

**Order of the
Inter-American Court of Human Rights
of November 28, 2005
Case of Blanco-Romero et al. v. Venezuela
(Merits, Reparations and Costs)**

In the *Case of Blanco-Romero et al. v. Venezuela*,

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

Sergio García-Ramírez, President;
Alirio Abreu-Burelli, Vice President;
Oliver Jackman, Judge;
Antônio A. Cançado Trindade, Judge;
Cecilia Medina-Quiroga, Judge;
Manuel E. Ventura-Robles, Judge; and
Diego García-Sayán, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I

INTRODUCTION OF THE CASE

1. On July 9, 2004, pursuant to the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the Republic of Venezuela (hereinafter "the State" or "Venezuela") originating in petitions No. 12.256, 12.258 and 12.307, received at the Secretariat of the Commission on March 3 and July 10, 2000, respectively.

2. The Commission filed the application in the instant case for the Court to determine whether the State had violated the rights protected in Articles 4(1) (Right to Life); 5(1) and 5(2) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) (Right to Personal Liberty); 8(1) (Right to a Fair Trial); and 25 (Right to Judicial Protection) of the American Convention, in relation to the obligation set forth

in Article 1(1) (Obligation to Respect Rights) of said Treaty, and in Articles 1, 2, 6 and 7 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández. It also requested the Court to determine whether the State had violated the rights in Articles 5 (Right to Humane Treatment); 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in relation to the obligation set forth in Article 1(1) (Obligation to Respect Rights) of said Treaty, to the detriment of the victims' next of kin.

3. In its application, the Commission alleged that on December 15, 16 and 17 of the year 1999, a heavy rain washed Vargas State in Venezuela causing landslides at the Ávila foothills. In complying with the measures ordered with the purpose of restoring public order, is alleged that some human rights violations took place, the perpetrators of which were certain members of the national Army and of the *Dirección General Sectorial de los Servicios de Inteligencia y Prevención* (Intelligence and Preventive Services Sector Bureau) (hereinafter "*DISIP*"). Under these circumstances, Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández were detained and later disappeared.

4. In particular, the Commission alleged that on December 21, 1999, Army agents entered by force in Mr. Oscar José Blanco-Romero's house, detained and hit him, and up to date his next of kin have obtained no information on his whereabouts. Moreover, on December 23, 1999, while Mr. Roberto Javier Hernández-Paz was at his uncle's house, some individuals who supposedly were *DISIP* officers entered the house without an entry warrant and detained Mr. Roberto Javier Hernández-Paz, who was violently obliged to leave the premises. Mr. Roberto Javier Hernández-Paz was allegedly hurt with a firearm by *DISIP* agents, who put him inside a car and drove him away to an unknown destination. Since that date, the whereabouts of Mr. Roberto Javier Hernández-Paz are unknown. Lastly, the Commission alleged that on December 21, 1999, Mr. José Francisco Rivas-Fernández, while staying at a shelter for victims of the floods in Vargas State, was detained and hit by military agents. Since then, the whereabouts of Mr. José Francisco Rivas-Fernández remain unknown.

5. In this respect, the Commission upheld that "there are sufficient elements to conclude [...] that [the alleged victims] were killed by Venezuelan State agents because no information on [their] whereabouts has been obtained for more than four years [...] and because the location of their remains is unknown."

6. The Commission further stated that the fact that the alleged victims were supposedly held incommunicado in isolated, and clandestine detention "are strong indications that Venezuelan authorities tortured them." Moreover, it pointed out that the next of kin "may be considered victims of cruel, inhuman and degrading treatment," because the authorities allegedly "concealed information about the victim's whereabouts from their beloved ones and due to the [alleged] beatings and excessive violence displayed by State agents to the detriment of the detainees and in the presence of their next of kin." It also pointed out that Venezuela was responsible for the alleged "ineffectiveness of the writ of *habeas corpus* aimed at determining the whereabouts of the [alleged] victims and the [allegedly] erroneous interpretation by judicial authorities of the object and purpose of said guarantee remedy." The Commission affirmed that the State was responsible for "obstruction of justice and lack of diligence in the investigation of the events [allegedly] by the *Dirección de los Servicios de Inteligencia y Prevención* (Intelligence and Preventive Services Bureau),

as well as for the irregular actions [allegedly] taken by the judicial authority charged with the criminal inquiry against the defendants accused by the Office of the Public Prosecutor, all of which [allegedly] contributed to absolute impunity in the cases under analysis."

7. Furthermore, the Commission asked the Inter-American Court to order the State, under Article 63(1) of the Convention, to take certain measures of reparation detailed in the application. Lastly, the Commission requested the Court to order the State to pay legal expenses and costs arising from the domestic legal proceedings and from the proceedings before the Inter-American System.

II JURISDICTION

8. The Court has jurisdiction to hear the instant case pursuant to Article 62(3) of the Convention, as Venezuela has been a State Party to the American Convention since August 9, 1977 and has accepted the contentious jurisdiction of the Court on June 24, 1981.

III PROCEEDINGS BEFORE THE COMMISSION

9. On March 3, 2000 the *Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989* (Committee of Next of Kin of the Victims of the Events of February-March 1989) (hereinafter "*COFAVIC*") and the *Centro por la Justicia y el Derecho Internacional* (Center for Justice and International Law) (hereinafter "*CEJIL*") filed a petition before the Inter-American Commission, which was processed under number 12.256, for the alleged forced disappearance of Mr. Oscar José Blanco-Romero. On that same date, the *Programa Venezolano de Educación-Acción en Derechos Humanos* (Venezuelan Program of Education-Action on Human Rights) (hereinafter "*PROVEA*") filed a petition with the Inter-American Commission, which was processed under number 12.258, for the alleged forced disappearance of Mr. Roberto Javier Hernández-Paz.

10. On July 10, 2000, the Human Rights Episcopal Vicarship of the Caracas Archdiocese (hereinafter "the Episcopal Vicarship") and CEJIL filed a petition with the Inter-American Commission, which was processed under number 12.258, for the alleged forced disappearance of Mr. José Francisco Rivas-Fernández.

11. On October 10, 2001, during its 113th regular session, the Commission approved Admissibility Reports 90/01, 91/01 and 92/01, whereby it declared cases 12.256, 12.258 and 12.307 admissible, respectively. On October 19, 2001, the Commission held itself available to the parties in order to reach a friendly settlement.

12. During its 118th regular session, the Commission, under the provisions of Article 29(d) of its Rules of Procedure, decided to join the three above-mentioned cases and address the issues in the same report on the merits.

13. On December 29, 2003, the Commission, according to Article 5 of the American Convention, approved Report No. 112/03, concluding that:

The State of Venezuela is liable for the violation of the following rights protected under the American Convention on Human Rights: Article 1(1) (Obligation to Respect Rights); 4(1) (Right to Life); Article 5(1) and (2) (Right to Humane Treatment); Article 7 (Right to Personal Liberty); Article 8(1) (Right to a Fair Trial); and Article 25 (Right to Judicial Protection), for the events occurred in Vargas State, between December 21 and 23, 1999, dates on which the actions that resulted in the detention and forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández by State agents started to be taken.

[T]he State of Venezuela violated Articles 8 and 25 of the American Convention in relation to Article 1(1) of said Treaty to the detriment of the [alleged] victim's next of kin.

The State of Venezuela violated the right to humane treatment protected under Article 5 of the American Convention in relation to Article 1(1) of said Treaty to the detriment of the [alleged victim's] next of kin.

The State of Venezuela violated Article 1 of the Inter-American Convention on Forced Disappearance of Persons, since it is responsible for the [alleged] forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández [...]

The State of Venezuela [...] violate[d] Articles 1, 2, 6 and 7 of the Inter-American Convention to Prevent and Punish Torture.

In this regard, the Commission made the following recommendations to the State:

1. [...] to individualize, prosecute and criminally punish the State agents that planned and perpetrated the detention and forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández originating in the events occurred in December, 1999, in Vargas State, Venezuela [;]
2. [t]o adopt the measures necessary to locate and return the mortal remains of Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández to their next of kin. Furthermore, to adopt the measures deemed adequate for the next of kin to receive a just and prompt reparation for the violations declared herein on account of the pecuniary and non pecuniary damage sustained [; and]
3. [t]o adopt the measures necessary to prevent similar events from occurring in the future, in keeping with the duty to prevent violations and secure the enforcement of the fundamental rights protected under the American Convention. To this effect, it is recommended that the State of Venezuela make a public acknowledgment of its responsibility to the moral satisfaction of the victims' next of kin and to inform Venezuelan society of the truth about the action taken in Vargas State in December, 1999, when the events that resulted in the detention and forced disappearance of Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández took place. Said public acknowledgment by the State shall furthermore include a commitment to prevent this type of events from occurring in the future.

14. On January 30, 2004, the Commission forwarded Report No. 112/03 to the State, granting it a term of two months to notify the Commission of the measures adopted in compliance with its recommendations.

15. On January 30, 2004, the Commission, pursuant to Article 43(3) of its Rules of Procedure, informed the petitioners of the adoption of the Report and of service thereof upon the State and requested them to submit a brief stating their position regarding the possible submission of the case to the jurisdiction of the Inter-American Court, which information was forwarded on March 2, 2004.

16. On June 20, 2004, after an extension had been granted, the term for the State to inform the Commission of the measures adopted in compliance with Report No. 112/03 expired. On June 22, 2004, the State forwarded to the Commission information on the domestic investigations conducted in relation to the events in the instant case. At the time the extension of the term was granted to the State, the Commission pointed out that as from the date of expiration thereof "the term for the parties to decide on the possible submission of the case to the Court will resume its course" and stated that "[s]aid term would expire on June 30, 2004."

17. On June 25, 2004, the Inter-American Commission decided to submit the instant case to the contentious jurisdiction of the Court, "in view of the failure [of the State] to satisfactorily implement the recommendations."

IV PROCEEDINGS BEFORE THE COURT

18. On June 30, 2004, the Commission filed an application with the Court in relation to cases number 12.256, 12.258 and 12.307.

19. The Commission appointed Commissioner Paulo Sergio Pinheiro and Executive Secretary Santiago A. Canton as Delegates before the Court, and Ariel Dulitzky, Débora Benchoam and Lilly Ching as legal advisors.

20. On August 9, 2004, the Secretariat of the Court (hereinafter "the Secretariat"), once the application had been preliminarily examined by the President of the Court (hereinafter "the President"), served the application and its appendixes on the State, and notified it of the term within which it was to answer the same and appoint its agents in the proceedings. On that same date, pursuant to the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat served the application upon the organizations appointed as representatives of the alleged victims and their next of kin, on CEJIL, on the Episcopal Vicarship and on *COFAVIC*, and informed them that a term of two months had been set for them to file their brief containing requests, arguments, and evidence (hereinafter the "brief containing pleadings and motions").

21. On September 23, 2004, the State appointed María Auxiliadora Monagas as regular agent.

22. On October 8, 2004, the representatives submitted their brief containing pleadings and motions. In addition to what the Commission had stated in the application (*supra* paras. 1 to 7), the representatives requested the Court to declare that the State was responsible for the violation of the Convention as alleged by the Commission in relation to Article 2 thereof and to determine whether the State had violated the "right to the truth [...] established in Articles 8, 13, 25 and 1(1) of the Inter-American Convention," and the rights enshrined in Articles I(a), I(b), X and XI of the Inter-American Convention on Forced Disappearance of Persons and Articles 3, 5 and 8 of the Inter-American Convention to Prevent and Punish Torture.

23. The State failed to submit an answer to the application and its comments on the brief containing pleadings and motions.

24. On May 25, 2005, the President issued an Order requiring Mr. Carlos Paz, a witness proposed by the Commission and the representatives, Messrs. Mrs. Gisela Romero, Mrs. Raquel Romero, Edgar Román Arias, Alfredo Vásquez, Oswaldo Domínguez and Raúl Cubas, witnesses proposed by the representatives, and Messrs. Jesús España-Reyes, Luis Díaz-Curvelo and Mrs. Vanessa Davis, witnesses proposed by the State, to forward their testimonies through affidavits. Furthermore, in said Order, the President summoned the Inter-American Commission, the representatives and the State to a public hearing to be held at the seat of the Inter-American Court as from June 27, 2005, to hear the final oral arguments on the merits and reparations, costs and expenses in the instant case, as well as the testimonies of the witnesses and expert witnesses proposed by the Inter-American Commission, the representatives and the State (*infra* para. 26). In such Order, the President also informed the parties that their term for submitting their final written arguments regarding the merits of the case and the reparations and costs and expenses would expire on July 28, 2005.

25. On June 14, 2005, the representatives submitted the testimonies and the reports rendered through affidavits as requested by the President (*supra* para. 24).

