁷⁴

121. The representatives agreed with the Inter-American Commission regarding the allegations of the arbitrary arrests and detentions of the Haitian survivors. They also affirmed that “international law provides that [...] the restriction of the right [to personal liberty] must accord with the requirements of legality and the restrictive approach to the adoption of the measure.”

122. In addition, they stressed that the State had “failed to present any evidence establishing that, on the night of June 18, its agents proceeded to detain and arrest the victims following a court order, in application of the law. Indeed, none of the victims has been formally charged”; moreover, it does not appear from the available evidence that the presumed victims who were detained had been discovered *in flagrante*. In addition, they were “not granted any presumption of innocence, and the rule on exceptional detention was not respected.” They also argued that “the reasons for the arrest and detention of these persons were never indicated by the authorities who carried out the operation, or by other

words, to exercise their rights with regard to judicial guarantees and to judicial protection.” In this regard, the Court reiterates that Articles 7(6), 8 and 25 of the Convention cover different spheres of protection. Specifically, “Article 7(6) of the Convention has its own legal content and the principle of effectiveness (*effet utile*) crosscuts the protection due to all the rights recognized in this instrument”; hence the Court considers that it is not appropriate to analyze the facts of the detention and expulsion in this case in light of Article 25 of the Convention. The alleged violation of the rights to judicial guarantees and protection will be analyzed in Chapter VII-3.

¹⁷⁴ With regard to the injured man, Joseph Desvraine, the Commission observed that “he was not in the group of those sent to Dejabón,” because he was injured and taken to the hospital which he was able to leave. Also, the evidence in the case file shows that Michel Françoise was taken to the hospital and provided statements in the military jurisdiction in the following days. Therefore, the Commission did not have sufficient information as regards what happened to these two individuals after their transfer to the hospital and, therefore, did not refer to the rights protected by Articles 7, 8 and 25 with regard to them.

officials of the Dominican State.” The victims, “were never allowed to communicate with the outside world, were not informed about the possibility of being brought before a judge, or allowed to contest the legitimacy and legality of the measure that determined the group’s arrest and detention.” Consequently, they asked the Court to declare the violation of Article 7 of the American Convention.

123. The State did not present any specific arguments regarding the alleged violation of Article 7 of the American Convention. However, in its final written arguments, it asserted that the presumed victims “[r]emained [detained] in the country for a few hours, because they entered Dominican territory without documents in the early morning hours, so that they had to wait for the formalities to be initiated during working hours in order to be returned to their country of origin, based on their condition and the events that occurred, without at any time being subject to any mistreatment or humiliation, and under the Protocol of Understanding on Repatriation Mechanisms signed by the Dominican Republic and Haiti on December 2, 1999.”

2. Considerations of the Court

124. In this section, the Court will examine the detention and consequent violation of the right to personal liberty alleged by the Commission and the representatives. The alleged violations of judicial guarantees established in Article 8 of the Convention owing to the migratory status of the presumed victims will be assessed together with the prohibition of collective expulsion in the following section (*infra* paras. 145 to 178). In this regard, since the detention was carried out on the Dominican territory and not when they crossed the border (*infra* para. 151), when the State could, in principle, have held them for an identity check,¹⁷⁵ the Court will analyze the alleged detention in light of the requirements of exceptionality of Article 7 of the American Convention,¹⁷⁶ and not as deprivation of liberty for identity verification and/or border control.

125. Thus, the Court has indicated that Article 7 of the American Convention contains a general rule, established in the first paragraph, that “[e]very person has the right to personal liberty and security,” and another rule with specific characteristics consisting of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7(2)) or arbitrarily (Art. 7(3)), to be informed of the reasons for the detention and notified of the charges (Art. 7(4)), to be subject to judicial review for the deprivation of liberty (Art. 7(5))

¹⁷⁵ Cf. ECHR, *Saadi v. United Kingdom*. [Grand Chamber] Application No. 13229/03, of 29 January 2008, paras. 64 to 66; Human Rights Committee. *Madafferi and Madafferi v. Australia*, Communication No. 1011/2001, Views of 26 August 2004, para. 9.2.

¹⁷⁶ Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. [...]

and to contest the lawfulness of the detention (Art. 7(6)).¹⁷⁷ Therefore, with regard to the general obligation, the Court recalls that “any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entail the violation of Article 7(1) thereof.”¹⁷⁸

126. With regard to the specific guarantee established in Article 7(2) of the Convention, the Court reiterates that the limitation of physical liberty, even for a short period, including limitations merely for identification purposes, must “adhere strictly to the relevant provisions of the American Convention and domestic law, provided that the latter is compatible with the Convention.”¹⁷⁹ Therefore, in order to analyze the alleged violation of Article 7(2), the Court considers it necessary to refer to the domestic legal and constitutional provisions, “so that any requirement established therein that is not complied with would make the deprivation of liberty unlawful and contrary to the American Convention.”¹⁸⁰

127. In this regard, Article 8(2) of the 1994 Constitution,¹⁸¹ in force at the time of the facts, stipulates that:

[...]

b. No one shall be imprisoned or have their liberty restricted without a written and founded order from a competent judicial official, except in case of *flagrante delicto*.

c. Anyone deprived of liberty without cause or without the legal formalities, or outside the cases provided by law, shall be released immediately at their own request or that of any other person.

d. Anyone deprived of liberty shall be brought before the competent judicial authority within forty-eight hours of detention or be released.

e. Any arrest shall be annulled, or imprisonment shall be decided within forty-eight hours of the arrest by a competent judicial authority, and the interested party must be notified within the same period of the decision taken in this regard.

f. It is absolutely prohibited to transfer any detainee from a prison facility to another location without a written and founded order from a competent judicial authority.

g. Anyone who has a prisoner in his or her custody shall be required to present the prisoner as soon as the competent authority requires this.

[...]

128. Also, at the time of the facts, article 13 of the 1939 Immigration Law regulated the procedure for the detention and deportation of immigrants:¹⁸²

The following aliens shall be arrested and deported under the orders of the Secretary of State for the Interior and Police, or other official appointed by the latter for this purpose:

Any alien who enters the Republic [...] using false or misleading declarations or without inspection and admission by the Immigration Authorities at one of the designated ports of entry.

[...]

e) [...] No alien shall be deported without being informed of the specific charges on which the deportation is based, or without having been given a fair opportunity to refute such charges under Immigration Regulations No. 279 of May 12, 1939, except in cases in which deportation has been ordered under article 55, paragraph 16¹⁸³ of the Constitution, or in the cases set out in article 10, paragraph 1,¹⁸⁴ and article 13, paragraph 3,¹⁸⁵ of this Law.

¹⁷⁷ 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 Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 53.

¹⁷⁸ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 54, and *Case of the Barrios Family v. Venezuela, supra*, para. 54.

¹⁷⁹ Cf. *Case of Torres Millacura et al. v. Argentina, Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 76, and *Case of the Barrios Family v. Venezuela, supra*, para. 75.

¹⁸⁰ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 57, and *Case of Fleury et al. v. Haiti, supra*, para. 54.

¹⁸¹ Constitution of the Dominican Republic, 1994. Voted and proclaimed by the national Assembly on August 14, 1994 (file of attachments to the representatives’ final written arguments, tome VIII, folio 4112).

¹⁸² Immigration Act, Law 95 of April 14, 1939. Published in Gaceta Oficial No. 5299 (file of attachments to the representatives’ final written arguments, tome VIII, folio 4240).

¹⁸³ Article 55. The President of the Republic is the head of the public administration and the supreme chief of all the armed forces of the Republic and the police forces. It corresponds to the President of the Republic: 16. To

129. In addition, Immigration Regulations No. 279 of May 12, 1939¹⁸⁶ regulated the deportation procedure as follows:

Immigration inspectors and officials acting as such shall conduct a full investigation of any alien, whenever truthful reports exist or there is any reason to believe that the alien is in the Republic in violation of the Immigration Act. If the investigation establishes that the alien should be deported, the Immigration Inspector shall request an arrest warrant from the General Immigration Board. The request for a warrant must state the facts and show the specific reasons why the alien should be deported. If the arrest warrant is issued, the Immigration Inspector shall call the alien to be heard regarding the charges stated in the arrest warrant.

The information relating to the alien shall be entered on the G-1 form when he is heard, unless this information has been recorded previously. [...] If the alien does not accept any of the charges stated in the arrest warrant, evidence will be sought to substantiate the charges; then the alien will be summoned again and given another opportunity to state his case, as well as to introduce evidence opposing his or her deportation. [...]

130. Nevertheless, as previously determined (*supra* paras. 54 and 55), after the truck overturned, 11 people were detained and taken to the Border Intelligence Operations Base (DOIF) in Montecristi. Some hours later they were taken to the Dejabón military barracks, where soldiers threatened to take them to a prison, and told them that they could work in the fields or pay money to the agents to be returned to Haiti. Based on this threat, the Court found it proved (*supra* para. 55) that the detainees collected money, gave it to the soldiers and, on the afternoon of June 18, 2000, were transferred to the town of Ouanaminthe (Wanaminthe), in Haiti. In this regard, the Court emphasizes that the said deprivation of liberty was not formally recorded or justified at any time. In addition, the transfer of the migrants from the Montecristi DOIF to the Dejabón military barracks was not authorized by a written or founded order and, at no time, were the detainees brought before a competent authority, in this case the Immigration Inspector or the Director General, as required by the Constitution in force (*supra* para. 127).

131. The Court has also upheld the need to guarantee certain minimum standards that must be met in police detention centers;¹⁸⁷ in particular, a record of detainees must be kept that permits monitoring the legality of the detentions.¹⁸⁸ In relation to the facts of this case, the Court notes that the authorities did not respect the obligation to record the information on the foreign detainees so that they could be deported. Thus, the absence of a record of this information on the "G-1 form" signified a disregard of the provisions of Immigration Regulations No. 279 (*supra* para. 129). Based on the foregoing, the State violated Article 7(2) of the American Convention to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel, and Rose Marie Dol (hereinafter "the detained victims").

order the arrest or expulsion of aliens whose activities, in his opinion, have been or could be prejudicial to public order and good practice.

¹⁸⁴ Article 10.a. The following types of aliens shall be excluded from entry into the Republic: (1) Anarchists or persons who promote doctrines or activities to overthrow the Dominican Government or contrary to law and order [...].

¹⁸⁵ Article 13. The following aliens shall be arrested and deported [...]: (3) Any alien who joins or associates with activities tending to overthrow the Dominican Government or who illegally traffics in drugs, or joins in other activities contrary to public order and safety.

¹⁸⁶ Immigration regulation No. 279 of May 12, 1939, published in Gaceta Oficial No. 5313 (file of attachments to the representatives' final written arguments, tome VIII, folio 4351).

¹⁸⁷ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 132.

¹⁸⁸ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 203, and *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012 Series C No. 249, para 151.

132. Regarding Article 7(4) of the Convention, the Court has considered that “the facts must be analyzed under domestic law and the provisions of the Convention, because information on the ‘reasons and grounds’ for the detention must be provided ‘when this occurs’ and because the right contained this article entails two obligations: (a) oral or written information on the reasons for the detention, and (b) notification, in writing, of the charges.”¹⁸⁹ Thus, both the Immigration Act and the Regulations in force determined that aliens held for deportation purposes must be informed of the specific reasons why they would be subject to deportation. In this regard, the evidence provided in this case reveals that at no time during the deprivation of liberty were these persons informed of the reasons and grounds for their detention, either verbally or in writing. In addition, there is no document to prove that the detainees were informed in writing of the existence of any kind of charge against them, which was contrary to the domestic norms in force at the time of the facts (*supra* para. 128) and, therefore, violated Article 7(2) and 7(4) of the American Convention on Human Rights, to the detriment of the detained victims.

133. Moreover, regarding the arbitrary nature of the detention referred to in Article 7(3) of the Convention, the Court has considered that “no one may be subjected to detention or imprisonment for causes or by methods that, although classified as legal, could be regarded as incompatible with respect for fundamental human rights, because, *inter alia*, they are unreasonable, unpredictable or disproportionate.”¹⁹⁰ Therefore, any detention must be carried out not only in accordance with domestic legal provisions, but it is also necessary that “domestic law, the applicable procedure, and the corresponding general explicit or tacit principles are, in themselves, compatible with the Convention.”¹⁹¹ Thus, “the concept of ‘arbitrariness’ cannot be equated with that of ‘contrary to the law,’ but must be interpreted more broadly to include elements of irregularity, injustice and unpredictability.”¹⁹²

134. In this regard, the State argued that the detainees “remained in the country for a few hours, since they entered Dominican territory undocumented in the early morning hours, so that they had to wait until the formalities were initiated during working hours in order to be returned to their country of origin.” Nevertheless, from the statements of the victims, the Court notes that the authorities did not keep them detained with the intention of bringing them before a judge or other officer authorized by law to exercise judicial power or in order to formulate charges against them in keeping with the domestic norms (*supra* paras. 54 and 55). Thus, after analyzing the evidence in the case file, the Court considers that the arrests were not made in order to carry out a procedure capable of determining the circumstances and legal status of the detainees, or even to conduct a formal immigration procedure for their deportation or expulsion,¹⁹³ which means that they were detentions for unlawful purposes and, consequently, arbitrary, in violation of Article 7(3) of the Convention, to the detriment of the detained victims.

¹⁸⁹ 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, and Case of *Fleury et al. v. Haiti*, *supra*, para. 60. Also, Cf. U.N., Body of Principles for the Protection of All Persons under Any Form of Detention or Prison, Adopted by the General Assembly in its Resolution 43/173, of 9 December 1988, Principle 10.

¹⁹⁰ 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 *Fleury et al. v. Haiti*, *supra*, para.57.

¹⁹¹ Cf. Case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 91, and Case of *Fleury et al. v. Haiti*, *supra*, para. 58.

¹⁹² Case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 92, and Case of *Fleury et al. v. Haiti*, *supra*, para. 58. See also, Human Rights Committee, Case of *Albert Womah Mukong v. Cameroon*, (458/1991), 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, para. 9.8.

¹⁹³ In this regard, see Working Group on Arbitrary Detention, Conclusions and recommendations of 15 December 2003, UN DOC E/CN.4/2004/3, para. 86.

135. With regard to Article 7(5) of the Convention, which provides that the detention should be reviewed promptly by a judge or other officer authorized by law to exercise judicial power, the Court has considered that “a judge must guarantee the rights of the detainee, authorize the adoption of precautionary or coercive measures, when strictly necessary and, in general, ensure that the detainee is treated in a manner consistent with the presumption of innocence,”¹⁹⁴ as a “guarantee intended to prevent arbitrary or unlawful detention,”¹⁹⁵ and as a guarantee of the right to life and personal integrity.”¹⁹⁶

136. The Court has established that the “American Convention does not establish a limitation to the exercise of the guarantee recognized in Article 7(5) of the Convention based on the reasons or circumstances for which a person has been arrested or detained. Therefore, based on the *pro persona* principle, this guarantee must be ensured as long as a person is arrested or detained owing to his or her migratory status, in keeping with the principles of judicial control and procedural immediacy.”¹⁹⁷ To ensure that it constitutes a real mechanism of control in response to unlawful and arbitrary detentions, the judicial review must be carried out promptly and in such a way that it guarantees compliance with the law and the detainee’s effective enjoyment of his or her rights, taking into account the special vulnerability.”¹⁹⁸

137. This Court also considers that, in migratory matters, “domestic laws must ensure that the officer authorized by law to exercise judicial power complies with the characteristics of impartiality and independence that must regulate any organ responsible for determining the rights and obligations of the individual. Thus, the Court has already established that the said characteristics must not only be met by the organs that are strictly jurisdictional, but the provisions of Article 8(1) of the Convention apply also to the decisions of administrative organs.”¹⁹⁹ Since, with regard to this guarantee, the immigration officer has the task of preventing and ending unlawful and arbitrary detentions,²⁰⁰ “it is essential that the said officer has the authority to release an individual if his or her detention is illegal or arbitrary.”²⁰¹

138. The Court also notes that article 8(3)(d) of the 1994 Dominican Constitution, in force at the time of the detentions analyzed, stipulates that: “[a]nyone deprived of their liberty shall be brought before the competent judicial authority within forty-eight hours of their detention or released.”²⁰²

139. The Court considers that, according to the arguments of the parties, the detentions took place over less than the 48 hours corresponding to the constitutionally-based time frame established by the Dominican legal system for bringing a detainee before a competent judicial authority. Despite this, the migrants were not released in Dominican Republic, but the military agents unilaterally applied the punishment of expulsion, without the victims

¹⁹⁴ Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 63, and *Case of Vélez Loo v. Panama, supra*, para. 105.

¹⁹⁵ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 83, and *Case of Vélez Loo v. Panama, supra*, para. 105.

¹⁹⁶ Cf. *Case of Tibi v. Ecuador*, para. 118, and *Case of Vélez Loo v. Panama, supra*, para. 105.

¹⁹⁷ Cf. *Case of Tibi v. Ecuador, supra*, para. 118, and *Case of Vélez Loo v. Panama, supra*, para. 107.

¹⁹⁸ Cf. *Case of Bayarri, supra*, para. 67, and *Case of Vélez Loo v. Panama, supra*, para. 107.

¹⁹⁹ *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 71, and *Case of Vélez Loo v. Panama, supra*, para. 107.

²⁰⁰ Cf. *Case of Bayarri, supra*, para 67, and *Case of Vélez Loo v. Panama, supra*, para. 108.

²⁰¹ *Case of Vélez Loo v. Panama, supra*, para. 108. In this regard, see Body of Principles for the Protection of All Persons under Any Form of Detention or Prison, Principle 11.

²⁰² Constitution of the Dominican Republic, 1994, *supra*, folio 4112.

having been brought before a competent authority, who, as appropriate, would determine their release, which resulted in the violation of Article 7(5) of the American Convention to the detriment of the detained victims.

140. Article 7(6) protects the right of all persons deprived of liberty to have recourse to a competent court, in order that the latter may decide, without delay, on the lawfulness of the detention, and as appropriate, order their release.²⁰³ In this regard the Court has emphasized that the "authority that must decide the legality of the arrest or detention must be a judge or court. Thus, the Convention is ensuring that it must be the judicial system that controls the detention."²⁰⁴

141. Regarding the nature of such remedies, the Court's case law has indicated that they "must not only exist formally in law, but must be effective; in other words, they must comply with the objective of obtaining, without delay, a decision on the lawfulness of the arrest or detention."²⁰⁵

142. Thus, the Dominican Constitution in force at the time of the facts (*supra* para. 127), stipulated that:²⁰⁶

g. Anyone who has custody of a detainee shall be obliged to present him or her as soon as the competent authority requires. The Habeas Corpus Act shall determine how to proceed summarily in order to comply with the requirements contained in subparagraphs (a), (b), (c), (d), (e), (f) and (g) and shall establish the appropriate sanctions.

143. In addition, Court observes that the migratory regulations in force at the time of the incident (*supra* paras. 128 and 129) did not establish remedies to contest the lawfulness of the arrest or detention, as established in Article 7(6) of the Convention, but only established the possibility for the detainee to "refute the charges" on which his or her deportation was based or to be "heard regarding the charges indicated in the arrest warrant" or "to provide evidence opposing the deportation." In this regard, the Court has indicated that the right protected by Article 7(6) of the Convention "signifies that the detainee may truly exercise this right, assuming that he or she is able to do so, and that the State really provide this remedy and decides it."²⁰⁷ However, the Court finds that, owing to their rapid expulsion, the migrant victims had no opportunity to exercise an appropriate remedy that would control the lawfulness of the detention. Consequently, the State violated Article 7(6) of the Convention to the detriment of the detained victims.

144. Based on the above arguments, the Court considers that the detention of the seven Haitian migrants did not comply with the constitutional and legislative provisions in force at the time of the events, because the detention was not intended to conduct a proceeding capable of determining the circumstances and legal status of those detained, or even to carry out a formal migratory procedure in order to deport or expel them; because of the absence of oral or written information about the reasons or grounds for the detentions and written notification of the charges against victims. The foregoing signified that the State violated the right to personal liberty established in Article 7(1), 7(2), 7(3) and 7(4), 7(5)

²⁰³ Cf. *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33; *Case of Vélez Loor v. Panama*, *supra*, para. 124, and *Case of Uzcátegui et al. v. Venezuela*, *supra*, para. 158.

²⁰⁴ Cf. *Case of Vélez Loor v. Panama*. para.126.

²⁰⁵ Cf. *Case of Acosta Calderón v. Ecuador*. Merits, reparations and costs. Judgment of June 24, 2005. Series C No. 129, para. 97 and *Case of Vélez Loor v. Panama*, *supra*, para. 129.

²⁰⁶ Constitution of the Dominican Republic, 1994, *supra*, folio 4109.

²⁰⁷ *Case of Yvon Neptune v. Haiti*. Merits, reparations and costs. Judgment of May 6, 2008. Series C No. 180, para. 114, and *Case of Uzcátegui et al. v. Venezuela*, *supra*, para. 158.

and 7(6) of the Convention, in relation to the obligation to respect the rights established in Article 1(1) thereof, to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel and Rose Marie Dol.

B. Freedom of movement, collective expulsion, and right to judicial guarantees

145. In this section, the Court will summarize the arguments of the parties and the Inter-American Commission on the alleged collective expulsion and the right to judicial guarantees. Then, in order to determine the alleged violation of the guarantees of due process and of the prohibition to carry out collective expulsions, the Court will evaluate the facts of the case in light of Dominican law in force at the time of the facts and of international law and will set out its considerations on: (a) the protection due to migrants; (b) due process and the minimum guarantees for aliens in situations of deprivation of liberty, expulsion or deportation, and (c) the legal content of Article 22(9) of the American Convention on collective expulsions.

1. Arguments

146. The representatives alleged the violation of Article 22(9) of the American Convention by indicating that "the expeditious nature of the expulsion [of the presumed victims] demonstrated the Dominican Republic's clear rejection of the possibility that the Haitians could legitimately contest the collective expulsion measure, [as well as] the factual impossibility of presenting to the State authorities an application for *habeas corpus*, a request for refugee status, asylum or any other measure of protection." They added that "contrary to international law, the expulsion of the [presumed victims was] of a collective nature, since they were transported to the border in a group, without prior individualization in order to make a specific assessment of the migratory status of each of them." Accordingly, they indicated that the collective and summary deportation, without prior individualization or the intervention of the courts, "totally contravenes Article 22(9)," thus violating "the prohibition of the collective expulsion of aliens." In this regard, they concluded that the conduct of the Dominican authorities was based on "grounds of discrimination and xenophobia to the detriment of the Haitians." In addition, they indicated that the only information the presumed victims received was that they must collect all the money they had in order to avoid going to prison. For these reasons, the representatives argued that the presumed victims were threatened and subjected to extortion by Dominican administrative personnel.

147. For the reasons stated above, the representatives concluded that the State had violated Articles 7, 8, 22(9) and 25 of the American Convention to the detriment of Cecilia Petit-Homme, Pierre Selafoi, Sylvie Therméus, Joseph Pierre, Rose-Marie Dol, Roland Israel, Josué Maximus, Sonide Nora, Alphonse Oremis, Renaud Tima and Winique Honorio.

148. For its part, the Commission did not allege a violation of Article 22(9) of the Convention, but argued that the State had violated Article 8 of this instrument, indicating "that although many judicial guarantees established in Article 8 of the American Convention incorporate language that is characteristic of criminal proceedings, similarly and owing to the possible consequences of migratory proceedings, strict application of the said guarantees is required." In addition, it stressed "that migrants are in a situation of real inequality which may result in due process being impaired unless special measures are adopted to compensate for their defenseless."

149. The State did not refer to the alleged violations of judicial guarantees and judicial protection in relation to the expulsion procedure, or to the alleged collective expulsion of the Haitian migrants.

2. Considerations of the Court

150. First, the Court notes that the allegation of the supposed violation of Article 22(9) of the Convention was only brought up by the representatives. In this regard, the Court recalls that the presumed victims, their next of kin, or their representatives may invoke rights other than those included in the Merits Report, based on the facts presented in the latter (*supra* para. 5).²⁰⁸

151. In addition, the Court reiterates that, from the evidence provided by the parties, this case does not refer to an expulsion or rejection by immigration officials at an immigration post at the border between Haiti and Dominican Republic. To the contrary, the events occurred in Dominican territory, more than 50 kilometers from the border. From the foregoing, the Court considers that the State did not prove that there were reasons to expel the Haitian migrants from Dominican territory without a formal procedure that observed the individual guarantees of each of these individuals. Consequently, the Court finds it necessary to set out the following considerations on the prohibition of collective expulsions, and on the guarantees of due process in deportation or expulsion proceedings.

a) Protection of migrants

152. The general obligation to respect and ensure rights gives rise to special obligations, which can be determined based on the particular needs for protection of the subject of law, because of his personal condition or because of the specific situation in which he finds himself.²⁰⁹ In this regard, “undocumented migrants or those in an irregular situation have been identified as a group in a vulnerable situation,²¹⁰ because they are the most vulnerable to potential or actual violations of their rights and, as a result of their situation, they suffer a significant lack of protection of their rights.”²¹¹

153. Regarding the consequences of this situation of vulnerability, the Court has considered that, “it should be noted that the human rights violations committed against migrants often remain in impunity, owing, *inter alia*, to the existence of cultural factors that justify these acts, the lack of access to power structures in a given society, and the legal and factual obstacles that make real access to justice illusory.”²¹²

154. The Court has considered that the foregoing “does not mean that no action can be taken against migrants who do not comply with the laws of the State. However, when taking the corresponding measures, States must respect their human rights and ensure the exercise and enjoyment of these rights to all persons subject to their jurisdiction, without any discrimination owing to their regular or irregular situation [...]” This is even more relevant if it is taken into account that, “under international law, certain limits to the application of migratory policies have been developed, which impose strict respect for

²⁰⁸ Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 55, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012 Series C No. 248, para. 47.

²⁰⁹ Cf. *Case of the Pueblo Bello Massacres v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 37.

²¹⁰ *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 114.

²¹¹ Cf. *Case of Velez Looor v. Panama, supra*, para. 98.

²¹² Cf. *Case of Velez Looor v. Panama, supra*, para. 98. See also, *Juridical Status and Rights of Undocumented Migrants, supra*, para. 112; United Nations, Economic and Social Council, Specific groups and individuals: migrant workers. Human rights of migrants. Report of the Special Rapporteur, Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights Resolution 1999/44, E/CN.4/2000/82, 6 January 2000, para. 73.

guarantees of due process and respect for human dignity, whatever the juridical situation of the migrant.”²¹³

155. Therefore, the exercise of the State’s power to establish its immigration policy should fully respect the prohibition of collective expulsion of aliens contained in Article 22(9) of the American Convention, and the guarantees intrinsic to the procedures for the expulsion or deportation of aliens, especially those derived from the rights to due process and to judicial protection.

b) Due process in cases of deportation or expulsion

156. The Court has indicated that the right to due process, established in Article 8 of the American Convention, refers to the series of requirements that must be observed in the procedural instances to ensure that individuals are able to defend their rights satisfactorily in the face of any act of the State that could harm these rights.²¹⁴

157. Similarly, in its consistent case law, the Court has considered that all the minimum guarantees of due process of law apply when determining rights and obligations of a “civil, labor, fiscal or any other nature.”²¹⁵ In other words, “any act or omission by the State organs in a proceeding, whether this is administrative, punitive or jurisdictional, must respect due process of law.”²¹⁶

158. In the Advisory Opinion on the Right to Information on Consular Assistance within the framework of the due process of law, the Court referred to the scope of the right to due process, stating that:

To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one’s interests.²¹⁷

159. On migratory matters, the Court considers that the right to due process of law should be guaranteed to all persons irrespective of their migration status,²¹⁸ since “[t]he broad scope of the preservation of due process applies not only *ratione materiae* but also *ratione personae*, without any discrimination.”²¹⁹ This means that “due process of law should be recognized as one of the minimum guarantees to be offered to all migrants, regardless of their migratory status,”²²⁰ so that migrants are allowed to assert their rights and defend

²¹³ Cf. *Case of Vélez Loo v. Panama*, *supra*, para. 100. See also *Juridical Status and Rights of Undocumented Migrants*, *supra*, paras. 118 and 119.

²¹⁴ Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Vélez Loo v. Panama*, *supra*, para. 142.

²¹⁵ Cf. *Case of the Constitutional Court v. Peru*, *supra*, para. 70, and *Case of Vélez Loo v. Panama*, *supra*, para. 142.

²¹⁶ Cf. *Case of Baena Ricardo et al. v. Panama*. Merits, reparations and costs. Judgment of February 2, 2001. Series C No. 72, para. 124

²¹⁷ *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, *supra*, para. 119.

²¹⁸ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 121.

²¹⁹ *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 122.

²²⁰ *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 122

their interests effectively and in conditions of full procedural equality with other defendants.²²¹

c) *Minimum guarantees for the alien subject to expulsion or deportation*

160. In this regard, international bodies for the protection of human rights have all established the characteristics for proceedings carried out by States in order to expel or deport aliens from their territory.

161. Thus, in the universal system for the protection of human rights, the Human Rights Committee, when interpreting Article 13 of the International Covenant on Civil and Political Rights,²²² established that "[t]he particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party[.] However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13."²²³; That is, it must comply with the following guarantees: (a) an alien can only be expelled in compliance with a decision reached in accordance with the law, and ((b) the alien must be empowered with the means to: (i) provide arguments against the expulsion (ii) submit his or her case before the competent authority, and (ii) be heard and represented for such purpose before the competent authority.

162. In addition, the African Commission on Human and Peoples' Rights has considered:²²⁴

[...] it is unacceptable to deport an individual without giving him or her an opportunity to argue his or her case before the competent domestic courts, since it is contrary to the spirit and letter of the African Charter on [Human and Peoples' Rights] and international law.

163. Similarly, the International Law Commission has stated that aliens in a situation such as that of this case must receive the following procedural safeguards: (i) minimum detention conditions during the proceeding; (ii) to be able to provide reasons against the expulsion; (iii) consular assistance; (iv) legal advice; (v) the right to free assistance and interpretation, and (vi) the right to be notified of the expulsion decision and the right to appeal it.²²⁵

164. In addition, the Court has emphasized the "importance of legal aid in cases [...] involving an alien who may not know the country's legal system and who is in a particularly vulnerable situation given the deprivation of liberty, which means that the recipient State must take into account the particular characteristics of the person's situation, so that the

²²¹ Cf. *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, *supra*, paras. 117 and 119; *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21 2002. Series C No. 94, para. 146, and *Case of Velez Loo v. Panama*, *supra*, para. 143.

²²² International Covenant on Civil and Political Rights, Article 13: An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

²²³ Human Rights Committee. General Comment No. 15: The position of aliens under the Covenant. Approved at the twenty-seventh session. 1986. Para. 9.

²²⁴ African Commission on Human and Peoples' Rights, Communication No. 159/96, Ordinary Session No. 22 of 11 November 1997, para. 20.