26. On June 27 and 28, 2005, the Court held the public hearing at which there appeared: a) for the Inter-American Commission: Susana Villarán de la Puente, Delegate; Santiago Canton, Delegate; Lilly Ching, Advisor and Víctor H. Madrigal-Borloz, Advisor; b) for the representatives: Gilma Tatiana Rincón-Covelli, counsel for CEJIL; Ana Aliverti, counsel for CEJIL; Liliana Ortega, counsel for COFAVIC; Mao Santiago, counsel for COFAVIC; José Gregorio Guarenas, counsel for the Episcopal Vicarship and Carlos Ayala-Corao, counsel for the Episcopal Vicarship; and c) for the State: Nora Uribe-Trujillo, Ambassador; María Auxiliadora Monagas, Agent; Esluve Sosa-Carrero, Advisor; José Alejandro Terán, Advisor; Raquel del Rocío Gásperi-Arellano, Advisor and Jorge Rasquín-M., Advisor. There also appeared Mrs. Alejandra Josefina Irate de Blanco, Mrs. Nélide Josefina Fernández-Pelicie, witnesses proposed by the Commission and the representatives; Mr. Edgar López, witness proposed by the representatives and Mr. José Rossel-Senhenn expert witness proposed by the representatives.

27. On June 28, 2005, during the abovementioned public hearing, the State proceeded to read a brief dated on that same day, wherein it stated, *inter alia*, the following:

[t]his being the occasion set by the Court for a hearing on the merits and reparations in the *Case of Oscar José Blanco-Romero et al.*, with the permission of the Court as due, the State appears before this Honorable Court to acquiesce to the claims asserted in the application filed against the State of Venezuela and, in good faith, to acknowledge its international responsibility in the instant case, all of which in furtherance of the principle established in Article 53(2) of its Rules of Procedure and, to that effect, to offer a friendly settlement before the Inter-American Commission on Human Rights and the petitioners.

28. During the public hearing, after the acknowledgment of responsibility made by the State, the Commission stated, *inter alia*, the following:

Their being full acquiescence, there should be no contested issues, neither in fact nor in law; however, a dispute does arise from the brief submitted by the State.

Therefore, the Commission considers that the brief submitted by the State should be materially amended in order to satisfy the claims asserted in the application filed by the Commission and, were this not possible, the instant case should follow the ordinary course of proceedings [...]

29. With regard to the acknowledgment made by the State, in the public hearing the representatives stated, *inter alia*, the following:

[w]e arrived at the conclusion that [the brief submitted by the State (*supra* para. 27)] does not amount to an acquiescence from the legal perspective in Article 53(2) of the Rules of the Court and in its case law, since it makes allegations that expressly contest the claims asserted in the application filed by the Inter-American Commission and in the petition filed by the representatives of the victims

[...]

We request that the brief forwarded by the Agent of the Illustrious State of Venezuela be dismissed as an acquiescence and, therefore, as it does not amount to an acquiescence, we request the Court to proceed to deliver a Judgment on the merits and reparations.

30. During the aforementioned public hearing, after the comments made by the Commission and the representatives on the acquiescence by the State to the claims, the State repeated the contents of the brief dated June 28, 2005 (*supra* para. 27) and stated that it "fully acquiesced," both with the facts and with the claims asserted by the parties.

31. Immediately following the above-mentioned statements by the Commission, the representatives and the State, Venezuela expressly pointed out, in response to the questions put to it by the President, that: a) it accepted the facts contained in the application and the brief containing pleadings and motions; b) it accepted them "in full"; and, c) it accepted them along with the claims asserted thereupon.

32. On June 28, 2005, after the acquiescence made by the State had been introduced, the Court issued an Order wherein it decided to admit the acknowledgment of international responsibility effected by the State, that there were no longer any facts in dispute and that the proceedings on the case should go on.

33. On July 28, 2005, the Commission, the representatives and the State submitted their final written arguments.

34. On October 4, 2005, the Secretariat, following the instructions of the President, requested the representatives to submit, as evidence to facilitate adjudication of the case, under Article 45 of the Rules of Procedure, a copy of the birth certificates or identity cards of the following persons: Orailis del Valle Blanco, Aida Benirgia Hernández-Paz, Nérida Marina Hernández-Paz, Mirna Esperanza Hernández-Paz, Aleidy Maritza Hernández-Paz, Brizania Hernández-Paz, Reina Alejandra Antune-Paz, Ramón Alberto Paz, Carlos Paz, Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández-Rivas and José Daniel Rivas-Martínez.

35. On October 18, 2005, the representatives forwarded to the Court the evidence to facilitate the adjudication of the case requested on October 4, 2005, and reported it was impossible to submit the identity card of Mrs. Brizania Hernández-Paz, because "it had been very difficult for her next of kin to reach her."

V Evidence

36. Before examining the evidence received the Court will state, in the light of the provisions set forth in Articles 44 and 45 of the Rules of Procedure, a number of points arising from precedents established in the Court itself, and applicable to the instant case.

37. Evidence is governed by the adversary principle, which embodies due respect for the parties' right to defense. This principle underlies Article 44 of the Rules of Procedure, inasmuch as it refers to the time when evidence must be received, so that equality among the parties may prevail.¹

38. In accordance with Court practice, at the beginning of each procedural stage, the parties must state, at the first opportunity granted them to do so in writing, the evidence they will tender. Furthermore, the Court or the President of the Court, exercising the discretionary authority under Article 45 of the Rules of Procedure, may ask the parties to supply additional items, as evidence to facilitate adjudication of the case, without thereby affording a fresh opportunity to expand or complement their arguments, unless by express leave of the Court.²

39. The Court has also pointed out before that, in taking and assessing evidence, the procedures observed before this Court are not subject to the same formalities as those required in domestic judicial actions and that admission of items into the body of evidence must be effected paying special attention to the circumstances of the specific case, and bearing in mind the limits set by respect for legal certainty and for the procedural equality of the parties. The Court has further taken into account international precedent, according to which international Courts are deemed to have authority to appraise and assess evidence based on the rules of a reasonable credit and weight analysis, and has always avoided rigidly setting the *quantum* of evidence required to reach a decision. This criterion is specially valid regarding international human rights Courts, which, for the purpose of the determination of the international responsibility of a State for the violation of the rights of a person, are flexible in the assessment and weighing of the evidence submitted for their consideration, regarding any incumbent matters of fact, following the rules of logic and based on experience.³

40. Based on the foregoing, the Court will now proceed to examine and assess the body of evidence presented in the instant case in the light of the applicable legal framework.

A) DOCUMENTARY EVIDENCE

¹ Cf. *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 71; *Case of Raxcacó-Reyes*. Judgment of September 15, 2005. Series C No. 133, para. 34; and *Case of Gutiérrez-Soler*. Judgment of September 12, 2005. Series C No. 132, para. 37.

² Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 72; *Case of Gutiérrez-Soler*, *supra* note 1, para. 38; and *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 82.

³ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 73; *Case of Raxcacó-Reyes*, *supra* note 1, para. 35; and *Case of Gutiérrez-Soler*, *supra* note 1, para. 39.

41. The Commission and the representatives submitted the statements by witnesses and the reports by expert witnesses through affidavits, as ordered by the President on May 25, 2005 (*supra* para. 24). Hereinbelow, the Court summarizes the aforementioned statements:

a) Witness proposed by the Inter-American Commission and the representatives

1. Carlos Paz, uncle to Roberto Javier Hernández-Paz

On December 23, 1999, five or six individuals, wearing camouflage outfits, entered the witness' home and took his nephew, Roberto Javier Hernández-Paz, to the Courtyard, where one of the men took out a gun and shot him in the leg. The men carried the witness' nephew into the street, where a second shot was fired. The witness has never seen his nephew again and stated that he thinks about him every night. The witness wishes justice to be done, and that the authorities investigate and find out where his nephew's body is, since the lack of information about the investigation has caused him to be in daily woe.

b) Witnesses proposed by the representatives

2. Gisela Romero, mother to Oscar José Blanco-Romero

The witness lived next door to her son, Oscar José Blanco-Romero. On December 18, 1999, the witness went to Chuspa in search of a safe place, for heavy rains had affected her home. On December 23, 1999, she learned that her son had been detained on December 21 of 1999. Together with Alejandra, Oscar José Blanco-Romero's wife, she searched for him at prisons, at the international airport and at police stations, and for his body at the morgue; however, he was never found, and she pointed out that neither "his clothes nor his shoes" have appeared.

Oscar José Blanco-Romero lived with his two sons and his two nephews. The latter currently live with Alejandra, Oscar's wife, and "they are like his own sons, because they have lived with Oscar since they were newborns."

She was financially supported by her son Oscar, who was a mason, a mechanics assistant, and "managed to do a little bit of everything." Moreover, she is "heartbroken," she suffers very much, "waits for Oscar day and night, [and] never loses hope that [her] son will appear some day." She hopes justice will be done and that those responsible provide information on her son's whereabouts, or at least on the location of his mortal remains.

3. Raquel Romero, aunt to Oscar José Blanco-Romero

From her cousin's house she saw when army members entered, by force, the house of her nephew, Oscar José Blanco-Romero, pulled him out of his residence, handcuffed him, and delivered him to the *DISIP*, which had already arrived at the

place. She has not received any information whatsoever about her nephew after his detention.

4. Edgar Román Arias, friend to José Francisco Rivas-Fernández

He was held at the same place where José Francisco Rivas-Fernández was, but has no knowledge about the circumstances in which his friend was detained.

5. Alfredo Enrique Vásquez-Loureda, legal representative of Mrs. Alejandra Josefina Iriarte de Blanco in the criminal proceedings regarding the forced disappearance of her spouse, Mr. Oscar José Blanco-Romero

The delays and irregularities of the criminal proceedings regarding the forced disappearance of Mr. Oscar Blanco-Romero were evident. The *DISIP* did not efficiently collaborate to relieve the accused parties from their police duties for the duration of the criminal proceedings against them. Judicial authorities also acted in a dilatory manner. Mrs. Alejandra Josefina Iriarte de Blanco's right to be heard was violated during the proceedings in which he represented her, and so was his right to intervene on her behalf, in spite of his having duly evidenced he was authorized to do so. Up to this date, nobody has been convicted for Mr. Oscar José Blanco-Romero's disappearance.

6. Oswaldo José Domínguez-Florida, Thirtieth National Prosecutor with full federal prosecuting jurisdiction

In August 2001, he was commissioned to intervene in the investigation conducted by the Office of the General Prosecutor regarding the disappearance of Mr. Oscar José Blanco-Romero. He participated in the preliminary hearing held at the Fifth Court in Vargas State, where serious violations of the victim's rights and due process rules were committed. On account of the foregoing, he filed a formal report against the judge in charge of said Court, as well as an appeal against the Court decision delivered by said judge dismissing the accusation. However, the Court of Appeals for Vargas State, instead of rectifying the mistakes, regarding both substantive and procedural aspects, validated them and confirmed dismissal of the accusation by the prosecution. Consequently, he filed a petition for a writ of *amparo* (remedy for the protection of constitutional rights) before the Constitutional Chamber of the Supreme Court of Justice, which declared it admissible and ordered the accusation to be rectified.

7. Raúl Cubas-Lisandro, member of the *Programa Venezolano de Educación-Acción en Derechos Humanos* (Venezuelan Program of Education-Action on Human Rights) (*PROVEA*)

In 1999, he was General Coordinator of *PROVEA*. His duties were to lobby and monitor the proposals regarding human rights brought before the Constituent Assembly. During his involvement in said organization, he became familiar with the claims and field investigations regarding the possible violations of human rights committed after the landslide that occurred in Vargas State in December of 1999.

PROVEA was the organization that initially supported the next of kin of Roberto Javier Paz and that assisted them in the domestic proceedings on the case.

Due to his contact with victims and witnesses, he learned that the army and the *DISIP* had incurred in several irregularities: entry into premises without judicial warrants, arbitrary detentions, tortures or mistreatment, and, in some cases, executions and disappearances.

a) Expert witnesses proposed by the Inter-American Commission and the representatives

1. Magdalena López de Ibáñez, psychologist

In cases of forced disappearance, the next of kin, who should also be considered as victims, are deprived of the physical and psychological security that build up both their identities as persons and their life projects. Deep pain, impotence, wrath, as well as fear and distrust are consequences it is very common to observe. Such kind of effects form a set of "disabling symptoms" that affect working, emotional and social life in general.

In the cases where the victim's next of kin are hopeful that their beloved one is still alive, they suffer more complex psychological experiences, since considering their loved ones to be dead without being certain about it, is to kill them symbolically, something which generates both guilt and ambivalence. Another recurring source of pain and grief is the impossibility of carrying out any funeral rites.

The victim's next of kin, in this case, manifested pain and suffering in different ways. For example, the young boy Oscar José Blanco-Iriarte, son of Oscar José Blanco-Romero, when examined, showed "selective mutism", sleeping and eating disorders, and difficulties at school, which had started after he had witnessed his father's detention and the acts of physical violence against him." Moreover, he denies his father's death without even accepting it as a possibility.

As for Alejandra Josefina Iriarte de Blanco, Oscar José Blanco-Romero's wife, she seemed deeply depressed, and suffered from insomnia, changes in eating habits, affective flattening, low self-esteem, and a feeling of non-existence of the future. For the first two years following her husband's disappearance, she continued to suffer from a state of depression and feared that something might happen to her. She is still anguished to know "what happened and why?" and demands answers that would allow her to process her mourning completely.

Nélida Marina Fernández-Rivas, mother to Francisco Rivas, shows deep perturbation of her psychological condition, set in motion by the traumatic events, which has not evolved over time. She does not accept the possibility of her son being dead and hopes she will have him back or receive "a letter or a sign" from him. She also shows anger and aggressiveness which she orients towards her other children and the rest of the family, for which reason family dynamics show significant perturbations. It is mandatory that Mrs. Fernández receive medication and undergo psychotherapy.