²²⁵ Cf. International Law Commission. *Expulsion of aliens*. Text and titles of draft articles 1 to 32 provisionally adopted on first reading by the Drafting Committee at the sixty-fourth session. UN Doc. A/CN.4/L.797, 24 May 2012, Articles 19 and 26.

said person may have effective access to justice on equal terms.”²²⁶ Preventing the person subjected to an administrative proceeding that involves a sanction from having legal counsel is severely limiting his or her right to defense, which causes procedural imbalance and leaves the individual unprotected before the exercise of the sanctioning powers.²²⁷ Therefore, in cases where the consequence of the immigration proceeding may be a punitive deprivation of liberty – as the expulsion was in this case – “free legal representation becomes an imperative for the interests of justice.”²²⁸

165. In addition, the Court has held, in relation to access to consular assistance, that in cases of migrants who are faced with a deprivation of liberty proceeding, it should be stressed that:

Aliens detained in a social and juridical milieu different from their own, and often in a language they do not know, experience a condition of particular vulnerability, which the right to information on consular assistance, inserted into the conceptual universe of human rights, seeks to remedy in such a way that the detained alien may enjoy a true opportunity for justice, and the benefit of the due process of law equal to those who do not have those disadvantages, carried out with respect for the dignity of the person.²²⁹

166. Thus, in order to guarantee the right to due process of an alien who has been detained, the Court has indicated that at least three elements of this guarantee must be ensured: (i) the right to be informed of his or her rights under the Vienna Convention, which must be implemented together with the State’s obligations under Article 7(4) of the Convention;²³⁰ (ii) the right to have access to communication with a consular official, and (iii) the right to the assistance itself.²³¹

167. In addition, the Court recalls that the immigration laws in force in the Dominican Republic at the time of the events (*supra* paras. 128 and 129) stipulated that “[n]o alien shall be deported without being informed of the specific charges that underlie their deportation and without having been given a fair opportunity to refute these charges,”²³² and that, when there are “credible reports” that an alien is in the country in violation of the Immigration Act, the Immigration Inspector “shall request [...] an arrest warrant [which] must state the facts and describe the specific reasons why the alien is subject to deportation. If the arrest warrant is issued, the Immigration Inspector shall summon the alien to be heard on the charges stated in the arrest warrant.” Also, “[i]f none of the charges indicated in the warrant is admitted by the alien, evidence shall be sought to substantiate the charges, the alien shall be summoned again and given another opportunity to declare and to introduce evidence opposing the deportation.”²³³ In addition, the Court finds that the instrument that regulated the repatriation procedures for Haitian migrants at the time of the

²²⁶ *Case of Vélez Loor v. Panama, supra*, para. 132. See also, *mutatis mutandi*, *Case of the Yakyé Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, paras. 51 and 63, and *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 184.

²²⁷ *Cf. Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, paras. 61 and 62, and *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 155.

²²⁸ *Cf. Case of Vélez Loor v. Panama, supra*, para. 146.

²²⁹ *Cf. Case of Vélez Loor v. Panama, supra*, para. 152. See also, *The Right to Information on Consular Assistance of the Guarantees of Due Process of Law, supra*, para. 119, and *Juridical Status and Rights of Undocumented Migrants, supra*, para. 121.

²³⁰ *Cf. Vienna Convention on Consular Relations*. Article 36.1.b) UN Doc A/CONF.25/12 of 24 April 1963, in force as of 19 March 1967. This notification must be made before the first statement is made. See also, *The Right to Information on Consular Assistance of the Guarantees of Due Process of Law, supra*, para. 106; *Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 164, and *Case of Vélez Loor v. Panama, supra*, para. 153.

²³¹ *Cf. Case of Vélez Loor, supra*, para. 153.

²³² Immigration Act, Law 95 of April 14, 1939, *supra*, folio 4240

²³³ Migration Regulations No. 279 of May 12, de 1939, *supra*, folio 4340.

events was the 1999 Protocol of Understanding on Repatriation Mechanisms between the Dominican Republic and the Republic of Haiti. According to this document:²³⁴

[...]

d) The Dominican migration authorities recognize the inherent human rights of repatriates [...].

e) The Dominican authorities shall provide each repatriate with a copy of the individual form containing the repatriation order.

f) The Dominican migration authorities undertake to forward previously, within a reasonable time, to the Haitian diplomatic or consular authorities accredited on Dominican territory, the lists of people in the process of being repatriated. Those authorities may exercise their function of consular assistance.

[...]

d) Collective expulsion

168. Article 22(9) of the American Convention establishes that:

"The collective expulsion of aliens is prohibited."

169. The Court has underlined that guaranteeing the content of Article 22 "is an essential condition for the free development of the individual."²³⁵

170. Thus, it is relevant to observe that several international human rights treaties are consistent in prohibiting collective expulsions in similar terms to the American Convention.²³⁶

171. Under the inter-American system for the protection of human rights, the Court considers that the "collective" nature of an expulsion involves a decision that does not make an objective analysis of the individual circumstances of each alien and, consequently, incurs in arbitrariness. Similarly, the European Court of Human Rights has determined that a collective expulsion of an aliens is:²³⁷

Any [decision] of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.

172. In consonance with the foregoing, the sheer number of aliens subject to expulsion decisions is not the essential criterion for characterizing an expulsion as collective.²³⁸

²³⁴ Protocol of Understanding on Repatriation Mechanisms between the Dominican Republic and the Republic of Haiti, signed on December 2, 1999 (file of annexes to the State's final arguments, tome VII, folio 3916).

²³⁵ 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 Velez Restrepo and Family Members v. Colombia, supra*, para. 220.

²³⁶ Cf. Protocol 4 to the European Convention for the Protection of Fundamental Rights and Freedoms, Article 4: "Collective expulsion of aliens is prohibited"; the African Charter on Human and Peoples' Rights, Article 12(5): "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups"; the Arab Charter on Human Rights, Article 26(2): "[...] Collective expulsion is prohibited under all circumstances"; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 22(1): "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually." See also United Nations Human Rights Committee, General Comment No. 15, para. 10: "Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. [...] On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions"; Committee on the Elimination of Racial Discrimination, Concluding observations on the Dominican Republic, UN DOC. CERD/C/DOM/CO/12, 16 May 2008, para. 13: "The Committee is concerned at information received according to which migrants of Haitian origin, whether documented or undocumented, are allegedly detained and subject to collective deportations ("repatriations") to Haiti without any guarantee of due process (arts. 5 (a) and 6)."

²³⁷ ECHR, *Andric v. Sweden* No. 45917/99. First Chamber. Decision of 23 February 1999, para. 1, *Case of Conka v. Belgium*. No. 51564/99. Third Chamber. Judgment of 5 February 2002, para. 59.

²³⁸ Cf. ECHR, *Hirsi Jamaa v. Italy*. No 27765/09. Grand Chamber. Judgment of 23 February 2012, para. 184.

173. Similarly, the United Nations Committee on the Elimination of Racial Discrimination indicated in its General Recommendation No. 30 that the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination must:

Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account.²³⁹

174. In addition, the Office of the United Nations High Commissioner for Human Rights, in its report on the rights of non-citizens, underscored that:

The procedure for the expulsion of a group of non-citizens must afford sufficient guarantees demonstrating that the personal circumstances of each of those non-citizens concerned has been genuinely and *individually* taken into account.²⁴⁰

175. In view of the foregoing, taking into account both the domestic norms in force in Dominican Republic and international law, it appears that a proceeding that may result in expulsion or deportation of an alien, must be individual, so as to evaluate the personal circumstances of each subject and comply with the prohibition of collective expulsions. Furthermore, this proceeding should not discriminate on grounds of nationality, color, race, sex, language, religion, political opinion, social origin or other status,²⁴¹ and must observe the following minimum guarantees with regard to the alien:

- i) To be expressly and formally informed of the charges against him or her and of the reasons for the expulsion or deportation.²⁴² This notification must include information about his or her rights, such as:
 - a. The possibility of stating his or her case and contesting the charges against him or her;²⁴³
 - b. The possibility of requesting and receiving consular assistance,²⁴⁴ legal assistance²⁴⁵ and, if appropriate, translation or interpretation;²⁴⁶
- ii) In case of an unfavorable decision, the alien must be entitled to have his or her case reviewed by the competent authority and appear before this authority for that purpose,²⁴⁷ and

²³⁹ Cf. Committee on the Elimination of Racial Discrimination. General Recommendation No. XXX on Discrimination against Non-citizens, 4 May 2005, para. 26.

²⁴⁰ Office of the United Nations Commissioner for Human Rights. "The Rights of Non-citizens," 2006, p. 218.

²⁴¹ Human Rights Committee. *General Comment No. 15, supra*, paras. 9 and 10; Committee on the Elimination of Racial Discrimination, *General Recommendation No. XXX, supra*, para. 25.

²⁴² Cf. International Law Commission. *Expulsion of aliens, supra*, Article 26.

²⁴³ Cf. Human Rights Committee, *General Comment No. 15, supra*, para. 10; African Commission on Human and Peoples' Rights, Communication No. 159/96, *supra*, para. 20; International Law Commission. *Expulsion of aliens, supra*, Article 26.

²⁴⁴ Cf. Vienna Convention on Consular Relations, Article 36.1.b); *The Right to Consular Assistance in the Framework of the Guarantees of Due Process of Law, supra*, para. 106; International Law Commission. *Expulsion of aliens, supra*, Article 26, and *Case of Vélez Loor v. Panama, supra*, paras. 152, 153 and 158.

²⁴⁵ Cf. *Juridical Status and Rights of Undocumented Migrants, supra*, para. 126, and *Case of Vélez Loor v. Panama, supra*, para. 146.

²⁴⁶ Cf. African Commission on Human and Peoples' Rights, Communication No. 159/96, *supra*; International Law Commission. *Expulsion of aliens, supra*, Article 26.

²⁴⁷ Cf. Human Rights Committee, *General Comment No. 15, supra*, para. 10, and International Law Commission. *Expulsion of aliens, supra*, Article 26.

iii) The eventual expulsion may only take effect following a reasoned decision in keeping with the law that is duly notified.²⁴⁸

e) *Conclusions*

176. From the foregoing, it is evident that the expulsion of the nine Haitian migrants was not in line with international standards on the matter or the procedures established in domestic law. The Haitian migrants were not guaranteed any of the minimum guarantees due to them as aliens. Therefore, the Court finds that the Dominican Republic violated the right to due process and to judicial guarantees established in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel, Rose Marie Dol, Josier Maxime and Sonide Nora.²⁴⁹

177. Furthermore, the Court notes that the requirements established in both Dominican law and the Protocol of Understanding between Haiti and Dominican Republic, as well as in international law, were not respected during the expulsion of the nine Haitian migrants. This action corroborates the conclusion of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert on minority issues concerning the existence of expulsions that are unjustified and violate the rights of Haitian migrants considered illegal by State officials.²⁵⁰

178. Based on the above, the Court concludes that the State treated the migrants as a group, without individualizing them or providing them with differential treatment as human beings and taking into consideration their eventual needs for protection. This represents a collective expulsion in violation of Article 22(9) of the American Convention on Human Rights, in relation to the obligation to respect rights established in Article 1(1) thereof, to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel, Rose Marie Dol, Josier Maxime and Sonide Nora.

VII-3 RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION

179. First, the Court will summarize the arguments of the parties related to the proceedings under the military jurisdiction and the impunity of the facts. Then the Court will proceed to establish general considerations on the rights to judicial guarantees and to judicial protection, and subsequently, it will rule on the alleged violation of these rights owing to the proceedings carried out under the Dominican military justice system.

A. Arguments

180. The Commission indicated that the military jurisdiction does not have competence to investigate the facts of this case because it should be applied "only when juridical rights in the military jurisdiction are threatened relating to the specific functions of the State's defense and security, and never to investigate human rights violations." It also considered that the military court was not impartial or independent in the exercise of its functions owing

²⁴⁸ Cf. Human Rights Committee, *General Comment No. 15, supra*, para. 10, and International Law Commission. *Expulsion of aliens, supra*, Article 26.

²⁴⁹ *Supra* note 92.

²⁵⁰ Joint report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert on minorities. Human Rights Council. UN DOC A/HRC/7/19/Add.5 and A/HRC/7/23/Add.3, 18 March 2008, p. 19 and 20 (file of annexes to the merits report, folios 1494 and 1495).

to various facts, such as: (a) the lack of access and participation of the victims' next of kin and the survivors in the investigation; (b) testimony was only taken from the soldiers involved, the driver of the vehicle, and one of the survivors; (c) the soldiers involved have been released despite having been identified and having admitted that they fired shots on the day of the incident; (d) deficiencies in the protection of the crime scene, in the ballistic tests, and in the autopsies of the corpses; (e) the investigation did not establish whether the use of force respected the principles of legality, need and proportionality, and (f) "the arbitrary and extrajudicial executions, as well as the gunshot injuries of the survivors cannot be considered offenses committed in the line of duty, but rather grave human rights violations and, consequently, the investigation of the facts [...] should have been undertaken in the ordinary jurisdiction." Moreover, Dominican Republic has not provided a satisfactory explanation of the facts, and has not disproved the allegations regarding responsibility based on probative elements" and has therefore violated Articles 8 and 25 in relation to Article 1(1) of the Convention.

181. The representatives indicated that the State had not conducted an exhaustive, serious and impartial investigation into the facts of this case. They added that the military courts lack the necessary independence and impartiality to investigate and prosecute the human rights violations committed by members of the armed forces. In addition, they indicated that the fact that there was no investigation under the ordinary justice system perpetuated a climate of impunity, which violated Article 8 and 25 of the American Convention in relation to Article 1(1) thereof.

182. The State asserted in its final written arguments that it "has fulfilled its obligation to investigate the facts of the case. The investigations [...] were based on criteria of impartiality, objectivity, and the search for the truth. Similarly, both the [...] ordinary justice system and the military justice system heard the case, and both jurisdictions investigated the site, examined the facts, and subsequently issued a decision in each case." The State also argued during the public hearing that, "pursuant to article 8 of the Code of Justice of the Armed Forces, the victims could have received financial compensation [...] from the ordinary jurisdiction."

B. Considerations of the Court

183. The Court has previously determined that there is a general obligation of guarantee arising from Article 1(1) of the American Convention and that it is closely related to the other obligations established in this instrument.²⁵¹ The obligation to investigate the facts that constitute human rights violations is one of the duties arising from the obligation to ensure rights established in the Convention.²⁵²

184. Indeed, this fundamental legal obligation includes "reasonable prevention of human rights violations and a serious investigation, using all available means, of the violations that have been committed within its jurisdiction," so as to be able to identify and punish the perpetrators of the violation and make reparation to the victims.²⁵³

185. These functions must be performed by judges who are independent and impartial when hearing human rights violations. Thus, it must be ensured that the judges "do not

²⁵¹ Cf. *Case of Vargas Areco v. Paraguay. Merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 73, and *Case of Vélez Restrepo and family members v. Colombia*, supra, para. 126.

²⁵² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra, paras. 166 and 176, and *Case of the Barrios Family v. Venezuela*, supra, para. 174.

²⁵³ *Case of Velásquez Rodríguez v. Honduras. Merits*, supra, para. 174, and *Case of Vélez Restrepo and family members v. Colombia*, supra, para. 186.

have a direct interest, a pre-established position or a preference for one or other party, and that they are not involved in the dispute.”²⁵⁴

186. Based on the foregoing considerations, the Court must determine whether, in this case, the State has violated the rights to judicial guarantees and to judicial protection established in Articles 2, 8, and 25 of the Convention, in relation to Article 1(1) of this instrument, taking into account that the investigation of the facts and the final decision to acquit those presumably responsible was carried out exclusively by organs of the military jurisdiction.

1. The military justice system cannot be the competent jurisdiction for human rights matters

187. Under democratic rule of law, military criminal justice must be restrictive and exceptional so that it is only applied to protect special juridical rights of a military nature that have been violated by members of the armed forces in the exercise of their functions.²⁵⁵ In addition, it has been the Court’s consistent case law that the military justice system is not the competent jurisdiction to investigate and, as appropriate, prosecute and punish the authors of human rights violations, but rather the prosecution of those responsible always corresponds to the ordinary justice system.²⁵⁶ This conclusion applies to all human rights violations.

188. This consistent case law of the Court has also indicated that the military jurisdiction does not meet the requirements of independence and impartiality established in the Convention.²⁵⁷ In particular, the Court has noted that when officials of the military criminal jurisdiction responsible for investigating the facts are members of the armed forces on active duty, they are not able to issue an independent and impartial ruling.²⁵⁸

189. Similarly, the Court has established that remedies before the military courts are not effective to decide cases of serious human rights violations, much less to establish the truth, prosecute those responsible, and make reparation to the victims, because those remedies that, for different reasons, result illusory cannot be considered effective, such as when the judicial organ lacks independence and impartiality.

190. In this case, the arbitrary deprivation of life, the extrajudicial executions, and the injuries to the Haitian survivors perpetrated by military personnel are acts that, under no circumstances, bear any relationship to the military mission or discipline. On the contrary, such acts affected rights protected by domestic criminal law and the American Convention, such as life and personal integrity (*supra* paras. 97 and 98). It is evident that such conducts are clearly contrary to the obligations to respect and protect human rights and, therefore, are excluded from the competence of the military jurisdiction.

²⁵⁴ Cf. *Case of Palamara Iribarne v. Chile*, *supra*, para. 146, and *Case of Usón Ramírez v. Venezuela*, *supra*, para. 117.

²⁵⁵ Cf. *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68. Para. 117, and *Case of Vélez Restrepo and family members v. Colombia*, *supra*, para. 240.

²⁵⁶ Cf. *Case of La Cantuta v. Peru*, *supra*, para. 142, and *Case of Vélez Restrepo and family members v. Colombia*, *supra*, para. 240.

²⁵⁷ Cf. *Case of Castillo Petruzzi et al. v. Peru*, *supra*, para. 132, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 198.

²⁵⁸ Cf. *Case of Durand and Ugarte v. Peru. Merits*, *supra*, para. 125.

191. As in previous cases,²⁵⁹ the Court has considered that, given the conclusion that the military justice system is not competent, it is not necessary to rule on other arguments regarding the independence or impartiality of the military jurisdiction or the possible violation of other parameters of the rights to judicial guarantees and to judicial protection. Nevertheless, the Court considers it necessary to point out some of the irregularities in the proceeding that led to impunity in the case.

192. Thus, the Court observes, *inter alia*, that: (a) the investigation was carried out by military officials and judges, (*supra* paras. 56 to 62); (b) there is no record of any ballistics report; (c) the presumed victims were not allowed to take part in the proceedings; (d) in the investigation, the State did not individualize the injured persons, so that these facts remained unpunished (*supra* para. 58); (e) the evidence before the Court does not show that the arrest warrant against the indicted soldiers was executed (*supra* para. 58), and (f) the investigation did not establish whether the use of force respected the principles of legality, necessity and proportionality.

193. In addition, with regard to the judicial decisions adopted, the Court notes that the judgment of the Joint Court Martial Appeals Court that acquitted the three soldiers who had been convicted in first instance, merely ordered the “acquittal” of the accused based on articles 321 and 327 of the Dominican Criminal Code. In this regard, the Court observes that article 321 refers to the grounds for excusing the crime of murder, if it has been preceded by “provocation, or serious threats or violence” (*supra* para. 62). In this case, it has been established that the victims never offered any resistance or posed any danger to the soldiers, a fact confirmed by the soldiers themselves during interrogations conducted in the investigation of the event (*supra* para. 83). Moreover, the Court underscores that article 327 referred to by the Joint Court Martial Appeals Court in its judgment had been annulled by Law No. 24-97 of January 28, 1997 (*supra* para. 62).

194. In addition, the Court found it proved that the First Instance Court of the Montecristi Judicial District rejected the request made by the next of kin of the deceased of September 30, 2002, that an investigation be opened in the ordinary jurisdiction (*supra* paras. 63 and 64). In addition, the decision of the Supreme Court of Justice of January 3, 2005, rejected the appeal for the appointment of an ordinary judge disregarding the provisions of the Convention that restrict the military jurisdiction. Based on the foregoing, the Court finds that both judicial decisions obstructed the participation of the next of kin of the deceased in their capacity as victims.

195. Furthermore, the Court recalls that the principle of “*res judicata*” signifies the final nature of a judgment only when this is reached respecting due process in accordance with this Court’s case law on the matter.²⁶⁰ Specifically regarding the concept of *res judicata*, the Court has indicated that the *ne bis in idem* principle is not applicable when the proceeding that culminates in the dismissal of the case, or the acquittal of the person responsible for a human rights violation, and absolves the accused of criminal responsibility, is not conducted independently and impartially in accordance with due procedural guarantees, or when there is no real intention of bringing those responsible to justice.²⁶¹

196. The Court also considers that “apparent” *res judicata* occurs when the factual analysis reveals that judicial investigation, the proceeding and the judicial decisions were not

²⁵⁹ Cf. *Case of Usón Ramírez v. Venezuela*, *supra*, para. 124, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 201.

²⁶⁰ Cf. *Case of Carpio Nicolle et al. v. Chile*, *supra*, paras. 131 and 132; *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 154, and *Case of the La Rochela Massacre v. Colombia*, *supra*, para. 197.

²⁶¹ Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 154.

truly intended to elucidate the facts, but rather to obtain an acquittal of the accused, and that the judicial officials lacked the requisite independence and impartiality.²⁶²

197. In this case, the application of inadmissible grounds in the decision of the Court Martial Appeals Court (*supra* para. 193) resulted in the removal of the alleged perpetrators from the hand of justice and left the facts of the case in impunity. In addition, the intervention of the military jurisdiction in the investigation of the facts contravened the parameters of exceptionality and restriction that characterize it and signified the application of a personal jurisdiction that functioned without taking into account the nature of the acts involved. Both circumstances violated the demands of justice and the rights of the victims, from which the Court concludes that the decision of the Court Martial Appeals Court cannot be considered a legal obstacle to the institution of criminal proceedings, or a final judgment.²⁶³

198. This conclusion is valid in this case even though the event was at the investigation stage by the Joint Military Investigation Board. As the above criteria reveal, the incompatibility of the American Convention with the intervention of the military jurisdiction in this type of case does not refer only to the prosecution by a court, but essentially to the investigation itself, because it constitutes the initiation and the necessary presumption for the subsequent intervention of an incompetent court. Based on the foregoing, the Court concludes that the State violated the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the deceased (*infra* Annex A).

2. Impunity of the offenders and access to justice

199. The Court has indicated that Article 8 of the Convention reveals that the victims of human rights violations or their next of kin must be given ample possibility to be heard and to act in the respective proceedings, both to seek clarification of the facts and the punishment of those responsible, and to obtain due reparation.²⁶⁴ Thus, the Court has indicated that, in a case of extrajudicial execution, the rights impaired correspond to the deceased victim's next of kin, who are the interested party in the search to obtain justice and those to whom the State must provide effective remedies to guarantee them access to justice, the investigation and, where appropriate, the eventual punishment of those responsible, and full reparation for the consequences of the violations.²⁶⁵

200. Also, the Court has repeatedly stated that:

[...] When the military courts hear acts that constitute human rights violations against civilians, they exercise jurisdiction not only with regard to the defendant, who must necessarily be an active member of the armed forces, but also with regard to the civil victim, who has the right to participate in the criminal proceeding not only for the effects of the corresponding reparation of the harm but also to exercise his rights to the truth and to justice [...]. Thus, the victims of human rights violations and their next of kin have the right to have the said violations heard and resolved by a competent court, in accordance with the due process of law and access to justice. The importance of the passive subject transcends the military sphere, since juridical rights inherent in the ordinary jurisdiction are involved.²⁶⁶

²⁶² *Case of Carpio Nicolle et al. v. Chile, supra*, para. 131, and *Case of Almonacid Arellano et al. v. Chile, supra*, para. 154.

²⁶³ *Cf. Case of Almonacid Arellano et al.*, para. 154.

²⁶⁴ *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 227, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 207.

²⁶⁵ *Cf. Case of Durand and Ugarte v. Peru. Merits, supra*, para. 130, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 200.

²⁶⁶ *Cf. Case of Radilla Pacheco v. Mexico, supra*, para. 275, and *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 197.

201. From the evidence in the case file, the Court notes that the laws in force at the time of the events and their application by domestic courts did not exclude the facts of the case from the military jurisdiction (*infra* para. 209). Moreover, both the First Instance Court of the Montecristi Judicial District and the Supreme Court of Justice rejected two appeals filed by the next of kin of the deceased victims for the case to be investigated and tried by the ordinary jurisdiction (*supra* paras. 63 and 64). Similarly, the Court emphasizes that the military criminal proceeding did not permit the participation of the victims' next of kin, since article 8 of Law No. 3483 stipulated that "no person may become a civil party before the military courts."²⁶⁷ In addition, the Court notes that the injuries suffered by the Haitian survivors were not investigated or prosecuted by the State (*supra* para. 98) and that, more than 12 years after the events occurred, no one has been convicted and the facts remain in total impunity. All the above deprived the next of kin of the deceased victims and the injured survivors from access to justice and violated the right 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) of this instrument to their detriment (*infra* Annex A).

VIII-4 OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS

202. The Court will now examine the arguments concerning the obligation to adopt domestic legal provisions and the legislative reforms implemented in Dominican Republic in order to determine whether, in this case, there was a violation of this State obligation.

A. Arguments

203. The Commission observed that the norm that established the competence of the military jurisdiction to hear the case was broad and allowed for the inclusion of any action carried out by a soldier in the course of duty, because it did not establish "clearly and without ambiguity which crimes were considered to fall within the military function, establishing the direct and close relationship with that function or with the impairment of rights inherent to the military sphere." It also indicated that no other norm described or explained the issue more clearly, so that the State violated Article 2 in relation to Articles 8 and 25 of the Convention.

204. The representatives agreed with the Commission regarding the ambiguity of Dominican law, which did not specify the offenses that were considered to fall within the military sphere, and argued that, owing to the mere existence of the laws that prevailed at the time in Dominican Republic, which permitted the prosecution of human rights violations by the military system of justice, the State had violated "Articles 8, 25 of the Convention, in relation to Articles 1(1) and 2 thereof." In addition, the representatives alleged the violation of the same articles of the Convention because the State had not eliminated the norms that violated the Convention and had failed to carry out an opportune 'control of conformity with the Convention' of the relevant Dominican legislation.

205. The State indicated in its final oral and written arguments that, following the facts of this case, changes had been made in the domestic legislation, such as the adoption of Law No. 76-02, on July 2, 2002, that established the Code of Criminal Procedure. This law amended "article 3 of special Law No. 3483 of February 13, 1953," which had served as the legal support to prosecute members of the patrol involved in the events before the military jurisdiction. According to the State, the new law establishes the sole and exclusive jurisdiction of the military criminal courts to hear offenses of a purely military disciplinary

²⁶⁷ Law No. 3483, de 1953, *supra*, folio 4056).

nature, so that conduct defined as criminal offenses committed by soldiers will be heard by the ordinary jurisdiction.

206. In addition, the State indicated that, in conformity with the mandate of Article 2 of the Convention, in January 2010, the text of the Dominican Constitution had been amended, and its article 254 now establishes that the military jurisdiction may only hear cases related to military offenses established in the laws on the matter, and that the armed forces will have a military disciplinary regimen applicable to those offenses that do not constitute offenses against the military criminal regime.”

B. Considerations of the Court

207. The Court reiterates that Article 2 (Domestic Legal Effects) of the American Convention establishes the general obligation of the State Parties to adapt their domestic law to the provisions of the Convention to guarantee the rights recognized therein. The Court has established that this obligation entails the adoption of two types of measures. On the one hand, the elimination of norms and practices of any nature that result in the violation of the guarantees established in the Convention and, on the other, the enactment of laws and the implementation of practices leading to the effective observance of the said guarantees.²⁶⁸

208. Regarding the obligation to adopt legislative or other measures to guarantee the full exercise and enjoyment of the human rights established in the Convention, the Court has established that it is not enough that domestic law determine the proceedings and competences of the military courts; but that, over and above this provision, the laws must define clearly who are soldiers, what are the criminal offenses that pertain to the military jurisdiction, determine the illegality of the unlawful conduct by describing the harm or jeopardy to military rights seriously affected, and must justify the exercise of military punitive power, and specify the corresponding sanction.”²⁶⁹

209. First, the Court observes that the intervention of the military jurisdiction was based on article 3 of Law No. 3483 of 1953, that established the Code of Justice of the Armed Forces, and which established the following:

Article 3

The military courts are competent to try special offenses of a military order established in the second volume of this Code, except as indicated herein.

Offenses of all kinds committed by soldiers or persons attached to the armed forces in military barracks, camps or any other military or naval facility or establishment or on board ships or aircraft of the State shall be tried by the military jurisdiction.

Offenses committed by soldiers in the exercise of their functions, wherever they are committed, are also subject to the military jurisdiction. [...]

All other crimes, offenses or misdemeanors committed by soldiers or persons attached to the armed forces will be tried by ordinary courts, in accordance with the provisions of the Code of Criminal Procedure, the Criminal Code, and the ordinary criminal laws.

210. In this regard, the Court observes that the provision of the said article 3 of the Code of Justice of the Armed Forces (*supra* para. 57), in force in 2000, functioned as a rule and not as an exception, a characteristic that is essential for the military jurisdiction in order to be in keeping with the standards established by this Court.²⁷⁰ In its report of July 23, 2000,

²⁶⁸ Cf. *Case of Castillo Petruzzi et al. v. Peru*, *supra*, para. 207, and *Case of Fornerón and daughter v. Argentina*, *supra*, para. 131.

²⁶⁹ *Case of Palamara Iribarne v. Chile*, *supra*, para. 127, and *Case of Usón Ramírez v. Venezuela*, *supra*, para. 110.

²⁷⁰ Cf. *Case of Durand and Ugarte v. Peru. Merits*, *supra*, para. 117, and *Case of Cabrera García and Montiel v. Mexico*, *supra*, para. 206

on the truck accident, the Joint Investigation Board justified the competence of the military jurisdiction based on the said article 3. This report was subsequently forwarded by the Secretary of the Armed Forces to the prosecutor of the Court Martial of First Instance and served as the basis for the court order to open proceedings before the Court Martial of First Instance (*supra* para. 59).

211. Subsequently, in 2005, the Supreme Court of Dominican Republic confirmed the competence of the military jurisdiction, using articles 28 of Law No. 834 of July 15, 1978,²⁷¹ and 382 of the 1884 Code of Criminal Procedure, as justification.²⁷² In other words, the Supreme Court did not analyze the said norms and article 3 of Law No. 3483 in light of the American Convention and the Court's case law starting with the *case of Durand and Ugarte*,²⁷³ regarding the lack of competence of the military criminal jurisdiction to try human rights violations and the restrictive and exceptional scope that it must have in the States that still retain this jurisdiction. Furthermore, it is important to underscore that this Court had already established that, owing to the legal right violated, the military jurisdiction is not the competent jurisdiction to investigate and, if appropriate, prosecute and punish the perpetrators of human rights violations and that, in the military jurisdiction, only active members of the armed forces can be judged for committing crimes or offenses that, owing to their nature, affect legal rights of the armed forces.²⁷⁴ Based on the foregoing, the Court concludes that both the actions of the military officials during the investigation and the prosecution of the case in the military jurisdiction, and those of the ordinary domestic courts, represented a clear failure to comply with the obligation contained in Article 2 of the American Convention, in relation to Articles 8 and 25 of this instrument.

1. Legislative reform

212. The State has informed this Court about changes made in the constitutional and legislative norms between 2002 and 2012.

213. At the legislative level, the 2002 Code of Criminal Procedure stipulates:²⁷⁵

Article 57. The criminal jurisdiction shall have universal and exclusive competence to hear and rule on all punishable acts and omissions established in the Criminal Code and in the special criminal legislation, and for the execution of its judgments and decisions, pursuant to this code. The procedural norms established in this code apply to the investigation, hearing and deciding of any punishable act, regardless of its nature or that of the accused, including members of the Armed Forces and the National Police, even when the offenses attributed to them have been committed in the exercise of their functions and without prejudice to the strictly disciplinary powers of the institutions to which they belong. [...]

²⁷¹ Law No. 834 of July 15, 1978: Art. 28: If a litigation is pending before two jurisdiction of the same level that are equally competent to hear it, the second jurisdiction empowered must relinquish competence in favor of the other one if one of the parties requests this. If now, it may do so *ex officio*.

²⁷² Code of Criminal Procedure, 1884: Art. 382: "In criminal or correctional matters, the Supreme Court of Justice may appoint judges, and in simple police matters, the first instance courts may do so, provide that the investigating judges and the correctional and criminal courts, as well as the police courts, which do not depend on each other, are informed of the same crime or related crimes or of the same contravention.

²⁷³ Cf. *Case of Durand and Ugarte v. Peru. Merits, supra*, paras. 116, 117, 125 and 126, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 240.