Ms. Teodora Paz de Hernández, mother to Roberto Javier Hernández-Paz, as a consequence of her son's detention and due to the lack of information regarding his

whereabouts, suffered a severe depression, characterized by significant changes in some of her body's basic functions, loss of interest in daily activities and interpersonal relations, feelings of guilt and extreme anger, and incapability to concentrate and make decisions. She has not been able to go through with her mourning appropriately.

In all the cases under study, the effects observed in all family members were extreme pain, impotence, defenselessness, anger, fear, and distrust. All of them showed they felt unprotected and vulnerable, resulting from the evidence that the individuals and institutions with the social function of protecting were precisely the ones that became victimizers.

The life projects of the victim's next of kin have been severely impaired, for which reason is necessary to have the cases judicially elucidated, as well as those responsible punished, for the family to start healing and overcoming their mourning process.

2. Jesús María Casal-Hernández, attorney at law

The expert witness referred to the evolution of *habeas corpus* in the Constitution of Venezuela, as well as its scope of application and characteristics, the parameters of which are established in the *Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales* (*Amparo* (remedy for the protection of constitutional rights) of Constitutional Rights and Guarantees Act) of 1988, which includes a specific title dealing with the "*amparo* (remedy for the protection of constitutional rights) of personal liberty and security." This Act clearly establishes the object guaranteed by this special remedy: the right to personal liberty and security.

Venezuelan legislation establishes that *habeas corpus* entails the obligation to immediately place the detainees under the custody of a competent Court, whereby it is assumed that they will be taken before judicial authorities. This requirement derives from International Law on Human Rights, which includes Advisory Opinion Number Eight the Inter-American Court addressing the application of said remedy in emergency situations, and in which the importance of *habeas corpus* as a useful instrument for judicial verification of a detainee's condition by bringing him or her before a judge is deemed essential.

The crime of forced disappearance of persons is not more than an aggravated or prolonged deprivation of liberty, in which it is not possible to obtain official information about the whereabouts of the affected person. Cases of disappearance are not clearly covered by the legislation in force, but they may be disposed of by means of an appropriate constitutional construction, as it has been done by the Constitutional Chamber of the Supreme Court of Justice.

In this case, the Courts should have granted *habeas corpus* with respect to all the persons who had been subject to forced disappearance, should have conducted an investigation to find out the whereabouts of the affected individuals, so as to order the detainees to be immediately brought before the Court, to be examined physically, and should have ordered their release and any other pertinent action. By rejecting said legal remedy straight away, the effective and timely protection, provided for by the Constitution, was denied.

b) Expert witnesses proposed by the representatives

3. René Molina-Galicia, attorney at law

Despite the fact that one of the main objectives of the Constitution of 1999 was to have an independent and impartial judiciary, and even though the principle of division of powers has been established, in Venezuelan practice, a judge is a mere "official", lacking independence and impartiality. In fact, a great number of judges are in office without having complied with the requirements established in the Constitution itself.

In Venezuela, the independence of the judiciary is merely formal. The lack of independence and impartiality in the judiciary, which are fundamental elements of any judicial system, has become increasingly more evident. Both of these elements are disappearing due to a strategy specifically designed to make the judiciary participate in the suppression of the most basic public liberties in Venezuela.

4. Fernando M. Fernández, professor of International Criminal Law and Human Rights

The expert witness referred to the regulation and case law development of the crime of forced disappearance of persons in Venezuelan domestic legislation. In this regard, he indicated that the Venezuelan Constitution of 1999 recognized forced disappearance as a critical violation of human rights. The Constitution prohibits any public authority to practice, permit or tolerate any forced disappearance of persons. Moreover, it establishes that any author, accomplice or accessory of the crime of forced disappearance of persons shall be punished. In any case, one of the transitory provisions of the Constitution instructs that the Criminal Code be amended to include the crime of forced disappearance of persons, and that, in the meantime, the Inter-American Convention on Forced Disappearance of Persons should be applied as far as possible.

The crime of forced disappearance was statutorily described in October 2000 by means of the *Ley de Reforma Parcial del Código Penal* (Criminal Code Partial Reform Act). The punishment provided for therein is 15 to 25 years' imprisonment. The crime of forced disappearance shall be deemed continuous as long as the whereabouts of the victim remain unknown. The criminal action resulting from this crime, as well as its punishment, cannot be barred by the statute of limitations, and the individuals responsible for it shall not enjoy any benefit whatsoever, including both pardon and amnesty.

The expert witness stated that Venezuela ratified the Statute of Rome, in which the forced disappearance of persons is considered to be an international crime.

As for the regulation of the crime of forced disappearance of persons, the expert witness stated that Venezuela meets most of the requirements established in international standards. However, there are some shortcomings in the statutory description of the crime of forced disappearance of persons, such as the following: (a) it does not expressly prohibit preliminary hearings on the merits or any other procedural privilege when the individual being investigated is a civil or military high-

ranking official; (b) it deems the crime continuous, in spite of the fact that the conduct is permanent; (c) it circumscribes the criminal conduct to illegitimate detentions, when it is possible that a detention that is legitimate at the outset results in the forced disappearance of the detainee; and (d) it establishes the sentence of imprisonment in a penitentiary facility, which entails forced labor, cell confinement and civil interdiction, all of which violate the principles of fair trial and fair punishment.

As for Venezuelan case law development, the expert witness indicated that, up to the present date, the Criminal Chamber of the Supreme Court of Justice has not adopted a position on the crime of forced disappearance of persons.

5. Claudia E. Carrillo-R., psychologist

The expert witness referred to the post-traumatic effects suffered by the victims' next of kin. The natural disaster which occurred on December 15 and 16, 1999 is relevant for these families, since it explains the state of vulnerability they showed when the events took place.

As for Gisela Romero, Oscar José Blanco-Romero's mother, the loss of her son was a traumatic event, charged with extreme grief, uncertainty, helplessness and psychological handicap. She feels a great deal of sadness, anger and guilt, which have grown worse due to the lack of information regarding Oscar's whereabouts, to impunity, and to investigation delays. She shows symptoms of depression, which are characterized by feelings of worthlessness and a permanent feeling of grief and irritability. She hopes to find her son and expects to receive reparations for the damages resulting from his six-year absence. She also has difficulties to fall asleep, and to express her feelings and thoughts regarding her son's whereabouts. Mrs. Romero would rather imagine Oscar being detained somewhere in the country than to consider him to be dead. The latter would mean to endure a heavy blow from which she would not be able to recover.

As for Alejandra Blanco, Oscar José Blanco-Romero's wife, she finds it difficult to talk about what happened and to express details about the events. During the tragedy, she lost track of time and, found herself disoriented and incapable of making decisions. She witnessed Oscar's violent detention and the destruction of her property and personal belongings. She feels guilty for not having been able to prevent the detention from occurring. Moreover, she has difficulties to fall asleep, she feels lonely and empty, and keeps everything to herself in order not to pass on her pain to her children, who remember their father and hope that he will return home. Even her older daughter, Aleoscar, does not accept the idea that her father is dead, and therefore avoids talking about it.

Ms. Teodora Paz de Hernández shows depression symptoms, such as sadness, negative thoughts, and recurrent memories related to her son's disappearance, contained anger, and difficulty to relate to her family and her social environment. She also shows difficulty to express and remember details about the events and the information regarding her family, which is a common cognitive alteration people suffer from after having experienced deep traumatic and stressful situations. Since her son's disappearance, she has difficulties to fall asleep, she has lost her appetite, and she frequently bursts into tears. There are times in which she accepts that her son could be dead and she shows resignation, but there are other times in which she

feels that he is alive and she forces herself to take up the search once again. She has even had dreams in which he came back, which she interprets as a sign to keep faith in the search. She experiences anxiety onsets that keep her from relaxing for most part of the day and that give her severe neck pain. She has lost interest in things that used to give her pleasure.

Ms. Nélide Fernández shows symptoms of depression, such as emptiness, anger, sadness and pain, which she tones down by strenuous physical exercise, since she works without resting in order to keep herself busy and avoid thinking. She has difficulties to fall asleep, has gained weight, suffers from headaches, has difficulties moving her legs, and suffers from gastric disorders. She shows mental absences, during which she reacts with anxiety to stimuli that remind her of the flood she was in and of her son's disappearance. She fears that something catastrophic might happen again to her family. She has suffered from suicidal ideation. Nélide Fernández has sought professional help. The anger generated by the events and by the lack of information makes her intolerant when relating to the rest of the family and to her coworkers.

The three families have experienced changes in their dynamics. As for Oscar Blanco's family, the victim was in charge of the affective and financial support of his home, his mother and his siblings. The absence of Mr. Oscar Jose Blanco-Romero has forced his wife to look for a job. His eldest daughter, Aleoscar, has taken up the role of supporting the family and she is the affective mainstay of her mother and siblings. As for the family of Roberto Javier Hernández-Paz, Mrs. Teodora has not been able to accept the void left by her missing son. She describes her interpersonal relations as limited, and opts by keeping things to herself, which has resulted in problems with her partner. These families' life projects have been affected, especially those of the parents, siblings, partners sons and daughters.

In cases of forced disappearance of persons, the lack of elucidation of the facts and of the location of the remains deepens the stressful and traumatic situation experienced by their next of kin, as well as the feeling that the disappeared person was subject to violent acts.

The elucidation of the facts would allow the victim's next of kin to understand the events that took place. These individuals have been waiting for credible news that would allow them to fill in the information void with which they have been dealing for the past six years. They also demand to know the truth about the whereabouts of their next of kin, as well as the certification of their physical and psychological condition. In the event that they be not alive any longer, their next of kin hope they have a funeral. Moreover, they hope that those guilty are punished and that they acknowledge the damage they inflicted.

The measures leading to the emotional rehabilitation of the victim's next of kin are many, such as the narration of the truth, the opportunity of being heard, the recovery of the mortal remains, justice, as well as adequate psychological and medical care, all of which would allow the family to handle the pain, the sadness, the stress, and the physical consequences such worries have generated in them.

B) TESTIMONIAL AND EXPERT EVIDENCE

42. On June 27 and 28, 2005, the Court held a public hearing to receive the statements by the witnesses and the reports by the expert witnesses proposed by the Inter-American Commission and by the representatives. The Tribunal will now summarize the relevant parts of said statements and expert reports.

a) Witnesses proposed by the Inter-American Commission and the representatives

1. Alejandra Josefina Iriarte de Blanco, wife to Oscar José Blanco-Romero

On December 21, 1999, when "army officers" entered her home, located in Vargas State, she was in the company of her husband, Oscar José Blanco-Romero, her mother and her four children. The soldiers arrived at the house "firing their guns", and they "smashed everything" in the house. She saw them arresting her husband and she concentrated on taking care of the children, who were agitated, crying and asking whether these men had shot their father dead. She is positive she saw Oscar José handcuffed and beaten. That night, she could not stay at home because everything had been destroyed.

After her husband's disappearance, she was the subject of harassment by "an army intelligence unit", intended to discourage her from searching for her husband.

On December 23, 1999, she began to search for her husband. She and her mother-in-law went to an army operations center, for she thought her husband was being held there. However, she did not find him on the records or lists of arrested persons. Some army officers told her that she should go to the office of the *DISIP*, for they turned arrested persons over to that agency. The witness indicated that she went to the *DISIP* operations center, but there she was not given any information whatsoever. The officer that she spoke to at the *DISIP* told her that she should go to Maiquetía airport, for there where some people held in custody there. The following day, she set out to the airport and walked for many hours. At one point, her feet failed her for walking so much, as the sand kept getting into her shoes. She walked by many rivers, where she saw a lot of dead people and animals. At the airport, they did not provide any information regarding her husband's whereabouts and his arrest was not registered on any record or list. She could not get any information from *DISIP* headquarters, nor could she obtain any information on Oscar José at the auxiliary morgue located in the airport.

After this search, she contacted the organization called *COFAVIC (Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989)* (Committee of Next of Kin of the Victims of the Events of February-March 1989), where she was called for an interview concerning the events, and where she received assistance to file several complaints. She filed for a remedy with the courts for Vargas State on January 28, 2000, which was dismissed as there was allegedly no subject-matter for the Court to determine.

The witness has been searching for her husband for six years and none of the authorities or officials approached have provided any useful information leading to find him.

The lives of the witness and her children have changed since the disappearance of her husband, who supported the family financially. Oscar José Blanco-Romero was a "millstone maker, he also sold food and had a small workshop where he repaired electric appliances." She had two children with Oscar José Blanco-Romero and has raised her niece and nephew since they were little, so she regards them as her own children. Her elder children help in the food shop, which is her sole source of income, and one of her younger children has problems at school due to the trauma caused by his father's disappearance. One of her daughters is an outstanding athlete and, due to her husband's absence, every time her daughter takes part in an international competition, the witness has to seek authorization from the Courts so that her daughter may leave the country, for she is a minor requiring authorization from her parents. Her son Edwar remembers everything that happened to his father and is receiving psychological help from the *COFAVIC (Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989)* (Committee of Next of Kin of the Victims of the Events of February-March 1989).