²⁷⁴ Cf. *Case of Castillo Petruzzi et al. v. Peru, supra*, para. 128, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 240.

²⁷⁵ Dominican Code of Criminal Procedure, Law No. 76/02, of July 19, 2002 (file of annexes to the State's final written arguments, tome VII, folio 3753). The Court also notes that the Code of Criminal Procedure only entered into force 24 months after its publication; in other words, on July 19, 2004, and only for cases that were initiated as of that date. See art. 499. Final Provisions. (i) Entry into force. This Code shall enter into force 24 months after its publication and shall apply to cases initiated after the expiry of this time frame.

214. The said norm of the new Code of Criminal Procedure was complemented by the adoption of Law No. 278/2004 of August 23, 2004, on "The implementation of the criminal procedure established by Law No. 76-02."²⁷⁶ Article 15 of this law stipulates that:

Article 15. Annulments. The following legal provisions with all their amendments and supplementary provisions are annulled:
[...]

13. All the procedural norms relating to the criminal prosecution of the members of the National Police and/or Armed Forces contained in the Code of Police Justice included in Law No. 285 of June 29, 1966, and in the Code of Justice of the Armed Forces, included in Law No. 3483 of February 13, 1953, and their respective amendments, as well as any other law establishing norms in this regard. All the above without prejudice to the disciplinary powers conferred on the internal bodies of the said institutions.

All legal provisions and all norms of criminal procedure established in special laws that are contrary to this law, are annulled and abrogated.

215. Similarly, article 254 of the 2012 Constitution stipulates that "[t]he military jurisdiction only has competence to try the military offenses established in the relevant laws. The Armed Forces shall have a military disciplinary regime for those offenses that do not constitute violations of the military criminal regime."²⁷⁷ In addition, the Armed Forces Military Disciplinary Regulations, adopted by Decree No. 2/08, stipulate the following:

Article 52. The acts committed by members of the Armed Forces that constitute crimes and offenses shall fall within the sphere of ordinary criminal or military law and, therefore, shall be heard and punished by the competent bodies, in accordance with the laws and provisions in force.

2. Conclusions

216. The Court recalls that Article 2 of the Convention establishes the general obligation of every State Party to adapt its domestic law to the provisions of the Convention in order to guarantee the rights recognized therein, which means that measures of domestic law must be effective (the *effet utile* principle).²⁷⁸ Therefore, the Court reiterates that, at the time of the facts, the State was in non-compliance with the obligation contained in Article 2 of the American Convention, in relation to Articles 8 and 25 of this instrument.

217. However, the changes to the law in the Dominican Republic between 2002 and 2010 established the competence of the ordinary jurisdiction to try offenses committed by military personnel and also established the exceptional nature of the military jurisdiction, exclusively for disciplinary offenses and offenses that are strictly related to the armed forces. Consequently, the Court concludes that, with the current Dominican legislation, the State has remedied its obligation to adopt domestic legal provisions established in Article 2 of the American Convention.

VII-5 OBLIGATION TO RESPECT AND GUARANTEE RIGHTS WITHOUT DISCRIMINATION

²⁷⁶ Law No. 278/04 on the implementation of the criminal procedure established by Law No. 76-02 of August 23, 2004. Available at http://www.suprema.gov.do/consultas/leyes/detalle_leyes.aspx?ID=420 (last consulted on October 20, 2012).

²⁷⁷ Constitution of the Dominican Republic. Published in Gaceta Oficial No. 10561 of January 26, 2010 (file of attachments to the representatives' final written arguments, folio 4212).

²⁷⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 68 and 69, and *Case of Fornerón and daughter v. Argentina, supra*, para. 130.

218. The Court will now set out the arguments regarding equality before the law and non-discrimination, as well as with regard to the supposed violation of juridical personality, to determine whether Articles 1(1), 3, and 24 of the American Convention have been violated in this case.

A. Arguments

219. The Commission argued that, when the events took place, there was a context of racism, discrimination and "anti-Haitian practices" in Dominican Republic. The Commission considered that "the excessive use of force by State agents that resulted in the extrajudicial executions and the injuries of the Haitian victims, the complete impunity in which the facts remain, and the expulsion from the country of the victims without providing access to judicial guarantees and judicial protection are inherently contrary to Articles 24 and 1(1) of the American Convention." The Commission argued that the State had violated the personal integrity of the survivors owing to the failure to return the remains of the deceased to their next of kin, which caused them additional suffering and anguish. Moreover, this right was violated by the fear felt by the survivors as a result of the pursuit and gunfire and having been obliged to carry the bodies of the dead and seriously wounded and, also, because they were detained by State agents without knowing their fate, taken to two detention centers without being informed of their rights, threatened with forced labor, and not provided with judicial guarantees.

220. The representatives endorsed the Commission's arguments that what took place occurred in a generalized context of structural discrimination engrained in the Dominican Republic, since the massacre was the result of a climate of racism towards the Haitian immigrants tolerated by the State.

221. They added that, in general, the victims were subjected to acts of violence and marginalization by State agents at different moments: (i) during the pursuit and extrajudicial executions by the soldiers; (ii) during the procedure of deporting the survivors, the expulsion was carried out summarily and in group, without offering the survivors the opportunity to present arguments in their favor, so that there was no individualization since they were Haitian nationals; (iii) in the treatment of the deceased victims, because their bodies were buried in a mass grave, with the exception of the Dominican national, whose body was returned to his next of kin according to the representatives; they therefore concluded that the "only evident reason for the conduct of the Dominican authorities was discrimination and xenophobia to the detriment of the Haitians," because the soldiers based their actions on the "color of the black skin" to conclude that they were "illegal immigrants," as emphasized in numerous documents provided by the State itself; (iv) the Supreme Court rejected the request to transfer jurisdiction from the military to the ordinary jurisdiction to try those responsible, when there is evidence that, in at least one similar case, a Dominican victim obtained a decision from the Supreme Court to forward his case from the military to the civil courts,²⁷⁹ and (v) in the investigation and even the acquittal of those who were responsible.

222. Based on the same reasoning, the representatives argued the violation of the right to juridical personality, recognized in Article 3 of the American Convention, because "undoubtedly, the Dominican State has absolutely failed to recognize their possibility of being entitled to fundamental rights and duties." The representatives concluded that all these circumstances took place "without any formality. They had no name, or even a number. For the Dominican authorities these victims should not have existed."

²⁷⁹ Judgment of the Supreme Court of Justice No. 4, issued on December 26, 2001 (Case of Tyson-Morenito) is the precedent to the act of transferring a case from the military to the civil courts (merits file, folio 988, and file of annexes to the pleadings and motions brief, tome V, folios 2784 to 2788).

223. During the hearing, the State declared that, according to the facts of the case, the case file does not reveal that the Haitian victims were subjected to discriminatory treatment. It indicated that there is no structural or institutionalized context of discrimination based on race or origin against Haitians or their descendants. It also asserted that there was never any intention of causing bodily harm to the persons in the truck during the pursuit. In general, the undocumented Haitians were never subjected to discriminatory, racist or any other type of treatment intended to harass them owing to their migratory status. It declared that 90% of Haitian nationals who live in Dominican Republic do so illegally and yet the Dominican State “has been reaching out a friendly hand to the Haitian nationals from a financial point of view, as well as from an employment and social perspective.”

B. Considerations of the Court

224. The Court has established that Article 1(1) of the Convention is a general norm the content of which extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein “without any discrimination.” In other words, whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it.²⁸⁰ Non-compliance by the State, owing to any discriminatory practice, with the general obligation to respect and ensure human rights results in its international responsibility.²⁸¹ Thus, there is an indissoluble connection between the obligation to respect and ensure human rights and the principle of equality and non-discrimination.²⁸²

225. The principle of the equal and effective protection of the law and of non-discrimination constitutes a noteworthy element of the system for the protection of human rights embodied in numerous international instruments²⁸³ and developed by legal doctrine

²⁸⁰ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of Atala Riffo and daughters v. Chile*. Merits, reparations and costs. Judgment of February 24, 2012. Series C No. 239, para. 78.

²⁸¹ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 85..

²⁸² Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 53, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, reparations and costs. Judgment of August 24, 2010. Series C No. 214, para. 268.

²⁸³ Cf. *Case of Xákmok Kásek v. Paraguay*, *supra*, para. 269. The following are some of these international instruments:

- Charter of the OAS (Article 3.I);
- American Declaration on the Rights and Duties of Man (Article II);
- American Convention on Human Rights (Articles 1 and 24);
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador” (Article 3);
- Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Articles 4.f, 6 and 8.b);
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (Articles I.2.a, II, III, IV and V);
- Charter of the United Nations (Article 1.3);
- Universal Declaration on Human Rights (Articles 2 and 7);
- International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3);
- International Covenant on Civil and Political Rights (Articles 2.1 and 26);
- International Convention on the Elimination of All Forms of Racial Discrimination (Article 2);
- Convention on the Rights of the Child (Article 2);
- Declaration on the Rights of the Child (Principle 1);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Articles 1.1, 7, 18.1, 25, 27, 28, 43.1, 43.2, 45.1, 48, 55 and 70);

and case law. At the current stage of the evolution of international law, the basic principle of equality and non-discrimination has entered the domain of *jus cogens*. The juridical structure of national and international public order is based on this principle, and it permeates the whole legal system.²⁸⁴

226. Nevertheless, referring to Articles 1(1) and 24 of the Convention, the Court has indicated that “the difference between the two articles is that the general obligation contained in Article 1(1) refers to the State’s obligation to respect and ensure ‘without discrimination’ the rights contained in the American Convention. [I]n other words, if a State discriminates in the respect or guarantee of a treaty-based right, it would violate Article 1(1) and the substantial right in question. If, on the contrary, the discrimination refers to unequal protection by domestic law, it would violate Article 24.”²⁸⁵

227. In this case, since the parties did not demonstrate unequal protection of domestic law, the Court will not rule on Article 24 of the Convention. Similarly, the Court observes that the arguments relating to Article 3 of the Convention do not strictly correspond to the Court’s case law in relation to the right to juridical personality,²⁸⁶ but rather to the analysis

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- Convention on the Elimination of All Forms of Discrimination against Women (Articles 2, 3, 5, 7 to 16);
 - Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (Articles 2 and 4);
 - Declaration of the International Labour Organization (ILO) on Fundamental Principles and Rights at Work and its Follow-up (2.d);
 - Convention No. 97 of the International Labour Organization (ILO) concerning Migrant Workers (revised) (Article 6);
 - Convention No. 111 of the International Labour Organization (ILO) concerning Discrimination in respect of Employment and Occupation (Articles 1 to 3);
 - Convention No. 143 of the International Labour Organization (ILO) concerning Migrant Workers (supplementary provisions) (Articles 8 and 10);
 - Convention No. 168 of the International Labour Organization (ILO) concerning Employment Promotion and Protection (Article 6);
 - Proclamation of Teheran. International Conference on Human Rights, Teheran, 13 May 1968 (paras. 1, 2, 5, 8 and 11);
 - Vienna Declaration and Programme of Action, World Conference on Human Rights, 14 to 25 June 1993 (I.15; I.19; I.27; I.30; II.B.1, Articles 19 to 24; II.B.2, Articles 25 to 27);
 - Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (Articles 2, 3, 4.1 and 5);
 - World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration and Programme of Action (Declaration: paragraphs 1, 2, 7, 9, 10, 16, 25, 38, 47, 48, 51, 66 and 104);
 - Convention against Discrimination in Education (Articles 1, 3 and 4);
 - Declaration on Race and Racial Prejudice (Articles 1, 2, 3, 4, 5, 6, 7, 8 and 9);
 - Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live (Article 5.1.b and 5.1.c);
 - Charter of Fundamental Rights of the European Union (Articles 20 and 21);
 - European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14);
 - European Social Charter (Article 19.4, 19.5 and 19.7);
 - Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1);
 - African Charter on Human and Peoples’ Rights (“Charter of Banjul”) (Articles 2 and 3);
 - Arab Charter on Human Rights (Article 2), and
 - Cairo Declaration on Human Rights in Islam (Article 1).

²⁸⁴ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 101, and *Case of Atala Riffo and daughters v. Chile*, *supra*, para. 79.

²⁸⁵ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, *supra*, paras. 53 and 54, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, *supra*, para. 272.

²⁸⁶ Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, reparations and costs. Judgment of March 29, 2006. Series C No. 146, para. 188; *Case of Bámaca Velásquez v. Guatemala*. Merits.

of Article 1(1) of this instrument. Therefore, this Court will analyze the different facts alleged in light of Article 1(1) of the Convention.

1. Discrimination in this case

228. The Court reiterates that, regarding the argument of the Commission and the representatives concerning a context of structural discrimination in Dominican Republic against Haitians or those of Haitian origin, it is not incumbent on it to rule on this in this case (*supra* para. 40). Nevertheless, the Court will analyze whether, in this matter, discriminatory measures were taken against the victims in the case owing to their condition as migrants, under Article 1(1) of the Convention.

229. In this regard, this Court acknowledges the difficulty for those who are the object of discrimination to prove racial prejudice, so that it agrees with the European Court that, in certain cases of human rights violations motivated by discrimination, the burden of proof falls on the State, which controls the means to clarify incidents that took place on its territory.²⁸⁷

230. Taking into account the context of the case, the arguments of the parties, and the preceding chapters, an analysis has been made of various situations of vulnerability of the Haitian victims, owing to their condition as irregular migrants (*supra* Chapters VII-1 and 2), derived specifically from the violence used and the treatment of the survivors and the deceased.

231. In this regard, Article 1(1) of the American Convention establishes respect for and guarantee of the rights recognized therein, "without any discrimination for reasons of race, color, [...] national or social origin, economic status, [...] or any other social condition." In addition, the International Convention on the Elimination of All Forms of Racial Discrimination defines such discrimination as:

[...] any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²⁸⁸

232. Thus, the United Nations Special Rapporteur on discrimination and its Independent Expert on minorities, as well as various international organizations, have referred to historical practices of discrimination in the Dominican Republic, which are demonstrated by the treatment of Haitian migrants and in the exercise their rights.²⁸⁹

Judgment of November 25, 2000, Series C No. 70, para. 179; *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, para. 179; *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 69, and *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 87.

²⁸⁷ In this regard, see *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 132, and ECHR. *D.H. et al. v. Czech Republic*. No. 5735/00. Grand Chamber. Judgment of 13 November 2007, para. 179. See also: Directive 91/80/CE of the Council of the European Union of 15 December, 1997, on the burden of proof in cases of discrimination based on sex, article 4, and Directive 2000/43/CE of the Council of the European Union of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, para. 21.

²⁸⁸ The International Convention on the Elimination of All Forms of Racial Discrimination of 4 January 1969, Article 1.

²⁸⁹ Among others, Cf. *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, paras. 109.1 to 109.3; Joint report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert on minorities. Human Rights Council. UN DOC A/HRC/7/19/Add.5 and A/HRC/7/23/Add.3 (hereinafter: "Joint report"), 18 March 2008, p. 8, 19, 20, 24, 26, 30, 32, 33, 44 (file of annexes to the merits report, folio 1483); *Unwelcome Guests: A Study of expulsions of Haitians and Dominicans of Haitian Descent from the Dominican Republic to Haiti*. International Human Rights Law Clinic, Boalt Hall School of

233. Regarding the rights of migrants, the Court recalls that it is permissible for a State to grant different treatment to documented migrants in relation to undocumented migrants, or between migrants and nationals, provided that this treatment is reasonable, objective and proportionate and does not harm human rights.²⁹⁰ An example of this could be to establish control mechanisms for the entry and exit of migrants, but always ensuring due process and human dignity, irrespective of their migratory condition.²⁹¹

234. Thus, the Court recalls that international human rights law not only prohibits policies and practices that are deliberately discriminatory, but also those whose impact could be discriminatory with regard to certain categories of individuals, even when it is not possible to prove a discriminatory intention.²⁹²

235. The Court considers that a violation of the right to equality and non-discrimination also occurs in situations and cases of indirect discrimination reflected in the disproportionate impact of norms, actions, policies or other measures that, even when their formulation is or appears to be neutral, or their scope is general and undifferentiated, have negative effects on certain vulnerable groups.²⁹³ This concept of indirect discrimination has also been recognized, among other bodies, by the European Court of Human Rights, which has established that, when a general policy or measure has a disproportionately prejudicial effect on a particular group it may be considered discriminatory even if it was not specifically directed at this group.²⁹⁴

Law, University of California at Berkeley, 2002 (file of annexes to the pleadings and motions brief, tome VI, folios 3487, 3498, 3499, 3500, 3513, 3514, 3520 to 3524, 3526, 3542); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai. United Nations Human Rights Council. UN Doc. A/HCR/14/43/Add.1., 21 May 2010, para. 57 (file of annexes to the pleadings and motions brief, tome IV, folio 3371); United Nations Human Rights Committee. Consideration of reports submitted by States parties under article 40 of the Covenant. CCPR/CI79/Add.18., 5 May 1993, para. 5 (file of annexes to the merits report, tome I, folio 1436); United Nations Human Rights Committee. Consideration of reports submitted by States parties under article 40 of the Covenant. CCPR/COI71/DOM. 26 April 2001, para. 16 (file of annexes to the merits report, tome I, folio 1442); Inter-American Commission on Human Rights. Report on the situation of human rights in the Dominican Republic, OEA/Ser.LN/II.104, Doc. 49 rev. 1, October 7, 1999, para. 328 (file of annexes to the merits report, tome I, folios 1347 and 1348); Inter-American Commission on Human Rights. Report on the follow-up to the IACHR recommendations on the situation of human rights in the Dominican Republic, 2001, para. 88, 89 and 130 (file of annexes to the merits report, tome I, folio 1421, 1423 and 1432), and Human Rights Watch, "Illegal People: Haitians and Dominico-Haitians in the Dominican Republic," vol. 14, no 1(B), April 2002 (file of annexes to the merits report, tome I, folio 1524 a 1530). See also article published on January 27, 2001, in the online newspaper *Info Haïti*, entitled "*Polémique entre la hiérarchie militaire et le chancelier dominicain sur la question des illégaux haïtiens*" (file of annexes to the pleadings and motions brief, tome V, folio 3139); article published on January 21, 2001, in the online newspaper *Info Haïti*, entitled "*Le chancelier dominicain promet des sanctions sévères contre ceux qui commettent des excès contre les illégaux haïtiens*" (file of annexes to the pleadings and motions brief, tome V, folio 3145), and article published on January 19, 2001, in the online newspaper *Info Haïti*, entitled "*Une patrouille de l'armée dominicaine a mitraillé un nouveau camion transportant des sans papiers haïtiens*" (file of annexes to the pleadings and motions brief, tome V, folio 3147).

²⁹⁰ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 119 and *Case of Vélez Loor v. Panama*, *supra*, para. 248.

²⁹¹ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 119.

²⁹² Cf. ECHR. *D.H. and Others v. Czech Republic*, *supra*, paras. 179, 184 and 194.; ECHR. *Hugh Jordan v. United Kingdom*, application No. 24746/94, 4 May 2011, para. 154, and ECHR. *Hoogendijk v. The Netherlands*, application No. 58641/00, 6 January, 2005 (First Section). See also: Council of Europe Directive 2008/0140 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. Brussels, 2 July 2008, pp. 7 and 8, and Directive 2000/43/CE on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Brussels, 29 June 2000, para. 13.

²⁹³ Cf. Committee on Economic, Social and Cultural Rights, *General Comment No. 20*, Non-discrimination in economic, social and cultural rights, para 10(b).

²⁹⁴ Cf. ECHR. *Hoogendijk v. The Netherlands* No. 58641/00. First Section. Judgment of 6 January 2005, p. 18.

236. In addition, the Court has indicated that "States must abstain from taking any action that is directly or indirectly addressed, in any way, at creating situations of discrimination *de jure* or *de facto*."²⁹⁵ States are obliged to "take positive steps to reverse or to change discriminatory situations that exist in their societies to the detriment of a specific group of people. This entails the special obligation of protection that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations."²⁹⁶ The State's non-compliance, by any discriminatory practice, with the general obligation to respect and ensure human rights results in its international responsibility.²⁹⁷

2. Conclusions

237. Therefore, the Court observes that, in this case, the situation of special vulnerability of the Haitian migrants was due, *inter alia*, to: (i) the absence of preventive measures to adequately address situations relating to migratory control on the land border with Haiti and based on their situation of vulnerability; (ii) the violence deployed by the illegal and disproportionate use of force against unarmed migrants; (iii) the failure to investigate the said violence, the absence of testimony by and the participation of the victims in the criminal proceedings, and the impunity of the events; (iv) the detentions and collective expulsion without the due guarantees; (v) the lack of adequate medical attention and treatment to the injured victims, and (vi) the demeaning treatment of the corpses and the failure to return them to the next of kin.

238. All of the foregoing demonstrates that, in the instant case, there was *de facto* discrimination against the victims in the case owing to their condition as migrants, which resulted in preventing them from enjoying the rights that the Court has declared violated in this Judgment. Therefore, the Court concludes that the State did not respect or ensure the rights of the Haitian migrants without discrimination in violation of Article 1(1) of the American Convention in relation to Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof.

VIII REPARATIONS (Application of Article 63(1) of the American Convention)

239. Based on the provisions of Article 63(1) of the American Convention,²⁹⁸ the Court has indicated that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation,²⁹⁹ and that this provision "reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."³⁰⁰

²⁹⁵ *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 103, and *Case of Atala Riffo and daughters v. Chile*, *supra*, para. 80.

²⁹⁶ *Cf. Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 104, and *Case of Atala Riffo and daughters v. Chile*, *supra*, para. 80.

²⁹⁷ *Cf. Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 85, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, *supra*, para. 268.

²⁹⁸ Article 63.1 of the Convention establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

²⁹⁹ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 245.

³⁰⁰ *Cf. Case of Aloeboetoe et al. v. Suriname Reparations and costs*. Judgment of September 10, 1993. Series C No. 15, para. 43, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 245.

240. Based on the violations of the American Convention declared in the preceding chapters, the Court will now consider the claims presented by the Commission and the representatives, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make reparation, in order to establish the measures addressed at repairing the harm caused to the victims.³⁰¹

241. This Court has established that "the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective damage. Therefore, the Court must observe this concurrence in order to rule appropriately and in accordance with law."³⁰²

242. The Court finds that the denial of justice to victims of grave human rights violations results in a series of adverse effects in both the individual and the collective sphere. Thus, it is evident that the victims of prolonged impunity suffer different effects owing to the search to obtain justice, not only of a pecuniary nature but also other suffering and harm of a mental and physical nature and in relation to their life project, as well as other possible alterations to their social relations and family dynamics.³⁰³

243. The Court has considered it necessary to grant different measures of reparation in order to redress the damage fully. Thus, in this case, in addition to the pecuniary compensation, measures of satisfaction and restitution, and guarantees of non-repetition are especially relevant due to the gravity of the effects and the harm caused.³⁰⁴

A. Injured party

244. The Court reiterates that, in the terms of Article 63(1) of the Convention, any individual who has been declared a victim of a violation of any right established in this instrument is considered an injured party. Therefore, this Court considers the persons referred to in Annex A as the "injured party" and, as victims of the violations declared in this Judgment, they will be considered beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate the facts and identify, prosecute and, as applicable, punish those responsible

1. Re-opening of the investigation and determination of individual responsibilities

245. The Commission asked the Court to order the State to carry out an investigation in the ordinary jurisdiction, and to conduct this investigations impartially and effectively, and within a reasonable time, in order to clarify the facts fully, identify the masterminds and perpetrators, and impose the corresponding sanctions." In addition, the Commission asked that the State be required to order the relevant disciplinary, administrative, or criminal measures to respond to the acts or omissions of the State officials that contributed to the denial of justice and the impunity of the facts of this case, and to establish a mechanism

³⁰¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 to 27, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 246.

³⁰² 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 the Rio Negro Massacres v. Guatemala*, *supra*, para. 247.

³⁰³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 226, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 272.

³⁰⁴ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 226, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 248.

that facilitates the complete identification of the injured victims, as well as the next of kin of the executed victims.”

246. The representatives asked that the State be ordered to open a new criminal investigation in the ordinary jurisdiction with regard to the facts of this case and to adopt the corresponding administrative, disciplinary or criminal measures to respond to the acts or omission of the State officials that contributed to the denial of justice and the impunity of the facts of this case.

247. The State indicated during the public hearing, and reaffirmed in its final arguments, that it “has complied with its obligation to investigate the facts of the case. The investigations undertaken by the State responded to criteria based on impartiality, objectivity and the search for the truth. [...] Now that these stages have been completed in the criminal courts, the claim for compensation for the victims, presumed victims, and their heirs for the presumed harm caused, remains pending before our country’s the civil courts.”

248. In Chapter VII-3, this Court determined that the State had violated the rights to judicial guarantees and judicial protection and, at the time of the facts, also the obligation to adopt domestic legal provisions established in Article 2 of the Convention in relation to Articles 8 and 25 thereof. Specifically, the Court considered that the intervention of the military jurisdiction in the investigation, prosecution and subsequent acquittal of the accused contravened the parameters of exceptionality and restriction that characterize that jurisdiction and signified an application of a personal jurisdiction that functioned without taking into account the nature of the acts involved (*supra* paras. 198 and 201). Consequently, the Court recalls that, in cases of grave human rights violations,³⁰⁵ a non-guilty verdict that constitutes apparent *res judicata* cannot represent an obstacle to the re-opening of the investigation or the proceedings (*supra* paras. 195 to 198).³⁰⁶

249. Consequently, this Court establishes that the State must adopt the following measures:

- a) Re-open the investigation of all facts and background information related to the instant case in the ordinary jurisdiction in order to identify, prosecute and, as appropriate, punish those responsible for the facts of the case. The State must lead and conclude the relevant investigations and proceedings within a reasonable time;

³⁰⁵ Cf. *Case of Bámaca Velázquez v. Guatemala*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 18, 2010, Considering paragraph 44: “when dealing with grave and systematic violations to human rights, [...], the impunity of such conduct due to the lack of investigation is a rather high infringement of the victims’ rights. The extent of this infringement not only authorizes but also demands an exceptional limitation of the guarantee of *ne bis in idem*, in order to allow the re-opening of these investigations when the decision argued as *res judicata* stems from the evident non-compliance with the obligations to investigate and severely punish grave violations. In such cases, the preponderance of the victims’ rights over legal certainty and *ne bis in idem* is even more evident, since the victims not only underwent atrocious behavior but they must also endure the indifference of the State, which clearly fails to comply with its obligation to clarify the acts, punish those responsible, and make reparation to those affected. The seriousness of the events of these cases is of such magnitude that it affects the essence of social coexistence and, at the same time, prevents any type of legal certainty. Therefore, when analyzing the legal remedies that may be filed by the defendants for grave human rights violations, the Court underlines that the judicial authorities are obliged to determine whether the deviation in the use of a criminal guarantee can result in a disproportionate restriction of the victims’ rights, where a clear violation of the right to access justice affects the criminal procedural guarantee of *res judicata*.”

³⁰⁶ Cf. *Case of Carpio Nicolle et al. v. Guatemala*, *supra*, paras. 131 and 132; *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 154; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 197, and *Case of Guitierrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 99.

- b) Remove all the obstacles to the proper investigation of the facts in the corresponding proceedings so as to avoid the repetition of what happened in this case.³⁰⁷ Thus, in cases of grave human rights violations, such as, in the instant case, the extrajudicial executions (*supra* paras. 93 to 97), the State may not apply amnesty laws, or argue prescription, non-retroactivity of criminal law, *res judicata*, or the *non bis in idem* principle or any similar mechanism to waive responsibility, in order to avoid this obligation;³⁰⁸
- c) Ensure that the different organs of the judicial system involved in the case have the necessary human and material resources to perform their duties in an appropriate, independent and impartial manner, and that those who participate in the investigation, including victims, witnesses and agents of justice, have the necessary guarantees of safety³⁰⁹ and means of transport to give testimony, and refrain from acts that obstruct the progress of the investigative process, and
- d) Ensure the full access and capacity to act of the survivors and the victims' next of kin at all stages of this investigation, in accordance with domestic law and the provisions of the American Convention. In addition, the results of the proceedings must be publicized so that society can know the facts of the case and those responsible.³¹⁰

2. Identification and repatriation of the mortal remains of the deceased victims

250. The representatives asked the Court to order the Dominican State to ensure the repatriation of the remains of the deceased victims to their next of kin. The Inter-American Commission did not refer to this aspect.

251. The State submitted documentation showing that State officials are unaware of the final location of the mortal remains of the deceased victims.

252. The Court concluded that the right of the victims' next of kin to know the whereabouts of the remains of their loved ones constitutes not only a requirement of the right to know the truth, but also a measure of reparation and, consequently, gives rise to the corresponding obligation of the State to satisfy these reasonable expectations. The failure to identify and return the remains to their next of kin was an expression of degrading and discriminatory treatment, in violation of Articles 5(1) and 1(1) of the Convention to the detriment of the deceased and their next of kin (*supra* para. 117).

253. Consequently, the Court orders that, within one year of notification of this Judgment, the State must determine the whereabouts of the bodies and, following genetic proof of relationship, by mutual agreement with the next of kin or the representatives, they must be repatriated to Haiti and delivered to the next of kin. In addition, the State must assume the said expenses and, as appropriate, the funeral costs.³¹¹

³⁰⁷ Cf. *Case of La Cantuta v. Peru*, *supra*, para. 226, and *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 240.

³⁰⁸ Cf. *Case of Barrios Altos v. Peru. Merits*, *supra*, paras. 41 a 44 and *Case of González Medina and Family Members v. Dominican Republic*, *supra*, para. 285.e).

³⁰⁹ Cf. *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 233, para. 186(d), and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 257(e).

³¹⁰ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 258.

³¹¹ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 185, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 270.

C. Measures of integral reparation: rehabilitation and satisfaction, and guarantees of non-repetition

254. International case law and, in particular, that of the Court, has repeatedly established that the judgment can constitute *per se* a form of reparation.³¹² Nevertheless, considering the circumstances of the case and the adverse effects on the victims resulting from the violations of the American Convention declared to their detriment, the Court finds it pertinent to determine the following measures of reparation.

1. Rehabilitation

a) Medical and psychological assistance for the victims

255. The Commission asked the Court to order adequate pecuniary and non-pecuniary reparations for the human rights violations declared in its merits report, including the implementation of a suitable program of psychosocial care for the survivors.

256. The representatives asked that the surviving victims be compensated for future medical and psychological expenses.

257. The State did not refer to this form of reparation.

258. The Court considered that, owing to the demeaning treatment of the survivors, the State had violated the right to personal integrity established in Article 5(1) of the Convention (*supra* para. 109).

259. In addition, the Court finds, as it has in other cases,³¹³ that it is necessary to order a measure of reparation that provides appropriate care for the mental and physical problems that the victims have suffered owing to the violations declared in this Judgment. In order to help repair this harm, the Court establishes that the State has the obligation to provide, free of charge and immediately, the medical and psychological treatment required by the victims, following their informed consent and for the time necessary, including the provision of medication free of charge. If the victims reside in Dominican Republic, the medical and psychological treatment must be provided by State institutions and personnel.³¹⁴ If the State does not have these resources, it must have recourse to specialized private or civil society institutions.³¹⁵ This treatment shall be provided, insofar as possible, in the medical centers nearest to their place of residence.³¹⁶

260. When providing the said treatment, the specific circumstances and needs of each victim must also be taken into consideration so that they are offered collective, family, and individual care, as agreed with each of them and following an individual assessment.³¹⁷

³¹² Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 259.

³¹³ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 287.

³¹⁴ Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, para. 42, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 289.

³¹⁵ Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 235, and *Case of Uzcátegui et al. v. Venezuela, supra*, para. 253(e).

³¹⁶ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Uzcátegui et al. v. Venezuela, supra*, para. 253(b).

³¹⁷ Cf. *Case of 19 Tradesmen v. Colombia*. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Uzcátegui et al. v. Venezuela, supra*, para. 253.c.