The witness and her children await Oscar's return in hope. They are very sad by the lack of elucidation of the events and are waiting and hoping to get justice done and to know why Oscar was taken away.

2. Nérida Josefina Fernández-Pelicie, mother of José Francisco Rivas-Fernández

She gave an account of the events of December 29, 1999, when her son was arrested, beaten and disappeared by army members. Her husband, one her children and herself tried to control the military men so that they would stop beating him. She heard one of the army members tell another one to kill him, since he was a "dog." The Rivas Fernández family did all they could to prevent the military from taking him away; in spite of them, they took off his shoes, gagged him and took him away.

The family of José Francisco Rivas spent the following day looking for him in other areas, going through the mud to hospitals, jails or military centers. In one of these places, they were informed that their son had been turned over to the *DISIP*. However, this agency kept informing them that they did not have any record showing such person to have been arrested.

Her son supported her financially; he used to do small construction and paint jobs and some odd jobs she got from the people in the neighborhood.

In the search for her son, she has received help from the *Vicaría* (Vicarship) and the *COFAVIC (Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989)* (Committee of Next of Kin of the Victims of the Events of February-March 1989), who have also provided her psychiatric help, although she pays for her medicines herself. She continues searching for her son and hopes to find him. She wants to recover "at least a button of his shirt, a finger from his hand, his teeth, whatever is left." She fervently wishes to have at least the possibility to bury her son and have a place to lay flowers or light a candle for him. She complains about the lack of investigation into the disappearance of her son. Ever since her son disappeared she has been feeling lonely, sad, and desolate. Her husband has composed a song that he hopes to play to his son when he is found. The family hopes justice to be done.

b) Witness proposed by the representatives

3. Edgar López, justice reporter

He covered the 1999 natural disaster in Vargas State. All governmental security forces were there. Upon hearing the news about widespread looting, security forces made use of additional powers to maintain public order. He learned about the existence of "criminal lists," which were no more than information provided by the neighbors themselves. That is how he learned about the case of Oscar José Blanco-Romero. He got to know about extrajudicial executions, and even about the possibility the bodies might have been thrown into the sea.

The reaction of several national authorities, including the President of Venezuela, to the different reports and complaints concerning human rights violations was to disqualify them.

a) Expert witness proposed by the representatives

1. Jorge Rossel Senhenn, attorney-at-law

On October 20, 2000, Venezuela criminalized forced disappearance, the statutory definition of which, among others, prohibits justification on the grounds of there being a state of emergency and classifies the crime as a continuing offense.

In cases of forced disappearance, those in charge of determining the outcome of petitions for writs of *habeas corpus* limit themselves to accepting the information contained in the official letter sent them by the agency that allegedly has the person in custody. However, Courts should take the necessary action to find the person, and receive the testimony of eyewitnesses. This does not occur in practice, for the usual procedure consists in forwarding official letters to the agencies where the person may be held in custody in order to make a decision on the basis of the information received.

In Venezuela, there are cases of illegal arrests either because they have been made in respect of persons that have not been caught in the act of committing an offense or without a warrant. Venezuelan law provides for the punishment of officers who violate the procedures laid down for the arrest and delivery of persons; that is, the crime of illegal deprivation of liberty.

One suitable remedy to prevent forced disappearance of persons is the writ of *habeas corpus*, which entails the search of the person in custody. If an action for a writ of *habeas corpus* is instituted and the person is not found or there are no elements indicating that such person is at a specific place, instead of closing the case, an inquiry for forced disappearance should definitely be opened.

Documentary Evidence Assessment

43. In the instant case, as in others,⁴ the Court recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural time or as evidence to facilitate adjudication of the case pursuant to Article 45 of the Rules of Procedure, which have not been disputed nor challenged, and whose authenticity has not been questioned.

44. In the instant case, the State offered expert testimony on April 21, 2005; that is, over fourth months after the expiration of the time period for filing the answer to the application, which is the opportunity to tender evidence, as provided by Article 44(1) of the Rules of Procedure. This testimony was challenged by the Commission as well as by the representatives. However, in the Order dated May 25, 2005, the President considered helpful, in accordance with Article 45 of the Rules of Procedure, to hear the testimony of four people proposed by the State; therefore, the President ordered that three of them render sworn statements before a public official whose acts command full faith and credit—and that the fourth person render testimony at the public hearing (*supra* para. 24)— as lay witnesses rather than as expert witnesses insofar as their testimony was related to questions of fact involved in the instant case. In spite of the foregoing, the State failed to produce such sworn statements.

45. Concerning the sworn statements given before a public official whose acts command full faith and credit by witnesses Carlos Paz, proposed by the Commission and the representatives, and Gisela Romero, Raquel Romero, Edgar Román Arias, Alfredo Enrique Vásquez-Loureda, Oswaldo José Domínguez-Florida and Raúl Cubas-Lisandro, proposed by the representatives, as well as by expert witnesses Jesús María Casal-Hernández and Magdalena López de Ibáñez, proposed by the Commission and the representatives, and Fernando Fernández, Claudia E. Carrillo R. and René Molina-Galicia, proposed by the representatives (*supra* para. 41), the Court admits them to the extent they conform to the subject-matter set forth in the Order of the President issued on May 25, 2005 (*supra* para. 24) and recognizes their evidentiary value and assesses them as a whole with the rest of the body of evidence, applying thereto the standards of reasonable credit and weight analysis and taking into account the acquiescence of the State to the claim. As this Court has established, the statements by the alleged victims and their next of kin may not be assessed separately, insofar as they have a direct interest in the instant case; rather, they must be assessed as a whole with the rest of the body of evidence in the case as they may provide helpful information about the alleged violations and their consequences.⁵

46. The Court finds that the documents submitted by the State at the public hearing (*supra* para. 27), which have not been challenged or contested and whose authenticity has not been questioned, are helpful; therefore, the Court incorporates them to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.⁶

⁴ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 77; *Case of Raxcacó-Reyes*, *supra* note 1, para. 38; and *Case of Gutiérrez-Soler*, *supra* note 1, para. 43.

⁵ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 81; *Case of Raxcacó-Reyes*, *supra* note 1, para. 39; and *Case of Gutiérrez-Soler*, *supra* note 1, para. 45.

⁶ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 87; *Case of Raxcacó-Reyes*, *supra* note 1, para. 41; and *Case of Gutiérrez-Soler*, *supra* note 1, para. 44.

47. The Court considers the documents submitted by the representatives in their written closing arguments helpful for the adjudication of the instant case, inasmuch as they have not been disputed or challenged, nor has their authenticity or truthfulness been questioned. Therefore, they are incorporated into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.⁷

48. As regards the press copy submitted in the application, the brief containing pleadings and motions and the written closing arguments, this Court has found that they could be assessed to the extent they give an account of publicly available and well-known facts or statements by State officials, or they corroborate aspects relating to the instant case.⁸

Testimonial and Expert Evidence Assessment

49. As part of the expert evidence received on April 21, 2005 (*supra* para. 44), the State offered the testimony of Raquel Rocío Gásperi-Arellano. Taking into account the objections raised by the Commission and the representatives thereto, the President, in Order dated May 25, 2005, provided that Gásperi-Arellano appear at the public hearing to be held as from June 25, 2005 to render testimony as a lay witness rather than as an expert witness, given that the purpose of the hearing was related to certain points of fact raised in the instant case. On June 8, 2005, Venezuela submitted the list of persons that would represent the State at the aforementioned hearing, in which Raquel Rocío Gásperi was included. Therefore, the representatives pointed out that Gásperi-Arellano could not act in the double capacity of witness and agent of the State. In view of this situation, the Court issued an Order on June 16, 2005, stating that the last decision expressed by the State was for Gásperi-Arellano to be part of the delegation that would represent it at the public hearing; therefore, the Court decided that the abovementioned person was barred from giving testimony at such hearing.

50. Regarding the testimony given by the witnesses proposed by the Inter-American Commission and the representatives and the reports rendered by the expert witness proposed by the representatives (*supra* para. 42), the Court admits them to the extent they conform to the subject-matter set forth in the Order of the Court issued on May 25, 2005, and recognizes their evidentiary value, taking into account the acquiescence of the State to the claim. This Court believes that the statements made by Alejandra Josefina Iriarte de Blanco and Nélida Josefina Fernández-Pelicie must be assessed as a whole with the rest of the body of evidence in the case rather than separately since, being related to two of the alleged victims, they have a direct interest in the instant case.

VI Proven Facts

⁷ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 89; *Case of Raxcacó-Reyes*, *supra* note 1, para. 42; and *Case of Gutiérrez-Soler*, *supra* note 1, para. 46.

⁸ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 79; *Case of the Girls Yean and Bosico*, *supra* note 2, para. 96; and *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 119.

51. In view of the acknowledgment of responsibility made by the State (*supra* para. 27) and in accordance with the body of evidence in the instant case, the Court finds the following facts to have been proven:⁹

a) *Background*

51.1 On December 15, 16 and 17, 1999, heavy rains in Vargas State, Venezuela, caused rock and mud slides along the foothills of the Ávila hill, affecting the coastal areas of that region. On December 16, 1999, the *Asamblea Nacional Constituyente* (National Constituent Assembly) declared the state of alarm for the Federal District and eight states of the country and empowered the Executive to implement such measures as may be necessary to prevent further damage and address the needs of the population affected by the aforementioned disaster.

51.2 Due to the security situation affecting the region struck by the natural disaster, members of the Marine Corps, of the National Guard and of the Army were deployed in the area, as well as *DISIP* agents. In the course of taking the action ordered to restore public order, there arose some situations of human rights violations, such as the events in the instant case, which were perpetrated by certain members of the Army and the *DISIP*. In such context Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández were arrested and subsequently disappeared.

b) *Regarding Mr. Oscar José Blanco-Romero*

i) *Arrest and disappearance*

51.3 On December 21, 1999, at approximately 2.00 pm, a group of the 422nd Paratrooper Infantry Battalion "Colonel Antonio Nicolás Briceño" (hereinafter "Infantry Battalion 'Colonel Antonio Nicolás Briceño'") commanded by Lieutenant Federico Ventura-Infante, stormed the residence of Mr. Oscar José Blanco-Romero — located in the Valle del Pino neighborhood, Caraballeda village, Vargas State— who was in the company of his wife, his mother-in-law and his two children, as well as his niece and nephew that had come to live with the victim at a very early age. The members of the aforesaid group forced Mr. Oscar José Blanco-Romero to go out of the house.

51.4 That same day, after being arrested and beaten by members of the aforementioned group, Mr. Oscar José Blanco-Romero, of 37 years of age, was turned over, following orders by Lieutenant Colonel Francisco Antonio Briceño-Araujo, Commanding Officer of the Unit, to *DISIP* officers, who arrived at the place under the command of a Police Commander called "Roberto". Ever since that day, Mr. Oscar José Blanco-Romero's next of kin have not been able to obtain information on his whereabouts.

⁹ Paragraphs 51(1) and 51(36) of the instant Judgment deal with undisputed facts, which this Court finds to have been proved based on the acknowledgement of international responsibility made by the State.

51.5 On December 23, 1999, Alejandra Josefina Iriarte de Blanco, Oscar José Blanco-Romero's wife, accompanied by his mother, Gisela Romero, and children, began searching for the victim in different government agencies and offices, such as garrison 58 of the National Guard, the *DISIP* operations center, located in the Caraballeda golf course, the paratrooper operations centers stationed in said state, Maiquetía International Airport, and the "Helicoide", and the *DISIP* operations base in Caracas. In order to get to said international airport they had to walk, for several hours, a long way where they saw the corpses of the people who had died as a result of the natural disaster, which made the search even more distressing. However, they did not find the name of their relative in the official lists or records of persons held in custody in any of the aforementioned places.

51.6 On January 29, 2000, Major General Lucas Enrique Rincón-Romero, General Commander of the Army, by means of the official letter sent to the *Tribunal Quinto de Control del Circuito Judicial Penal del Estado Vargas* (Fifth Control Court of the Criminal Judicial Circuit for Vargas State), acknowledged that Mr. Oscar José Blanco-Romero had been arrested on December 21, 1999 by members of the Infantry Battalion "Colonel Antonio Nicolás Briceño" and immediately handed over to a unit of the *DISIP* (*supra* paras. 51(3) and 51(4)). However, on February 18, 2000, *DISIP* General Director Captain Eliezer Reinaldo Otaiza-Castillo, informed that the arrest of Mr. Oscar José Blanco-Romero was not registered neither "on the records nor in the report book" of the aforesaid agency.

ii) Domestic proceedings

51.7 Due to the disappearance of Oscar José Blanco-Romero, Mrs. Gisela Romero and Mrs. Alejandra Josefina Iriarte de Blanco filed the relevant complaint with the *Fiscalía Superior del Estado Vargas* (Office of the Senior Prosecutor for Vargas State) and with the *Cuerpo Técnico de Policía Judicial* (Judicial Police Technical Division), which was later reaffirmed on January 24, 2000 with the *Ministerio Público* (Office of the Public Prosecutor) by Mrs. Iriarte de Blanco.