261. However, if the victims do not reside in Dominican Republic, the Court considers it pertinent to determine that, if the victims seek or request medical or psychological treatment, the State must grant the surviving victims who were injured, the sum of US\$7,500.00 (seven thousand five hundred United States dollars) and the remaining survivors, the sum of US\$3,500.00 (three thousand five hundred United States dollars), both sums for expenses related to medical and psychological treatment, so that they may receive such attention in the place where they reside.³¹⁸

1. Satisfaction

a) Publication and dissemination of the Judgment

262. The representatives requested the publication of this Judgment in Spanish, French and Creole in a newspaper with widespread distribution, as well as in the official gazette. The Commission and the State did not refer to this measure of reparation.

263. The Court orders, as it has in other cases,³¹⁹ that the State must publish the official summary of this Judgment prepared by the Court within six months of notification of the Judgment as follows: (a) once, in the official gazette of the Dominican Republic; (b) once in a national newspaper of the Dominican Republic with widespread circulation, and (c) translated into French and Creole, and published once, in a national newspaper of Haiti with widespread circulation. In addition, this Judgment, in its entirety, must remain available for one year, on an official website of the Dominican Republic.

b) Acknowledgement of international responsibility and public apology

264. The representatives asked that the State make an acknowledgement of its responsibility for the violations of the human rights of the victims and their next of kin and issue a public apology to the victims and their next of kin. The Commission and the State did not refer to this measure.

265. The Court finds that, in order to repair the harm caused to the victims and to avoid a repetition of facts such as those of this case,³²⁰ it is necessary to order the State to organize a public act to acknowledge its international responsibility in relation to the facts of the instant case. During this act, reference must be made to the human rights violations declared in this Judgment. The act must be carried out by means of a public ceremony in the presence of senior State officials, including those from the military sphere and the DOIF, and the victims in this case. The State must reach agreement with the victims or their representatives on the means of complying with the public act of acknowledgement, as well as on the required characteristics, such as the location – it could be held in the Consulate of the Dominican Republic in Haiti – and the date.³²¹ The State has six months from notification of this Judgment to carry out this act.

3. Guarantees of non-repetition

³¹⁸ Cf. *Case of the Miguel Castro Castro Prison*, *supra*, para. 450, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 269.

³¹⁹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of the Rio Negro Massacres v. Guatemala*, *supra*, para. 287.

³²⁰ Cf. *Case of Carpio Nicolle et al.*, *supra*, para. 136, and *Case of González Medina and Family Members v. Dominican Republic*, *supra*, para. 297.

³²¹ Cf. *Case of Kawas Fernández v. Honduras*, *supra*, para. 202, and *Case of González Medina and Family Members v. Dominican Republic*, *supra*, para. 297.

266.m The Court recalls that the State must prevent the recurrence of human rights violations such as those described in this case and, consequently, adopt all the legal, administrative and any other measures necessary to ensure the effective exercise of the rights³²² of migrants, in conformity with the obligations of respect and guarantee established in Articles 1(1) and 2 of the Convention.³²³

a) *Human rights training for public officials*

267. The Commission asked the Court to order the adoption of the necessary measures to prevent the occurrence of similar events in the future, in accordance with the obligation of prevention and protection of human rights established in the American Convention. In particular, it asked that permanent human rights programs be implemented in the training establishments of the Armed Forces and the National Police, particularly with regard to the excessive use of force and the principle of non-discrimination. Similarly, the representatives asked that the State implement, within one year, training sessions on the human rights of migrants, the use of force, and the principle of non-discrimination for members of the armed and police forces, agents responsible for border control, and agents responsible for the administration of justice.

268. The State did not comment in this respect.

269. The effectiveness and impact of the implementation of the human rights education programs for public officials is crucial to generate guarantees of non-repetition of events such as those in the instant case.³²⁴ However, since the State's international responsibility for the violation of Articles 1(1), 2, 4, 5, 7, 8, 25 and 22(9) of the American Convention has been proved, this Court considers it important to enhance the institutional capacities of the bodies responsible for respecting and guaranteeing the said human rights, by training members of the Armed Forces, border control agents, and agents responsible for migratory procedures, in order to prevent the repetition of events such as those examined in this case.³²⁵

270. Within these programs, the State must refer to the Court's case law on the matter and, especially, to the criteria established in this Judgment, including the applicable international instruments to which the Dominican Republic is a party. The training, as appropriate to each authority, should include the following topics: (a) the use of force by law enforcement agents, in accordance with the principles of legality, proportionality, necessity and exceptionality, as well as the criteria of progressive and differentiated use of force. Also, on preventive measures adopted by the State, and actions during and following an incident; (b) the principle of equality and non-discrimination applied, in particular, to migrants, and (c) due process in the detention and deportation of irregular migrants, according to the standards established in this Judgment. Additionally, in order to comply with these objectives and since this refers to a system of continuing education, the said courses must be offered permanently.³²⁶ In this regard, the State must present an annual report for three consecutive years indicating the measures it has taken to this end.

³²² Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 166, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 221.

³²³ Cf. *Case of Pacheco Teruel et al. v. Honduras, supra*, para. 92.

³²⁴ Cf. *Case of the Las Dos Erres Massacre v. Guatemala supra*, para. 252.

³²⁵ Cf. *Case of Radilla Pacheco v. Mexico, supra*, para. 346, and *Case of de las The Rio Negro Massacres v. Guatemala, supra*, para. 291.

³²⁶ Cf. *Case of González et al. ("Cotton field") v. Mexico, supra*, para. 541, and *Case of Pacheco Teruel et al. v. Honduras, supra*, para. 114.

b. Campaign on the rights of migrants

271. The Commission requested the adoption of the necessary measures to prevent these events from occurring in the future. Similarly, the representatives asked, within the guarantees of non-repetition, that the Court order training on the principle of non-discrimination. For its part, the State indicated during the public hearing that it has not been demonstrated and there is no evidence to confirm any discriminatory treatment to the detriment of the presumed victims or against the Dominican nationals.

272. Since it has been proved that the State was responsible for a pattern of discrimination against migrants in Dominican Republic, the Court finds it relevant that the State organize a media campaign on the rights of regular and irregular migrants on Dominican territory in the terms of this Judgment. To this end, the State must submit an annual report for three consecutive years, indicating the measures it has taken to this end.

c. Adoption of domestic legal measures

i. Use of Force

273. As proved in paragraph 85 of this Judgment, the Court declared that the Dominican State failed to comply with its obligation to protect the rights to life and to personal integrity by adequate legislation on the use of force, in violation of the right to guarantee the rights to life and to personal integrity and of Article 2 of the Convention.

274. The Court recalls that the State must prevent the recurrence of human rights violations such as those that occurred in this case and, to this end, adopt all necessary legal, administrative and any other measures to avoid a repetition of similar events in the future, in compliance with its obligation to protect and ensure the fundamental rights established in the American Convention. In particular, in keeping with Article 2 of the Convention, the State must adopt the measures necessary to make the exercise of the rights and freedoms recognized in the Convention effective.³²⁷

275. In particular, the State must, within a reasonable time, adapt its domestic law to the American Convention, incorporating the international standards on the use of force by law enforcement agents,³²⁸ in accordance with the principles of legality, proportionality, necessity and exceptionality, as well as the criteria for the progressive and differentiated use of force. This legislation must include the specifications indicated in Chapter VII-1 of this Judgment.

ii. The military jurisdiction

276. The Commission asked the Court to order the State to adopt the necessary legislative or other type of measures to bring article 3 of the Military Criminal Code into compliance with the American Convention and the Court's case law.

277. In this regard, the representatives requested the following measures: (a) the repeal of domestic laws concerning the attribution of jurisdiction to military courts for cases involving allegations of human rights violations committed by members of the armed forces; (b) the adoption of new laws that clearly grant jurisdiction to civil courts in such situations,

³²⁷ Cf. *Case of Velázquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 240.

³²⁸ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela, supra*, para. 144.

and (c) the adoption of laws prohibiting the practice of collective deportation and ordering State authorities to cease this practice immediately.

278.m For its part, during the public hearing, the State indicated that it had made important changes in the judicial system, in relation to both procedural laws and the Constitution.

279. In paragraphs 211 and 216 of this Judgment, the Court declared the violation of Article 2 of the Convention because the legislation in force that regulated the military jurisdiction at the time of the events violated the American Convention. However, as indicated in paragraph 217, the State made several changes to the law from 2002 to 2010, which determined the competence of the ordinary jurisdiction to try offenses committed by military personnel, establishing that the military jurisdiction was exclusively for disciplinary offenses and offenses of a strict military nature. Consequently, the Court concluded that the current Dominican legislation has remedied the violation of Articles 2, 8 and 25 of the American Convention. Consequently, it is inappropriate to order a measure of reparation on this aspect.

D. Compensation

1. Pecuniary and non-pecuniary damage

280. The Commission asked the Court to establish a measure of reparation to make adequate reparation for the human rights violations declared in its Merits Report as regards both the pecuniary and the non-pecuniary aspects.

281. The representatives asked the Court to take into account the age of each victim at the time of death, life expectancy, and wage (or the minimum wage for the type of worker). Also, in order to determine loss of earnings, they indicated that the minimum wage in Haiti was approximately US\$624.00 a year, while in Dominican Republic it was approximately US\$2,900.00 a year. Regarding the surviving victims, the representatives indicated that they have suffered a loss of productivity in their work and, therefore, asked that the level of incapacity for work productivity be set at a rate of 75%. They also asked that, in keeping with the Court's case law in this regard, the victims should be compensated for the possessions that were seized or destroyed by State agents.³²⁹ Lastly, the representatives asked the Court to order a minimum payment of US\$80,000.00 for each victim, both deceased and surviving, for non-pecuniary damage.³³⁰

³²⁹ Regarding the indirect damage, in sworn statements provided by the representatives, some surviving victims stated that they lost possessions and money during the facts of the case. The said amounts are described as follows: Celafoi Pierre, stated that he lost 1,500.00 Dominican pesos (US\$38.00); Renaud Tima indicated that he lost 4,000.00 Dominican pesos (US\$101.00); Rose Marie Petit-Homme stated that he lost 500 Dominican pesos (US\$12.00) and, lastly, Sonide Nora stated that she lost 1,500 Dominican pesos (US\$38.00), a ring worth un 2,000 Haitian gourdes (US\$50.00) and her clothes valued at 3,000 Haitian gourdes (US\$76.00) (file of annexes to the pleadings and motions brief, folios 3086 to 3095).

³³⁰ Regarding the next of kin of the deceased victims, the representatives requested payment of the following minimum amounts for non-pecuniary damage: US\$50,000.00 to each companion son/daughter, father and mother; US\$20,000.00 to each brother/sister of the victim; US\$5,000.00 to a stepfather or stepmother of the deceased victim, and an additional US\$5,000.00 to each family member of the deceased victims for the denial of justice. Also, regarding the next of kin of the surviving victim, the representatives requested payment of the following minimum amounts for non-pecuniary damage: US\$5,000.00 to the companion of a surviving victim; US\$5,000.00 to each son/daughter of a surviving victim; US\$15,000.00 to each father/mother of a surviving victim; US\$2,000.00 to each brother/sister of a surviving victim, and US\$5,000.00 to each family member of the surviving victims for the denial of justice. Furthermore, in addition to the amounts indicated above, the representatives requested the following minimum amounts for non-pecuniary damage: US\$2,000.00 for Mélanie Sainvil Pierre, Joseph Pierre's companion, who was pregnant at the time of the events; US\$5,000.00 for Ilfaudia Dorzema and Sylvie Felizor, who was pregnant at the time of the events, and US\$5,000.00 for Roland Israel, because he was a minor at the time of the events.

282. The State did not comment in this regard.

283. In its case law, the Court has developed the concept of pecuniary damage and the circumstances in which it must be compensated. This Court has established that pecuniary damage involves "loss or detriment to the income of the victims, the expenses incurred as a result of the facts, and the pecuniary consequences that have a causal nexus with the facts of the case."³³¹

284. This Court considers that compensation for loss of income includes the income that the deceased victim would have received during his or her probable life. However, due to his or her death, the sum is delivered to the next of kin. Regarding the deceased victims, although the earnings that the victims failed to receive as a result of the violations declared in this Judgment has not been proved, some evidence³³² has been verified that allows the Court to infer that the deceased victims would have been able to carry out some remunerated activity or trade³³³ during their probable life. Therefore, the Court determines to award, in equity, the sum of US\$10,000.00 (ten thousand United States dollars) to each of the seven deceased victims for pecuniary damage (*supra* para. 97).

285. Regarding the surviving victims, this Court has indicated, in relation to pecuniary damage in the event of surviving injured victims, that the calculation of the compensation must take into account, among other factors, the time that they were unable to work.³³⁴ In this regard, the evidence provided does not indicate specifically the period during which the surviving victims were prevented from working owing to the facts of this case, Consequently, the Court establishes the sum of US\$3,500.00 (three thousand five hundred United States dollars) for pecuniary damage for the 10 surviving victims, who were injured (*supra* para. 98), considering this appropriate in terms of equity. This amount must be delivered within one year of notification of this Judgment.

286. In its case law, the Court has developed the concept of non-pecuniary damage and established that it can include the suffering and distress caused to the direct victims and their next of kin, the harm to values that are highly significant to individuals, as well as the changes, of a non-pecuniary nature, in the living conditions of the victims or their family.³³⁵

287. Thus, the Court considers, as it has indicated in other cases,³³⁶ that the non-pecuniary damage inflicted upon the deceased and surviving victims is evident, because it is inherent in human nature that any person subjected to events such as those of the instant case, experiences profound suffering, anguish, terror, impotence, and insecurity, so that no evidence is required to prove this harm.³³⁷ Moreover, regarding the next of kin of such victims, the Court reiterates that the suffering caused to the victim "extends to the closest

³³¹ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 307.

³³² Fritz Alce worked on the land; Nadege Dorzema, Roselene Therméus and Ifaudia Dorzema were domestic workers; Jacqueline Maxime worked as a mechanic; Pardis Fortilus was a student, and lastly, Máximo Rubén de Jesús Espinal worked as a bus fare collector (pleadings and motions brief, folios 267 and 268).

³³³ Cf. *Case of Usón Ramírez v. Venezuela, supra*, para. 180.

³³⁴ Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 28, and *Case of Baena Ricardo et al. v. Panama, supra*, para. 205.

³³⁵ 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. 84, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 307.

³³⁶ Cf. *Case of the 19 Tradesmen v. Colombia, supra*, para. 248, and *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 308.

³³⁷ Cf. *Case of the 19 Tradesmen v. Colombia, supra*, para. 248, and *Case of Lysias Fleury v. Haiti, supra*, para. 143.

members of the family, especially those who were in close affective contact with the victim."³³⁸ In addition, the Court has found that the suffering and death of a person causes non-pecuniary damage to their sons, daughters, spouse or permanent companion, mother and father, which does not need to be demonstrated.³³⁹

288. Based on its case law, and taking into consideration the circumstances of the instant case, the violations committed, the suffering caused, the time elapsed, the denial of justice, as well as the change in their living conditions, the proven effects on the personal integrity of the next of kin of the victims, and the other consequences of a non-pecuniary nature suffered, the Court establishes, in equity, the following amounts in United States dollars in favor of the victims, as compensation for non-pecuniary damage:³⁴⁰

- a) For the seven deceased victims, the sum of US\$20,000.00 (twenty thousand United States dollars), which must be delivered to their heirs in accordance with the provisions of paragraph 298 of this Judgment;
- b) For the 10 surviving victims who were injured, the sum of US\$16,500.00 (sixteen thousand five hundred United States dollars);
- c) For the four surviving victims who were not injured, the sum of US\$10,000.00 (ten thousand United States dollars);
- d) For Sylvie Felizor who was pregnant at the time of the events, and Roland Israel, who was a minor, the additional sum of US\$2,000.00 (two thousand United States dollars), and
- e) For the next of kin of the deceased victims, the additional sum of US\$7,000.00 (seven thousand United States dollars) to each son/daughter, father, mother, spouse or permanent companion; of US\$5,000.00 (five thousand United States dollars) to each sibling and one grandmother of a victim (see Annex A).