51.8 On January 28, 2000, Mrs. Iriarte de Blanco filed a petition for a writ of *habeas corpus* regarding her husband with the *Tribunal Quinto de Control del Circuito Judicial Penal del Estado Vargas* (Fifth Control Court of the Criminal Judicial Circuit for Vargas State). On February 1, 2000, said Court dismissed the *habeas corpus* petition as "there [was] no subject-matter for the Court to determine," given that Oscar José Blanco-Romero "[was] neither legally nor illegally deprived [of liberty] by order" of the *DISIP*. In addition, the Court forwarded its decision to the *Fiscalía Superior del Estado Vargas* (Office of the Senior Prosecutor for Vargas State) so that the prosecutor might "order[ed] the measures leading" to elucidating the reported events.

51.9 On February 7, 2000, the record of the case was forwarded to the *Corte de Apelaciones del Circuito Judicial Penal del Estado Vargas* (Court of Appeals of the Criminal Judicial Circuit for Vargas State) (hereinafter "the Court of Appeals") to review "through the consultation mechanism" the decision handed down by the *Tribunal Quinto de Control* (Fifth Control Court) on the *habeas corpus* petition. On February 10, 2000, the Court of Appeals affirmed the aforesaid decision.

51.10 On May 15, 2001, the National Attorney General, Mr. Julián Isaías Rodríguez filed an action for review of the decision rendered by the *Tribunal Quinto de Control del Circuito Judicial Penal del Estado Vargas* (Fifth Control Court of the Criminal

Judicial Circuit for Vargas State). The *Sala Constitucional del Tribunal Supremo de Justicia* (Constitutional Chamber of the Supreme Court of Justice) dismissed the action for review on January 24, 2002 on the grounds that the *habeas corpus* was not the “effective means to locate, as it is necessary to do, a person who has[,] allegedly[,] illegally or illegitimately disappeared.”

51.11 On September 14, 2001, Oswaldo José Domínguez-Florida, Thirtieth Prosecutor for the Attorney General’s Office with Full Nationwide Jurisdiction, and Irma Pazos de Fuenmayor and Raquel del Rocío Gasperi-Arellano, Forty-fifth and Seventy-fourth prosecutors, respectively, for the Attorney General’s Office of the Metropolitan Area of Caracas filed a complaint with the *Juez de Primera Instancia en Funciones de Control de la Circunscripción Judicial Penal del Estado Vargas* (Control Court of First Instance of the Criminal Judicial Circuit for Vargas State) against Messrs. Casimiro José Yanes and Justiniano de Jesús Martínez-Carreño, *DISIP* officers, for the forced disappearance of persons, to the detriment of Messrs. Oscar José Blanco-Romero and Marco Antonio Monasterio-Pérez.

51.12 On September 6, 2002 the *Juzgado Quinto de Primera Instancia* (Fifth Court of First Instance), among other things, dismissed the action against Messrs. Casimiro José Yanes and Justiniano de Jesús Martínez-Carreño. In its decision, the *Juzgado Quinto* (Fifth Court) ruled that the evidence of the lineup identification performed during the investigation was inadmissible because it had been conducted in violation of the right to a fair trial of the accused. In addition, the Court dismissed the complaint because of formal defects, allowing the prosecutors to file an amended complaint, curing said defects, for the dismissal was without prejudice.

51.13 On September 12 and 13, 2002 respectively, the Thirtieth Prosecutor for the Attorney General’s Office with Full National Jurisdiction, and the Forty-fifth and Seventy-fourth prosecutors for the Attorney General’s Office of the Metropolitan Area of Caracas, as well as the representatives of the victims appealed the dismissal by the *Tribunal Quinto de Primera Instancia* (Fifth Court of First Instance). On October 17, 2002, the *Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Estado Vargas* (Court of Appeals of the Criminal Judicial Circuit of the Judicial District for Vargas State) “[d]ismissed the action for review [...] as regards the dismissal of the complaint filed by the prosecution” and [r]everse[d] the decision by the *Juzgado Quinto* (Fifth Court)[,...] declaring the lineup identification procedures null and void.”

51.14 On February 25, 2003, the Thirtieth Prosecutor for the Attorney General’s Office with Full National Jurisdiction filed an *amparo* (remedy for the protection of constitutional rights) with the *Sala Constitucional del Tribunal Supremo de Justicia* (Constitutional Chamber of the Supreme Court of Justice) against the decisions handed down by the *Juzgado Quinto de Primera Instancia* (Fifth Court of First Instance) and the *Corte de Apelaciones* (Court of Appeals). The representatives of the victim and of his next of kin filed a petition on February 26, 2003 for a joinder to such action. On February 11, 2004, the *Sala Constitucional* (Constitutional Chamber) dismissed the *amparo* (remedy for the protection of constitutional rights).

51.15 On May 11, 2004, the Thirtieth Prosecutor for the Attorney General’s Office with Full National Jurisdiction, and the Forty-fifth and Seventy-fourth prosecutors for the Attorney General’s Office of the Metropolitan Area of Caracas filed a complaint against Messrs. Casimiro José Yáñez and Justiniano de Jesús Martínez-Carreño, charging them as a perpetrator and as an accessory, respectively, with the crime of

Forced Disappearance of Persons. Such arraignment was forwarded to the *Juzgado Primero de Primera Instancia de Control del Circuito Judicial Penal del Estado Vargas* (First Control Court of First Instance of the Criminal Judicial Circuit for Vargas State).

c) *Regarding Mr. Roberto Javier Hernández-Paz*

i) *Arrest and disappearance*

51.16 On December 23, 1999, at approximately 7.30 pm, Mr. Roberto Javier Hernández-Paz, of 37 years of age, was at the residence of his uncle Carlos Paz, located in the Tarigua area, Caraballeda village, Vargas State, when a vehicle identified with the *DISIP* acronym parked in front of the house. Five officers got out of the vehicle and three of them waited in the garden while the other two entered the house without a search warrant and arrested Mr. Roberto Javier Hernández-Paz, who was dragged out of the house. Mr. Roberto Javier Hernández-Paz was injured with a firearm in front of his residence by *DISIP* agents, who got him inside the aforementioned vehicle and drove him away to an unknown destination. Since that date, the whereabouts of Mr. Roberto Javier Hernández-Paz have remained unknown.

51.17 On December 30, 1999, Aleidy Maritza Hernández-Paz, sister of Mr. Roberto Javier Hernández-Paz, went to the office of the *DISIP* to request information on the whereabouts of her brother, but Police Commander Luis Pineda-Castellanos, Director of Investigations, said that they had no information regarding that person. In addition, she went to the National Guard office in Vargas State, where she could not obtain any information on her brother's whereabouts either. On February 10, 2000, Hernández-Paz and her mother, Teodora Paz de Hernández, went to the *Instituto de Medicina Forense* (Institute of Forensic Medicine), but they did not obtain any information regarding Mr. Roberto Javier Hernández-Paz there.

ii) *Domestic proceedings*

51.18 On January 21, 2000, *PROVEA*, the *Red de Apoyo por la Justicia y la Paz* (Justice and Peace Support Network), the *COFAVIC* (Committee of Next of Kin of the Victims of the Events of February-March 1989) and the *Vicaría Episcopal* (Episcopal Vicarship) filed a petition for a writ of *habeas corpus* with the *Tribunal Segundo de Control del Circuito Judicial Penal del Estado Vargas* (Second Control Court of the Criminal Judicial Circuit for Vargas State).

51.19 On January 24, 2000, the *Director General Sectorial* (Sector General Director) of the *DISIP*, Lieutenant Colonel Jesús E. Urdaneta-Hernández, informed the *Tribunal Segundo de Control* (Second Control Court) that Mr. Roberto Javier Hernández-Paz had not been arrested by officers of the agency.

51.20 On January 25, 2000, the *Tribunal Segundo de Control* (Second Control Court) ruled that there was no "subject-matter for the Court to determine," "inasmuch as it was established that citizen Roberto Javier Hernández-Paz [was] not illegally deprived of his liberty by order of [... the *DISIP*], and given that there is no evidence or record of the detaining authority or the place of confinement where the person is allegedly being held."

51.21 On January 28, 2000, an appeal was lodged with the *Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Estado Vargas* (Court of

Appeals of the Criminal Judicial Circuit of the Judicial District for Vargas State) against the decision rendered by the *Tribunal Segundo de Control* (Second Control Court) on the *habeas corpus* petition. On February 4, 2000, the *Corte de Apelaciones* (Court of Appeals) affirmed said decision.

51.22 On October 6, 2000, the Attorney General's Office had Mr. Carlos Paz subpoenaed in order to testify as a witness, but did not provide for a lineup of *DISIP* officers, for purposes of identification by the aforesaid witness.

51.23 On May 17, 2004, the Seventy-fourth Prosecutor for the Attorney General's Office of the Metropolitan Area of Caracas "ordered to close" the criminal inquiry into the disappearance of Mr. Roberto Javier Hernández-Paz on the grounds that "the elements on the records [...] only provide[d] information regarding participation of *DISIP* officers [...]," but the investigation "did not reveal any information that may contribute [to] the identification of the perpetrator(s)[;] in that regard[,] additional facts or elements are required to be able to identify them[,] as well as to prove their participation in the [...] forced disappearance." That same day, the aforesaid prosecutor notified the aforementioned decision to Mr. Carlos Paz.

d) *Regarding Mr. José Francisco Rivas-Fernández*

i) *Arrest and disappearance*

51.24 On December 21, 1999, Mr. José Francisco Rivas-Fernández, of 24 years of age, was at an office of the "*Acción Democrática*" (Democratic Action) political party, located in Caraballeda, Vargas State, which was being used as a shelter for the families affected by the floods, such as that of Mr. José Francisco Rivas-Fernández. On that date, at approximately 7.30 pm, a curfew was imposed and the members of the Infantry Battalion "Colonel Antonio Nicolás Briceño" stationed in the area fired shots into the air.

51.25 The soldiers of said Infantry Battalion saw Mr. José Francisco Rivas-Fernández, who was sitting outside the referred office, and proceeded to arrest and beat him, while a sergeant instructed them to kill him, as he was allegedly a "criminal." The parents of Mr. José Francisco Rivas-Fernández tried to help their son and stop the soldiers from beating him, but they threw him to the floor, handcuffed him and took off his shoes. Despite the intervention of Mr. José Francisco Rivas-Fernández's parents, he was taken by a military detachment to an area called "Quebrada Seca" and was severely beaten on the way.

51.26 On December 22, 1999, Mr. José Francisco Rivas-Fernández's parents began the search for their son, walking through the mud and among the dead bodies of people and animals. Initially, they addressed a Sergeant, whose last name was Rondón, to ask him about their son's whereabouts and situation. However, said officer informed them that Mr. José Francisco Rivas-Fernández had been turned over to *DISIP* officers. The next of kin of Mr. José Francisco Rivas-Fernández continued searching for him, but they were unable to obtain any information about what had happened to him in any of the military and *DISIP* units they visited. Since that date, the whereabouts of Mr. José Francisco Rivas-Fernández have remained unknown.

ii) *Domestic proceedings*

51.27 On January 28, 2000, *PROVEA*, the *Red de Apoyo por la Justicia y la Paz* (Justice and Peace Support Network), the *COFAVIC* and the *Vicaría Episcopal* (Episcopal Vicarship) filed a petition for a writ of *habeas corpus* with the *Tribunal Sexto de Control del Circuito Judicial Penal del Estado Vargas* (Sixth Control Court of the Criminal Judicial Circuit for Vargas State).

51.28 On February 11, 2000, the *Tribunal Sexto de Control* (Sixth Control Court) ruled that there was no subject-matter for the Court to determine regarding the *habeas corpus* petition, for the Minister of Defense and the General Director of the *DISIP* had informed that the officers of the Infantry Battalion “Colonel Antonio Nicolás Briceño” and of the *DISIP* did not arrest Mr. José Francisco Rivas-Fernández. The *habeas corpus* petitioners lodged an appeal against such decision; however, the aforementioned decision was affirmed by the *Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Estado Vargas* (Court of Appeals of the Criminal Judicial Circuit of the Judicial District for Vargas State) on February 17, 2000.

51.29 On May 14, 2004, the Seventy-fourth Prosecutor for the Attorney General's Office of the Metropolitan Area of Caracas “ordered to close” the inquiry into the disappearance of Mr. José Francisco Rivas-Fernández on the grounds that “the elements on the records [...] only provide[d] information regarding the participation of *DISIP* officers,” but the investigation “did not reveal any information that may contribute [to] the identification of the perpetrator(s)[;] in that regard[,] additional facts or elements are required to be able to identify them[,] as well as to prove their participation in the [...] forced disappearance.” That same day, the aforesaid prosecutor notified such decision to Nélida Josefina Fernández-Pelicie.

e) Consequences of the forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández

51.30 The next of kin of Mr. Oscar José Blanco-Romero mentioned in the different briefs filed with the Court by the Commission and the representatives are as follows: Alejandra Josefina Iriarte de Blanco,¹⁰ wife; Gisela Romero,¹¹ mother; Aleoscar Russeth Blanco-Iriarte¹² and Oscar Alejandro José Blanco-Iriarte,¹³ children of Mr. Oscar José Blanco-Romero and of Alejandra Josefina Iriarte de Blanco, and Orailis del Valle Blanco¹⁴ and Edwar José Blanco,¹⁵ niece and nephew of the victim, who lived in his home and were his dependants.¹⁶

¹⁰ Cf. marriage certificate of Alejandra Josefina Iriarte and Oscar José Blanco-Romero (file of appendixes to the application 1 to 35, appendix 35, volume II, page 630e).

¹¹ Cf. birth certificate of Oscar José Blanco-Romero (file of appendixes to the application 1 to 35, appendix 35, volume II, page 630).

¹² Cf. birth certificate of Aleoscar Russeth Blanco-Iriarte (file of appendixes to the application 1 to 35, appendix 35, volume II, page 630c).

¹³ Cf. birth certificate of Oscar Alejandro José Blanco-Iriarte (file of appendixes to the application 1 to 35, appendix 35, volume II, page 630d).

¹⁴ Cf. birth certificate of Orailis del Valle Blanco (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4026).

¹⁵ Cf. birth certificate of Edwar José Blanco (file on the merits of the case and reparations, volume III, page 555).

51.31 The next of kin of Mr. Roberto Javier Hernández-Paz mentioned in the different briefs filed with the Court by the Commission and the representatives are as follows: Teodora Paz de Hernández,¹⁷ mother; Roberto Aniceto Hernández,¹⁸ father; Nélica Marina Hernández-Paz,¹⁹ Aida Benirgia Hernández-Paz,²⁰ Mirna Esperanza Hernández-Paz,²¹ Aleidy Maritza Hernández-Paz,²² Brizania Hernández-Paz,²³ Reina Alejandra Antune-Paz,²⁴ Ramón Alberto Paz,²⁵ siblings; and Carlos Paz,²⁶ uncle.

51.32 The next of kin of Mr. José Francisco Rivas Fernández mentioned in the different briefs filed with the Court by the Commission and the representatives are as follows: Nélica Josefina Fernández-Pelicie,²⁷ mother; Francisco Jeremías Rivas,²⁸ father; Eneida Josefina Rivas-Fernández²⁹, Yelitza Isabel Rivas-Fernández,³⁰ Luis

¹⁶ Cf. statement rendered by Alejandra Iriarte de Blanco before a public official whose acts command full faith and credit, undated (file of appendixes to the submission of requests and arguments, volume I, page 2665).

¹⁷ Cf. birth certificate of Roberto Javier Hernández-Paz (appendixes to the submission of requests and arguments, volumes II and III, page 3018).

¹⁸ Cf. birth certificate of Roberto Javier Hernández-Paz (appendixes to the submission of requests and arguments, volumes II and III, page 3018).

¹⁹ Cf. identity card of Nélica Marina Hernández-Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4028).

²⁰ Cf. identity card of Aida Benirgia Hernández-Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4027).

²¹ Cf. identity card of Mirna Esperanza Hernández-Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4029).

²² Cf. identity card of Aleidy Maritza Hernández-Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4030).

²³ On October 18, 2005, the representatives informed the Court that it was not possible to submit the identity card of Brizania Hernández-Paz. This fact was not disputed by the State.

²⁴ Cf. identity card of Reina Alejandra Antune-Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4031).

²⁵ Cf. identity card of Ramón Alberto Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4032).

²⁶ Cf. identity card of Carlos Paz (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4033).

²⁷ Cf. passport of Nélica Josefina Fernández-Pelicie (record of the transcript of the public hearing); and birth certificate of Mr. José Francisco Rivas-Fernández (appendixes to the submission of requests and arguments, volumes II and III, page 3019).

²⁸ Cf. birth certificate of Mr. José Francisco Rivas-Fernández (appendixes to the submission of requests and arguments, volumes II and III, page 3019).

²⁹ Cf. identity card of Eneida Josefina Rivas-Fernández (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4034).

³⁰ Cf. identity card of Yelitza Isabel Rivas-Fernández (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4035).

Ernesto Rivas-Fernández,³¹ Rubén Alexis Rivas-Fernández,³² Miguel Enrique Galindo-Fernández³³ and José Daniel Rivas-Martínez,³⁴ siblings.

51.33 Alejandra Josefina Iriarte de Blanco and Gisela Romero, as well as Oscar Alejandro José Blanco-Iriarte, Aleoscar Russeth Blanco-Iriarte, Orailis del Valle Blanco and Edwar José Blanco have endured intense suffering due to the illegal arrest and disappearance of Mr. Oscar José Blanco-Romero. In addition, they suffer residual psychological *sequelae* caused by the aforesaid arrest and forced disappearance. The family's financial situation has also been affected as a result of the events of the instant case, as Mr. Oscar José Blanco-Romero's wife, his children and his mother, Gisela Romero, depended on the victim financially.³⁵

51.34 On the other hand, the next of kin of Mr. Roberto Javier Hernández-Paz also suffered a strong emotional and psychological shock due to his disappearance. In addition, they have faced financial hardship, because Mr. Roberto Javier Hernández-Paz devoted part of his income to support his family.³⁶

51.35 The next of kin of Mr. José Francisco Rivas-Fernández suffered as a result of his illegal arrest and disappearance. Likewise, they have suffered psychological damage associated with such events. These relatives have also been affected financially, given that Mr. José Francisco Rivas-Fernández represented a source of income allowing the family group to survive. The events of the instant case have significantly altered the dynamics of Mr. José Francisco Rivas Fernández's family.³⁷

51.36 The next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández have been represented by *PROVEA*, the *Red de Apoyo por la Justicia y la Paz* (Justice and Peace Support Network), the *COFAVIC* and the *Vicaría Episcopal* (Episcopal Vicarship) in the domestic proceedings as well as before the Commission and the Court; therefore, said organizations have incurred a number of expenses related to such proceedings.

³¹ Cf. identity card of Luis Ernesto Rivas-Fernández (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4036).

³² Cf. identity card of Rubén Alexis Rivas-Fernández (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4037).

³³ Cf. identity card of Miguel Enrique Galindo-Fernández (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4038).

³⁴ Cf. identity card of José Daniel Rivas-Martínez (file of evidence to facilitate adjudication of the case submitted by the representatives on October 18, 2005, page 4039).

³⁵ Cf. statement rendered by Alejandra Iriarte de Blanco before the Inter-American Court on June 28, 2005; sworn written statement rendered by Gisela Romero before a public official whose acts command full faith and credit on June 8, 2005; and expert opinions delivered by Claudia E. Carrillo R. and Magdalena López de Ibáñez before a public official whose acts command full faith and credit on June 8 and 10, 2005, respectively (file on the merits of the case and reparations, volume III, pages 683 to 687, 746 to 760 and 761 to 769).

³⁶ Cf. expert opinions delivered by Claudia E. Carrillo R. and Magdalena López de Ibáñez before a public official whose acts command full faith and credit on June 8 and 10, 2005, respectively (file on the merits of the case and reparations, volume III, pages 746 to 760 and 761 to 769).

³⁷ Cf. statement rendered by Nélida Josefina Fernández-Pelicie before the Inter-American Court on June 28, 2005; and expert opinions delivered by Claudia E. Carrillo R. and Magdalena López de Ibáñez before a public official whose acts command full faith and credit on June 8 and 10, 2005, respectively (file on the merits of the case and reparations, volume III, pages 683 to 687, 746 to 760 and 761 to 769).

The CEJIL (Center for Justice and International Law) has acted in collaboration with said organizations in the proceedings before the Commission and the Court.³⁸

VII MERITS

52. Next, the Court will determine the scope of the State's acknowledgment of international responsibility (*supra* paras. 27 and 30).

53. Article 53(2) of the Rules of Procedure provides as follows:

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

54. In exercise of its contentious jurisdiction, the Inter-American Court applies and interprets the American Convention; where a case has been submitted to its jurisdiction, the Court has the authority to determine the international responsibility of a State Party to the Convention for any violations to the provisions thereof.³⁹

55. In exercise of its inherent powers for the international judicial protection of human rights, the Court may determine whether an acknowledgment of international responsibility by a respondent State provides sufficient grounds, under the American Convention, to proceed with the consideration of the merits of the case and the determination of potential reparations and legal costs. For such purpose, the Court will analyze the situation in each particular case.⁴⁰

³⁸ Cf. powers of attorney for representation purposes before the Inter-American Court granted by Alejandra Iriarte de Blanco and Gisela Romero to the *Vicaría Episcopal* (Episcopal Vicarship), the *COFAVIC* and the *CEJIL* (Center for Justice and International Law) (file of appendixes to the application, volume II, appendixes 1 to 35, appendix 35, pages 630 G to 630 V); power of attorney for representation purposes before the Inter-American Court granted by Teodora Paz to the *Vicaría Episcopal*, *COFAVIC* and *CEJIL* (file of appendixes to the application, volume II, appendixes 1 to 35, appendix 35, pages 632 to 633); power of attorney for representation purposes before the Inter-American Court granted by Nélide Josefina Fernández-Pelicie to the *Vicaría Episcopal*, *COFAVIC* and *CEJIL* (file of appendixes to the application, volume II, appendixes 1 to 35, appendix 35, pages 635 a 636); power of attorney for representation purposes before the Inter-American Court granted by Roberto Aniceto Hernández, Nélide Hernández-Paz, Mirna Hernández-Paz, Aleidy Hernández-Paz, Reina Altune-Paz, Ramón Alberto Paz, Aida Hernández-Paz and Carlos Paz to the *Vicaría Episcopal*, *COFAVIC* and *CEJIL* (file on the merits of the case and reparations, volume III, pages 512 to 514, 539 to 541 and 549 to 551); power of attorney for representation purposes before the Inter-American Court granted by Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández and Francisco Jeremías Rivas in his own name and on behalf of his minor son, José Daniel Rivas-Martínez (file on the merits of the case and reparations, volume III, pages 509 to 511, 542 to 548 and 552 to 554); and invoices and receipts submitted as evidence of the expenses incurred by the representatives (file of appendixes to the submission of requests and arguments, volumes II, III, IV and V, pages 3024 to 3268, 3269 to 3528 and 3559 to 4025; and written closing arguments of the representatives, volume IV, appendix J, pages 1210 to 1470).

³⁹ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 64.

⁴⁰ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 65; *Case of Huilca-Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 42; and *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101, para. 105.

56. The preamble of the Court's Order of June 28, 2005 (*supra* para. 32) in the instant case provided as follows:

1. That the Court has taken into consideration the fact that the State "[has], acting in good faith, acknowledg[ed] its international responsibility in the instant case." Furthermore, the State has ratified its acknowledgment of the facts averred in the petition and in the brief containing pleadings and motions, as well as the claims asserted by the Commission and the representatives in the case at hand.

2. That the acknowledgment of international responsibility by the State constitutes a positive contribution to the development of these proceedings and the enforcement of the principles underlying the American Convention.⁴¹

3. That said acknowledgment by the State [...] puts an end to the dispute regarding the facts of the instant case.

4. That the Court will, in due time, decide on the points of law and reparations.

[...]

Subsequently, the Court resolved as follows:

1. To allow the acknowledgement of international responsibility by the State, pursuant to the first Considering clause of the [...] Order.

2. That there is no longer a dispute as to the facts of the case and, accordingly, the Court will, in due time, render the relevant Judgment.

3. To continue with the proceedings in the instant case.

57. In view of the acknowledgment of international responsibility by the State (*supra* para. 27), the Court considers that the facts stated in paragraphs 51(1) to 51(36) of the instant Judgment have been proved and, based on such proven facts and having weighed the particular circumstances of this case, it will now list the alleged violations of the articles alleged.

58. Considering that Venezuela has acknowledged its international responsibility for the facts averred and the claims raised in the application and in the brief containing pleadings and motions, the Court considers that the State has incurred in international responsibility for the illegal detention and forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández by State agents, in violation of their rights under Articles 4(1) (Right to Life); 5(1) and 5(2) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) (Right to Personal Liberty); 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) and 2 thereof, as well as for its failure to comply with its obligations under Articles 1, 5, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Articles I(a) and I(b), X and XI of the Inter-American Convention on Forced Disappearance of Persons.

59. As regards the violation of Article 5 of the American Convention to the detriment of the victims' next of kin, the Court has held that in cases that involve the

⁴¹ Cf. *Case of Gutiérrez-Soler*. Order of the Inter-American Court of Human Rights of March 10, 2003, Considering Clause No. 4; *Case of Carpio-Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 84; *Case of Molina-Theissen*. Judgment of May 04, 2004. Series C No. 106, para. 46; and *Case of the Plan de Sánchez Massacre*. Judgment of April 29, 2004. Series C No. 105, para. 50.

forced disappearance of persons, the violation of the right to psychological and moral integrity of the victim's next of kin is, precisely, a direct consequence of the disappearance, which causes them, by the fact itself, serious suffering that is further aggravated by the state authorities' continued refusal to provide information on the victim's whereabouts or to open an effective investigation to find the truth.⁴²

60. The Tribunal has weighed the particular circumstances of this case, particularly the close nature of the emotional bond between the next of kin and Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, the fact that some of the aforementioned next of kin witnessed the detention of the victims and the ill-treatment afforded them, the official refusal to provide information on the events, and the blocking of the efforts made by such next of kin to find out the truth about the events. Based on said circumstances and the State's acknowledgement of responsibility, the Court considers it a proven fact that the victims' next of kin have suffered a great deal, to the detriment of their psychological and moral integrity, due to the forced disappearance of the victims. Furthermore, the lack of information on the whereabouts of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández has further aggravated the suffering of their next of kin.