289. The distribution of the amounts indicated in paragraphs 284 to 288(a) shall be made within one year of notification of this Judgment, as follows:

- a) Fifty per cent (50%) of the compensation shall be shared, in equal parts, between the victims' children. If one or several of the children are deceased, the part that would have corresponded to them will increase that of the other children of the same victim;
- b) Fifty per cent (50%) of the compensation shall be delivered to the person who was the victim's spouse or permanent companion at the time of his or her death;
- c) In the event that there are no family members in any of the categories defined in the preceding subparagraphs, the corresponding amount shall increase the part that corresponds to the other category;
- d) If the victim did not have children or a spouse or a permanent companion, the compensation for pecuniary damage shall be delivered to his or her parents; and

³³⁸ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*. Reparations and costs. Judgment of May 25, 2001. Series C No. 76, para. 106, and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 276.

³³⁹ This criterion has been indicated in other cases, also with regard to daughters, sons, spouse or permanent companion, mother and father, among others. Cf. *Case of the Pueblo Bello Massacres v. Colombia*, *supra*, para. 257; *Case of Goiburú et al. v. Paraguay*. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153, para. 159, and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 276.

³⁴⁰ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Reparations and costs, *supra*, para. 84, and *Case of Vélez Restrepo and family members v. Colombia*, *supra*, para. 299.

- e) If there are no family members in any of the categories defined in the preceding subparagraphs, the compensation shall be paid to the heirs, in accordance with inheritance laws.

E. Costs and Expenses

290. In their pleadings and arguments brief, the representatives indicated a total of US\$215,912.99 in costs and expenses incurred since 2000 to assist the victims, to investigate the facts, and for legal representation before the domestic and international courts, among other matters.³⁴¹

291. In the final written arguments, the International Clinic for the Defense of Human Rights presented additional expenses for the sum of US\$88,547.00.³⁴² Also, the Dominican-Haitian Cultural Center submitted its expenses amounting to US\$14,102.89,³⁴³ while the *Grupo de Ayuda a Refugiados y Repatriados* requested the payment of US\$ 25,537.14.³⁴⁴

292. The Court reiterates that, according to its case law,³⁴⁵ costs and expenses are part of the concept of reparations, because the activity deployed by the victims in order to obtain justice at both the domestic and the international level entails expenses that must be compensated when the State's international responsibility is declared in a judgment.

293. Regarding their reimbursement, the Court must prudently assess their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, as well as those incurred during the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.

294. The Court has repeatedly indicated that "the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural moment granted to them; that is, with the brief with pleadings, motions and evidence, without prejudice to these claims being subsequently updated, in keeping with the new costs and expenses they have incurred owing to the proceedings before this Court."³⁴⁶

³⁴¹ The International Clinic for the Defense of Human Rights presented expenses for legal assistance amounting to US\$135,600.00. The Dominican-Haitian Cultural Center requested a total of US\$ 35,212.00 for domestic procedural expenses, legal assistance, and extrajudicial investigation expenses. And, the *Grupo de Ayuda a Refugiados and Repatriados* presented expenses of US\$42,062.00 for support to victims, legal assistance and transportation expenses (file of attachments to the pleadings and motions brief, tome IV, folios 2590 to 2626).

³⁴² These expenses correspond to US\$74,570.00 for legal assistance; US\$11,880.00 for students assistance, US\$771 for hearing expenses and US\$1,326.00 for office expenses (file of attachments to the representatives' final written arguments, tome IX, folios 4893 to 5080).

³⁴³ The expenses that, in fact, correspond to expenditure subsequent to the public hearing amount to approximately US\$420.00, corresponding to transport, accommodation and office expenses (file of attachments to the representatives' final written arguments, tome IX, folios 5087 to 5166).

³⁴⁴ The corresponding amounts are US\$16,247.00 for legal assistance, US\$846.70 for documentation expenses, US\$8,443.00 for accommodation, transport and meals (file of attachments to the representatives' final written arguments, tome IX, folios 5168 to 5170).

³⁴⁵ 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 the Rio Negro Massacres v. Guatemala, supra*, para. 314.

³⁴⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 275, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 307.

295. In the instant case, the Court observes that the annexes to the representatives' final arguments included information on the monetary expenditure and actions taken prior to the submission of the pleadings and motions brief; thus, this information is time-barred according to the above-mentioned case-law (*supra* para. 24).

296. In addition, the Court reiterates that it is not sufficient to merely furnish probative documents; rather, the parties must submit arguments that relate the evidence to the corresponding fact and, in the case of alleged financial disbursements, the items and their justification must be clearly established.³⁴⁷

297. In the instant case, the evidence provided by the representatives and the corresponding arguments do not justify the amounts requested fully. However, certain expenses during the litigation of the case were proved; specifically, expenses to attend the public hearing of the case held at the seat of the Court, and expenses for submitting their briefs throughout the proceedings before the Court. Taking this into account, this Court establishes in equity the sum of US\$25,000.00 (twenty-five thousand United States dollars) for the UQAM International Clinic for the Defense of Human Rights; US\$17,000.00 (seventeen thousand United States dollars) for the *Grupo de Apoyo a los Repatriados y Refugiados*, and US\$16,000.00 (sixteen thousand United States dollars) for the Dominican-Haitian Cultural Center. In addition, the said sums must be delivered to each institution within one year of notification of this Judgment. At the stage of monitoring of compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives any subsequent reasonable and duly proven expenses.

F. Reimbursement of expenses to the Victims' Legal Assistance Fund

298. The representatives asked the Court for a total of US\$25,300.00 (twenty-five thousand three hundred United States dollars) from the Victims' Legal Assistance Fund to cover the costs of the litigation before the Inter-American Court.

299. In the Order of the President of the Court of December 1, 2011, authorization was given for the Fund to facilitate the presence of two presumed victims and one representative at the public hearing of the case, together with the presentation of a statement by affidavit. Thus, the amount awarded was US\$5,972.21 (five thousand nine hundred and seventy-two United States dollars and twenty-one cents).

300. The State did not submit observations in this regard.

301. Based on the violations declared in this Judgment, the Court orders the State to reimburse the Fund the sum of US\$5,972.21 (five thousand nine hundred and seventy-two United States dollars and twenty-one cents) for the expenses incurred. This amount must be repaid to the Inter-American Court within ninety days of notification of this Judgment.

G. Method of compliance with the payments ordered

302. The State must pay the compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses established in this Judgment directly to the persons or organization indicated herein, within one year of notification of this Judgment, in the terms of the following paragraphs.

303. If any of the beneficiaries should die before receiving the respective compensation, the criteria established in paragraph 289 of this Judgment shall be applied.

³⁴⁷ Cf. *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*, *supra*, para. 277, and *Case of Rosendo Cantú et al. v. Mexico*, *supra*, para. 285.

304. The State must comply with its pecuniary obligations by payment in United States dollars. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Dominican financial institution, in United States dollars, and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

305. The amounts allocated in this judgment as compensation and for reimbursement of costs and expenses shall be delivered to the persons and organizations indicated in full, as established in this Judgment, without any deductions arising from possible taxes or charges.

306. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in the Dominican Republic.

IX OPERATIVE PARAGRAPHS

307. Therefore,

THE COURT

DECLARES,

unanimously that:

1. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Jacqueline Maxime, Fritz Alce, Roselene Therméus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema, in the terms of paragraphs 83 to 97 of this Judgment.

2. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Noclair Florvilien, Joseph Desvraine, Sylvie Felizor, Michel François, Sonide Nora, Rose-Marie Petit-Home, Joseph Pierre, Renaud Tima, Selafoi Pierre, Josier Maxime, Alphonse Oremis and Honorio Winique, in the terms of paragraph 98 of this Judgment.

3. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Jacqueline Maxime, Fritz Alce, Roselene Therméus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema, and their next of kin, indicated in Annex A to this Judgment, in the terms of paragraphs 99 to 117 of this Judgment.

4. The State is responsible for the violation of the right to personal liberty, recognized in Article 7(1), 7(2), 7(3), 7(4) 7(5) and 7(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel and Rose Marie Dol, in the terms of paragraphs 124 to 144 of this Judgment.

5. The State is responsible for the violation of the rights to judicial guarantees and freedom of movement, recognized in Articles 8(1) and 22(9) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Rose-Marie Petit-Homme, Joseph Pierre, Renaud Tima, Selafoi Pierre, Sylvie Felizor, Roland Israel, Rose Marie Dol, Josier Maxime and Sonide Nora, in the terms of the paragraphs 150 and 178 of this Judgment.

6. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection recognized 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 the victims listed in Annex A of this Judgment, in the terms of paragraphs 183 to 201 of this Judgment.

7. The State is responsible for the violation of the obligation to adapt its domestic law established in Article 2 of the American Convention on Human Rights, in relation to Articles 4(1) 8 and 25 of this instrument, in the terms of paragraphs 82 and 207 to 217 of this Judgment.

8. The State failed to comply with its obligation not to discriminate contained in Article 1(1) of the American Convention on Human Rights, in relation to the rights established in Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof, in the terms of paragraphs 224 to 238 of this Judgment.

9. The Court considered that it is not appropriate to rule on the alleged violation of the rights to juridical personality and equal protection, recognized in Articles 3 and 24 of the American Convention on Human Rights, in the terms of paragraph 227 of this Judgment.

AND DECIDES

unanimously that:

1. This Judgment constitutes *per se* a form of reparation.
2. The State must re-open the investigation into the facts of case in order to individualize, prosecute and, as appropriate, punish all those responsible for the facts, in the terms of paragraphs 248 and 249 of this Judgment
3. The State must determine the whereabouts of the bodies of the deceased, repatriate them, and return them to their next of kin, within one year of notification of the Judgment, in the terms of paragraphs 252 and 253 of this Judgment
4. The State must provide the medical and psychological treatment required by the victims, immediately and for all the time necessary, in the terms of paragraphs 258 to 261 of this Judgment
5. The State must make the publications indicated in paragraph 263 of this Judgment, within six months of notification of the Judgment.
6. The State must carry out a public act of acknowledgment of international responsibility and public apology, within six months of notification of the Judgment, in the terms of paragraph 265 of this Judgment
7. The State must implement the permanent training program ordered in paragraph 269 of this Judgment, for officials of the Armed Forces, border control agents, and agents in

charge of migratory procedures, in the terms of paragraph 270 of this Judgment. In this regard, the State must present an annual report for three consecutive years, in which it indicates the measures taken to this end.

8. The State must organize a media campaign on the rights of regular and irregular migrants on Dominican territory. In this regard, the State must present an annual report for three consecutive years, in which it indicates the measures taken to this end, in the terms of paragraph 272 of this Judgment.

9. The State must, within a reasonable time, adapt its domestic laws on the use of force by law enforcement officials, in the terms of paragraphs 274 and 275 of this Judgment.

10. The State must pay the amounts established in the paragraphs 284, 285, 288, 297 and 301 of this Judgment as compensation for pecuniary and non-pecuniary damage, for reimbursement of costs and expenses, and to reimburse the Victims' Legal Assistance Fund, in the terms of paragraphs 283 to 306 of this Judgment, within one year of notification hereof.

11. The State must, within one year of notification of this Judgment, submit a report to the Court on the measures adopted to comply with it.

12. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention on Human Rights, and will conclude this case when the State has complied fully with the provisions of the Judgment.

Done, at San Jose, Costa Rica, on October 23, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri

Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

ANNEX A

LIST DE VICTIMS

The names used by the Court in the Judgment to refer to the deceased and surviving victims in this case appear below. The pseudonyms or alternative names that appear in the documentation provided by the parties and that refer to the same persons are placed in brackets.

Deceased victims

1. Jacqueline Maxime (Jaqueline or Yachine Masime)
2. Fritz Alce (Gemilord or Gemilar)
3. Roselene Therméus (Roselaine Therneus, Theremeus or Therneur)
4. Ilfaudia Dorzema (Iffaudia or Fosieu Dosema)
5. Máximo Rubén de Jesús Espinal
6. Pardis Fortilus (Noupady Fortius)
7. Nadege Dorzema (Nana Dosema)

Surviving victims

1. Joseph Pierre
2. Selafoi (Celafoi) Pierre
3. Joseph Desravine (Devraïne, Maudire Felizor or Joseph Dol)
4. Renaud Tima (Timat)
5. Sylvie Felizor (Silvie Therméus or Mrs. Joseph Dol or Mrs. Joseph Desravine)
6. Rose-Marie Petit-Homme (Cecilia Petithomme/Estilien or Rose-Marie Estilien)
7. Sonide Nora
8. Josier (Josué) Maxime
9. Noclair Florvilien (Flor Vilien)
10. Michel Francoise (Florantin, Florentin, Francés and Floant)
11. Roland Israel
12. Rose Marie (Fifi) Dol
13. Alphonse Oremis
14. Honorio Winique

Next of kin of the deceased victims

The names used by the Court in the Judgment to refer to the deceased victims in this case and their next of kin. The pseudonyms or alternative names used by the parties to refer to the same persons are placed in brackets. In addition, the relationship between the family members and the deceased is indicated.

DECEASED	NEXT OF KIN
1. Fritz Alce (Gemilord)	1. Franceau Alcé (son)
	2. Jheffly Alcé (son)
	3. Lifaite (Pito) Alcé (Levoyelle Alce) (father)
	4. Nortilia Alcé (Mrs. Lifaite Alce or Ane-Marie Alcé) (mother)
	5. Jeannette Prévaly (permanent companion)
	6. Gyfanord Alce (brother)

	7. Ruteau Alce (brother)
2. Ilfaudia (Iffaudia) Dorzema	8. Illiodor Dorzema (father)
	9. Tinacie Jean (Mrs. Illiodor Dorzema) (mother)
	10. Favia Dorzema (sister)
	11. Nalia Dorzema (sister)
	12. Odelin Dorzema (brother)
	13. Rosel�ne Dorzema (sister)
	14. Rosemond Dorzema (brother)
	15. Wilna Dorzema (sister)
	16. Nerlande Dorzema (sister)
	17. Jude Dorzema (brother)
	18. Nadia Dorzema (sister)
3. Jacqueline Maxime (Yachine Masime)	19. Angeline Dorzema (sister)
	20. Fr� Dorzema (sister)
	21. Paulette Fortilius (grandmother)
	22. Jacques Wana Maxime (daughter)
	23. Elc�us Maxime (father)
	24. Lamer cie Estimable (Mrs. Elc�us Maxime) (mother)
4. M�ximo Rub�n de Jes�s Espinal	25. "Rositha" (permanent companion)
	26. Micheline Maxime (sister)
	27. Josier (Josu�) Maxime (brother)
	28. Mariela Espinal (daughter)
	29. Rub�n Espinal (son)
	30. Junior Espinal (son)
	31. Fausto Peralta (father)
5. Nadege Dorzema	32. Ana Mar�a Espinal (mother)
	33. Elisabeth Contreras Mart�nez (permanent companion)
	34. Nathalie Guerrier (daughter)
	35. R�valine Charles (mother)
6. Pardis Fortilus (Noupady Fortius)	36. Kernelus Guerrier (permanent companion)
	37. Mirat Dorsema (brother)
	38. Loubens (Lourbens) Fortilus (son)
	39. Elusma Fortilus (father)
	40. Erzulia (Ezcria Isima) Rose Exama (mother)
7. Roselene Therm�us (Roselaine Therneus)	41. Lourdie Pierre (permanent companion)
	42. Nerve Fortilus (brother)
	43. Dieula Servilus (daughter)
	44. Rose Dol (Therm�us) (daughter)
	45. Gertide Dol (daughter)
	46. Lona Beauvil (daughter)
	47. Louna Beauvil (daughter)
	48. Rony (Lony) Beauvil (son)
	49. Groseon Therm�us (father)
	50. Th�rese Joseph (Jeunestine Ceimon, Genecine Felizor, Mrs. Armand Therm�us or Th�rese Dol) (mother)
	51. Cercius (Clercious) M�teleus (sister)