61. In the light of said acknowledgement of responsibility, it is the Court's view that Venezuela violated the rights enshrined in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, namely: Alejandra Josefina Iriarte de Blanco, Gisela Romero, Aleoscar Russeth Blanco-Iriarte, Oscar Alejandro José Blanco-Iriarte, Orailis del Valle Blanco, Edwar José Blanco, Teodora Paz de Hernández, Roberto Aniceto Hernández, Nélide Marina Hernández-Paz, Aida Benirgia Hernández-Paz, Mirna Esperanza Hernández-Paz, Aleidy Maritza Hernández-Paz, Brizania Hernández-Paz, Reina Alejandra Antune-Paz, Ramón Alberto Paz, Carlos Paz, Nélide Josefina Fernández-Pelicie, Francisco Jeremías Rivas, Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández, and José Daniel Rivas-Martínez. Likewise, the State failed to comply with its obligation under Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the above-listed next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández. Likewise, Venezuela violated Article 8(2) (Right to a Fair Trial) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Alejandra Josefina Iriarte de Blanco, by preventing her, at the September 6, 2002 preliminary hearing before the Fifth Criminal Trial Court for Vargas State, as a Control Court, from exercising her right to state the grounds for her petition in connection with the prosecution's case and by preventing her attorney from presenting his power of attorney, thus blocking him from pressing criminal

⁴² Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 146; *Case of 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 211; and *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C No. 70, para. 160.

charges on behalf of Mrs. Iriarte de Blanco at the hearing, something which kept her from exercising her right to assert her defense and examine those who might provide information that would cast some light on the facts relating to her husband's forced disappearance.

62. The Court does not consider the right to know the truth to be a separate right enshrined in Articles 8, 13, 25 and 1(1) of the Convention, as alleged by the representatives, and, accordingly, it cannot find acceptable the State's acknowledgement of responsibility on this point. The right to know the truth is included in the right of the victim or of the victim's next of kin to have the relevant State authorities find out the truth of the facts that constitute the violations and establish the relevant liability through appropriate investigation and prosecution.⁴³

63. Likewise the representatives argued, exclusively when they took part in the public hearing, that the State is responsible for the alleged violation of Article 27 (Suspension of Guarantees) of the American Convention; for its part, the Commission did not address this particular issue. It is the Court's view that, on this particular occasion, a ruling on the aforementioned argument by the representatives is not necessary.

64. Lastly, the Court considers that the acknowledgment of international responsibility by the State constitutes a very important step towards the development of these proceedings and the enforcement of the principles underlying the American Convention.

65. In the light of the above, and in accordance with the Court's Order of June 28, 2005 (*supra* para. 32), the Court will determine the relevant reparations and costs and expenses in the instant case.

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

DUTY TO MAKE REPARATIONS

66. In view of the State's acknowledgment of responsibility (*supra* para. 27) and in line with the considerations on the merits set forth in the preceding chapter, the Court declared that the State violated, to the detriment of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, the rights under Articles 4(1) (Right to Life); 5(1) and 5(2) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) (Right to Personal Liberty); 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1(1) and 2 thereof, and that it failed to comply with its obligations under Articles 1, 5, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Articles I(a) and I(b), X and XI of the Inter-American Convention on Forced Disappearance of Persons. Moreover, the State violated the rights

⁴³ Cf. *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 62; *Case of the Plan de Sánchez Massacre. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 97; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 257.

enshrined in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, namely: Alejandra Josefina Iriarte de Blanco, Gisela Romero, Aleoscar Russeth Blanco-Iriarte, Oscar Alejandro José Blanco-Iriarte, Orailis del Valle Blanco, Edwar José Blanco, Teodora Paz de Hernández, Roberto Aniceto Hernández, Nélida Marina Hernández-Paz, Aida Benirgia Hernández-Paz, Mirna Esperanza Hernández-Paz, Aleidy Maritza Hernández-Paz, Brizania Hernández-Paz, Reina Alejandra Antune-Paz, Ramón Alberto Paz, Carlos Paz, Nélida Josefina Fernández-Pelicie, Francisco Jeremías Rivas, Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández, and José Daniel Rivas-Martínez. Likewise, the State failed to comply with its obligation under Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the above-listed next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández; and Article 8(2) (Right to a Fair Trial) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Alejandra Josefina Iriarte de Blanco.

67. This Court has held that it is a principle of International Law that any violation of an international obligation that has caused damage carries the duty to make adequate reparations.⁴⁴ In previous rulings on this subject, the Court took into consideration the provisions of Article 63(1) of the American Convention, under which:

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

68. Article 63(1) of the American Convention codifies a customary rule that is one of the fundamental principles of contemporary International Law on the responsibility of States. The occurrence of an internationally wrongful act attributable to a State engages such State's international responsibility and triggers the resulting duty to make reparations and to have the consequences of the violation remedied.⁴⁵

69. Whenever practicable, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in restoring the situation prior to the violation. If impracticable, as is true of most cases, including the one at hand, the international Court is to determine the measures required to guarantee the enforcement of the impaired rights, repair the consequences of the violation and set compensation for the damage thereby

⁴⁴ Cf. *Case of Raxcacó-Reyes*, *supra* note 1, para. 114; *Case of Gutiérrez-Soler*, *supra* note 1, para. 61; and *Case of Acosta-Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 145.

⁴⁵ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 243; *Case of Gutiérrez-Soler*, *supra* note 1, para. 62; and *Case of Acosta-Calderón*, *supra* note 44, para. 231.

caused.⁴⁶ In addition, the State is also required to take affirmative steps to prevent the recurrence of harmful events such as the ones complained of in the instant case.⁴⁷ It is a principle of general International Law that the State is not allowed to modify or disregard its duty to make reparations in reliance upon its domestic law, a principle that has been consistently enforced in the Court's case-law.

70. Reparations are measures aimed at removing the effects of the violations. Their nature and amount are dependent upon the characteristics of the violation as well as the pecuniary and non pecuniary damage caused. Reparations may not cause the enrichment or impoverishment of the victims or their successors, and should be commensurate to the violations declared to be such in Court's Judgment.⁴⁸

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A) *BENEFICIARIES*

71. The Court will now determine who are to be considered "injured parties" for the purposes of Article 63(1) of the American Convention. First, the Court considers as "injured parties," in their capacity as victims of the aforementioned violations (*supra* para. 66), Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, as well as their next of kin: Alejandra Josefina Iriarte de Blanco, Gisela Romero, Aleoscar Russeth Blanco-Iriarte, Oscar Alejandro José Blanco-Iriarte, Orailis del Valle Blanco, Edwar José Blanco, Teodora Paz de Hernández, Roberto Aniceto Hernández, Nérida Marina Hernández-Paz, Aida Benirgia Hernández-Paz, Mirna Esperanza Hernández-Paz, Aleidy Maritza Hernández-Paz, Brizania Hernández-Paz, Reina Alejandra Antune-Paz, Ramón Alberto Paz, Carlos Paz, Nérida Josefina Fernández-Pelicie, Francisco Jeremías Rivas, Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández, and José Daniel Rivas-Martínez. Further to the State's acknowledgement of responsibility (*supra* paras. 27, 30 and 31) and considering that such persons were named in the Commission's application (*supra* para. 18) and by the representatives in their brief containing pleadings and motions (*supra* para. 22), they are all to be considered included in the injured-party category and beneficiaries of such reparations as the Court may determine, in connection with both pecuniary and non pecuniary damage, as the case may be.

72. The allocation of compensation among the next of kin of the disappeared victims, for the pecuniary and non pecuniary damage sustained by the latter, will be as follows:⁴⁹

⁴⁶ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 244; *Case of Raxcacó-Reyes*, *supra* note 1, para. 115, and *Case of Gutiérrez-Soler*, *supra* note 1, para. 63.

⁴⁷ Cf. *Case of Raxcacó-Reyes*, *supra* note 1, para. 115; *Case of Gutiérrez-Soler*, *supra* note 1, para. 63; and *Case of Acosta-Calderón*, *supra* note 44, para. 147.

⁴⁸ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 245; *Case of Raxcacó-Reyes*, *supra* note 1, para. 116, and *Case of Gutiérrez-Soler*, *supra* note 1, para. 64.

⁴⁹ Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 259; and *Case of 19 Tradesmen*, *supra* note 42, para. 230; and *Case of the Caracazo*. Judgment of November 11, 1999. Series C No. 58, para.

- a) Fifty percent (50%) of the compensation shall be allocated in equal shares to the victim's children. Orailis del Valle Blanco and Edwar José Blanco, the niece and nephew of Mr. Oscar José Blanco-Romero, who lived under the same roof with, and were financially dependent on, the victim, are to be put on an equal footing with the victim's children for the purposes of allocating the compensation;
- b) Fifty percent (50%) of the compensation shall be delivered to the spouse or common-law spouse of the victim as of the date of the victim's death or disappearance;
- c) Should the victim have neither children nor a spouse or common-law spouse, the compensation shall be distributed as follows: fifty percent (50%) shall be delivered to his parents. Should one of the parents be deceased, the other shall, in addition, receive that portion as well. The remaining fifty percent (50%) shall be paid to the victim's siblings in equal shares; and
- d) Should no next of kin exist in one or more of the above categories, the portion due to the relatives in such categories shall be proportionately added to the portion due to the remaining categories.

73. As to those next of kin of the victims who are beneficiaries of the compensation set in the instant Judgment and who have died or should die before receiving the relevant compensation, the same distribution rules as stated in the preceding paragraph shall apply.

B) PECUNIARY DAMAGE

Arguments by the Commission

74. The Commission stated as follows:

- a) the victims' next of kin suffered "multiple consequences[,] including the loss of children, parents, spouses or relatives who, in many cases, were the source of support for the family group;"
- b) due to such loss, the next of kin sustained considerable and decisive material losses. Furthermore, they stopped receiving their usual income, which they needed for their support; and
- c) it requested that the Court set, on equitable grounds, the amount of compensation for *damnum emergens* and loss of earnings.

Arguments by the representatives

75. As regards *damnum emergens*, the representatives stated as follows:

- a) it should cover the expenses incurred by the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-

Fernández in trying to establish their whereabouts. The next of kin took different steps for such purpose, even though they do not have the relevant receipts or other documentary support therefore;

b) given the indifference shown by the Venezuelan authorities, the next of kin were forced to resort to national and international non-governmental organizations, persons of local and international renown, and foreign authorities in order to report the facts and drive the investigations forward. Furthermore, they have resorted to public institutions to request that the authorities engage in activities intended to guarantee the right of access to justice; and

c) they requested that compensation be set, on equitable grounds, for the *damnum emergens* sustained by the aforementioned next of kin.

76. As regards loss of earnings, the representatives stated as follows:

a) the victims worked in the informal economy, which hinders the gathering of evidence on their earnings. To assess loss of earnings for the three victims, the following factors need to be taken into consideration: the age of each of them as of the date of the illegal detention and disappearance, the official life expectancy for Venezuela, and the statutory minimum salary in force. 25% is to be deducted off the amount thus arrived at, to account for the personal expenses it can reasonably be expected that each of them would have incurred; and

b) taking the aforementioned factors into account, loss of earnings for each one of the victims is as follows: Oscar José Blanco-Romero, 98,847,283.39 bolívares or an equivalent amount of United States dollars; Roberto Javier Hernández-Paz, 130,620,657.02 bolívares or an equivalent amount of United States dollars, and José Francisco Rivas-Fernández, 139,294,007.42 bolívares or an equivalent amount of United States dollars.

Arguments by the State

77. In its final written arguments, the State noted that the representatives were to state, based on measurable and objective criteria, the *damnum emergens* and loss of earnings caused by the violations. However, notwithstanding the claims raised by the representatives, the State requested that the Court set, based on equitable grounds, compensation for *damnum emergens* and loss of earnings in such terms and consistently with the minimum salary in force in Venezuela.

Considerations of the Court

78. In this section, the Court will address the issue of pecuniary damage, which entails the loss or impairment of the victim's income, the expenses incurred in connection with the facts of the case and such pecuniary consequences as may have a causal link to the facts of the instant case,⁵⁰ for which purpose, if applicable, the

⁵⁰ Cf. *Case of Raxcacó-Reyes*, *supra* note 1, para. 129; *Case of Gutiérrez-Soler*, *supra* note 1, para. 74; and *Case of Acosta-Calderón*, *supra* note 44, para. 157.

Court will set a compensatory amount intended to provide redress for the financial consequences of the violations declared to be such in the instant Judgment.

79. The representatives requested compensation for the loss of earnings of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández based on the age of each of them on the date of the illegal detention and forced disappearance, the official life expectancy in Venezuela⁵¹ and the statutory minimum salary in force in Venezuela. In this regard, the representatives acknowledged that they do not have accurate proof of the income earned by each victim, as they worked in the informal economy.

80. The Court has noted that the file does not contain adequate receipts to accurately assess the income earned by Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández at the time the events took place. Accordingly, considering the activities performed by the victim as a way to make a living, as well as the circumstances and peculiarities of the instant case, the Court hereby sets, on equitable grounds, the sum of US\$ 45,000.00 (forty-five thousand United States dollars) for Mr. Oscar José Blanco-Romero, the sum of US\$ 47,000.00 (forty-seven thousand United States dollars) for Mr. Roberto Javier Hernández-Paz, and the sum of US\$ 65,000.00 (sixty-five thousand United States dollars) for Mr. José Francisco Rivas-Fernández, as reparations for the loss of earnings. Such amounts are to be delivered as per paragraph 72 hereof.

81. The representatives requested that the Court award compensation for *damnum emergens* based on the expenses incurred by the next of kin of Messrs. Oscar José Blanco-Romero (*supra* para. 51(3)), Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández in trying to determine their whereabouts and in connection with the steps taken in their quest for justice, as well as the expenses arising from the "destruction" caused by the members of the Infantry Battalion at the home of Mrs. Alejandra Josefina Iriarte de Blanco on the date of Mr. Oscar José Blanco-Romero's detention, and the expenses incurred by Mrs. Nélide Josefina Fernández-Pelicie to purchase the medication that was essential for her psychological treatment (*supra* para. 51(35)). In this regard, in her testimony, Mrs. Iriarte de Blanco said that the army officers who entered her house to detain her husband caused damages she had to cover (*supra* para. 42). Similarly, Mrs. Gisela Romero, in her affidavit before a public official whose acts command full faith and credit, and Mrs. Nélide Josefina Fernández-Pelicie, in her testimony at the public hearing, both claimed to have incurred various expenses in their efforts to find their sons and to obtain justice in the instant case (*supra* paras. 41 and 42). For their part, expert Claudia Carrillo also stated that Mrs. Fernández-Pelicie has received "medical care" due to her "suicidal ideation" (*supra* para. 41).

82. In connection with the above, it should be noted that the representatives have failed to provide receipts or other similar evidence to assess the amount of the sums disbursed by Mrs. Alejandra Josefina Iriarte de Blanco and by Mrs. Gisela Romero, the mother of Oscar José Blanco-Romero, by Mrs. Teodora Paz de Hernández and by Mr. Roberto Aniceto Hernández, the parents of Roberto Javier Hernández, and by Mrs. Nélide Josefina Fernández-Pelicie and Mr. Francisco

⁵¹ Cf. *Instituto Nacional de Estadística de Venezuela* [Venezuela's National Institute of Statistics], *Esperanza de vida al nacer de ambos sexos, según entidad federal* (Life expectancy at birth for both genders, as per federal entity), 1999-2003 (file of appendixes to the brief containing pleadings and motions, Vol. 2, folio 3014).

Jeremías-Rivas, the parents of José Francisco Rivas-Fernández, on account of each of the expense items listed in the preceding paragraph. In this regard, the Court finds it appropriate to set, on equitable grounds, the following sums of money as compensation on this account:

- a) US\$ 1,000.00 (one thousand United States dollars) payable to Mrs. Alejandra Josefina Iriarte de Blanco, the wife of Mr. Oscar José Blanco-Romero;
- b) US\$ 1,000.00 (one thousand United States dollars) payable to Mrs. Gisela Romero, the mother of Mr. Oscar José Blanco-Romero;
- c) US\$ 500.00 (five hundred United States dollars) payable to each of Mrs. Aleidy Maritza Hernández-Paz and Teodora Paz de Hernández, the sister and mother of Mr. Roberto Javier Hernández-Paz, respectively; and
- d) US\$ 1,000.00 (one thousand United States dollars) payable to the parents of Mr. José Francisco Rivas-Fernández. Out of such amount, US\$ 500.00 (five hundred United States dollars) is to be paid to Mrs. Nélica Josefina Fernández-Pelicie and US\$ 500.00 (five hundred United States dollars) to Mr. Francisco Jeremías Rivas.

C) PECUNIARY DAMAGE

Arguments by the Commission

83. The Commission stated that:

- a) the next of kin of the victims have suffered the loss of their family members under traumatic conditions, attended by the anguish and uncertainty of not knowing where they are. The delay in investigating into the events and the lack of effective action to identify, prosecute and punish those responsible increase the suffering of the aforementioned next of kin;
- b) to the serious consequences of the events “must be added the detention, mistreatment, insulting and further humiliations suffered by Mrs. Nélica [Josefina Fernández-Pelicie] and the aggressive and aloof treatment suffered by [Mrs. Iriarte de Blanco] and the next of kin of Mr. Roberto Javier Hernández-Paz during their endless search”; and
- c) it requested the Court to order payment of compensation for non pecuniary damages, on equitable grounds and considering the circumstances in the instant case.

Arguments by the representatives

84. The representatives stated that:

- a) the irreversible nature of the violations renders *restitutio in integrum* impossible, for they infringe rights such as the right to personal liberty, to humane treatment, to life, to judicial protection and to a fair trial. The time,

the manner and the place in which such violations were effected have resulted in immense suffering for the victims and for their next of kin; and

b) they requested the Court that, when fixing the sum payable for the non pecuniary damages sustained, it compensate, on equitable grounds, the pain, the anguish and the distress suffered by the victims and their next of kin as a result of the illegal detentions, the inhumane, cruel and degrading treatment and the forced disappearances of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández. Likewise, the Court must take into account the lack of information on the whereabouts of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, the denial of justice –basically resulting from a cover up pattern and from a serious impunity scheme– and the concealing of the truth about what happened, all to the detriment of the next of kin of the aforementioned and of Venezuelan society.

Arguments by the State

85. The State requested the Court to “order whatever be necessary to determine, within the circumstances of the case, the amount of a compensation commensurate with the intensity of the suffering the respective events caused to the victims and to their next of kin and with the other non pecuniary consequences [...] on equitable grounds.”

Considerations by the Court

86. Non pecuniary damage may include distress and suffering, tampering with the person’s core values and alterations of a non pecuniary nature in the victim’s living conditions. As it is impossible to assess the value of non pecuniary damage in a precise equivalent in money, the purpose of fully compensating the victims can be served in but two ways. The first one is by paying the victim an amount of money or by delivering property or services the worth of which may be established in money, such as the Court may determine, by exercising reasonably its judicial discretion and applying equitable standards. The second one is by public actions or works reaching the general public, the effect of which, among others, be to recognize the victim’s dignity and to avoid recurrence of human rights violations.⁵²

87. The Judgment, according to repeated international precedents, constitutes, in and of itself, a form of reparation.⁵³ However, considering the circumstances of the instant case, the sufferings the events have caused the victims herein, the alterations they all sustained in their living conditions and all the other consequences of a non pecuniary nature they had to bear, the Court deems fit that compensation be paid, on equitable grounds, for non pecuniary damages.

88. In the first place, the Court considers that the circumstances of the detentions and subsequent disappearances of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández (*supra* paras. 51(3),

⁵² Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 282; *Case of Gutiérrez-Soler*, *supra* note 1, para. 82; and *Case of Acosta- Calderón*, *supra* note 44, para. 158.

⁵³ Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 285; *Case of Raxcacó-Reyes*, *supra* note 1, para. 131; y *Case of Gutiérrez-Soler*, *supra* note 1, para. 83.

51(4), 51(5), 51(6), 51(16), 51(17), 51(24), 51(25) and 51(26) were of such nature as to cause great fear and suffering. The Court deems the circumstances in the instant case to have caused the victims a serious moral harm that is to be assessed in its whole dimension when fixing compensation therefor. In the light of such view the Court considers that each one of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández must be compensated for non pecuniary damages and orders, on equitable grounds, that each of them be paid individually US\$ 70.000,00 (seventy thousand United States dollars) or the equivalent in Venezuelan currency, for such item. Such compensation shall be delivered to their next of kin pursuant to paragraph 72 of the instant Judgment.

89. In the second place, the Court deems Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Gisela Romero, Miss Aleoscar Russeth Blanco-Iriarte, Mr. Oscar Alejandro José Blanco-Iriarte, Miss Orailis del Valle Blanco, Mr. Edwar José Blanco, Mrs. Teodora Paz de Hernández, Mr. Roberto Aniceto Hernández, Mrs. Nélide Marina Hernández-Paz, Mrs. Aida Benirgia Hernández-Paz, Mrs. Mirna Esperanza Hernández-Paz, Mrs. Aleidy Maritza Hernández-Paz, Mrs. Brizania Hernández-Paz, Mrs. Reina Alejandra Antune-Paz, Mr. Ramón Alberto Paz, Mr. Carlos Paz, Mrs. Nélide Josefina Fernández-Pelicie, Mr. Francisco Jeremías Rivas, Mrs. Eneida Josefina Rivas-Fernández, Mrs. Yelitza Isabel Rivas-Fernández, Mr. Luis Ernesto Rivas-Fernández, Mr. Rubén Alexis Rivas-Fernández, Mr. Miguel Enrique Galindo-Fernández and Mr. José Daniel Rivas-Martínez, to have sustained great suffering as a result of the forced disappearance of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández (*supra* paras. 51(33), 51(34) and 51(35)), whereby this Tribunal considers them victims of the violation of Articles 5(1), 8(1) and 25 of the Convention. On the grounds of the foregoing, the Court fixes, on equitable grounds, the amount of:

- a) US\$ 25.000,00 (twenty five thousand United States dollars) for each one of the parents of the victims: Mrs. Gisela Romero, Mrs. Teodora Paz de Hernández, Mr. Roberto Aniceto Hernández, Mrs. Nélide Josefina Fernández-Pelicie and Mr. Francisco Jeremías Rivas;
- b) US\$ 25.000,00 (twenty five thousand United States dollars) for Mrs. Alejandra Josefina Iriarte de Blanco, wife to Mr. Oscar José Blanco-Romero;
- c) US\$ 25.000,00 (twenty five thousand United States dollars) for Mr. Oscar José Blanco-Romero's children: Miss Aleoscar Russeth Blanco-Iriarte and Mr. Oscar Alejandro José Blanco-Iriarte; Miss Orailis del Valle Blanco and Mr. Edwar José Blanco;
- d) US\$ 10,000.00 (twenty five thousand United States dollars) for Mr. Roberto Javier Hernández-Paz's brothers and sisters: Mrs. Aida Benirgia Hernández-Paz, Mrs. Nélide Marina Hernández-Paz, Mrs. Mirna Esperanza Hernández-Paz, Mrs. Aleidy Maritza Hernández-Paz, Mrs. Brizania Hernández-Paz, Mrs. Reina Alejandra Antune-Paz, Mr. Ramón Alberto Paz; and for his uncle, Mr. Carlos Paz; and
- e) US\$ 10.000,00 (ten thousand United States dollars) for Mr. José Francisco Rivas-Fernández's brothers and sisters: Mrs. Eneida Josefina Rivas-Fernández, Mrs. Yelitza Isabel Rivas-Fernández, Mr. Luis Ernesto Rivas-Fernández, Mr. Rubén Alexis Rivas-Fernández, Mr. Miguel Enrique Galindo-Fernández and Mr. José Daniel Rivas-Martínez.

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

Arguments by the Commission

90. The Commission requests the Court to order the following measures of satisfaction and non-recurrence guarantees:

- a) carrying out an earnest and effective judicial investigation in order to determine the responsibility of the perpetrators of the detentions and the subsequent forced disappearances. The outcome of such investigation must be made known to the general public, so as to enforce the right to know the truth of the next of kin of the victims and of all Venezuelan society;
- b) the State must take the necessary action in order to locate the place where the victims are, so that the next of kin may complete their mourning for the disappearance of their beloved ones;
- c) the State must take the necessary action in order to guarantee that under domestic law the writ of *habeas corpus* be compatible with Articles 7(6) and 25 of the American Convention of Human Rights; and
- d) in consultation with the next of kin of the victims, "a symbolic recognition [by the State] aimed at recovering historical memory of the disappeared persons."

Arguments by the representatives

91. The representatives requested the Court to order the following satisfaction and non-recurrence measures:

- a) an earnest, fair and effective investigation into the events to be publicly made known to the Venezuelan society. Such investigation must be effected within reasonable time;
- b) adequate participation of the next of kin of the victims in the criminal proceedings;
- c) taking the necessary action to find Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, or their remains, in order for them to be delivered to their next of kin, so the latter may complete their mourning for the disappearance of their beloved ones;
- d) publishing and widely disseminating the instant Judgment, in the Official Gazette, in the press and on radio and television broadcasts;
- e) holding a public official ceremony wherein the State acknowledge its responsibility and which may allow the name and the dignity of the victims to be recovered;

- f) providing the necessary means for giving and guaranteeing primary, secondary and university education to the children of Mr. Oscar José Blanco-Romero and Mrs. Alejandra Josefina Iriarte de Blanco;
- g) issuing an official certificate whereby Aleoscar Russeth Blanco-Iriarte be authorized to leave the country, with her mother's previous consent;
- h) designing teaching aids and regular courses in all enrollment, training, promotion and advancement programmes for members of the armed forces of Venezuela and of the *DISIP*, dealing with human rights and particularly with the state duties on the matter and with the absolute prohibition of torture and of forced disappearance of persons;
- i) designing and implementing a permanent training programme on human rights for judges and prosecutors, specifically including as subjects of study international human rights rules, jurisprudence and case law on forced disappearance, and the writ of *habeas corpus*;
- j) to institute a memorial day aimed at awakening the conscience of Venezuelan society in order to avoid recurrence of events such as those reported in the instant case; and
- k) adapting domestic legislation concerning forced disappearance to international standards.

Arguments by the State

92. The State contended that:

- a) in the course of the public hearing, as a token of respect and consideration towards the victims, it "requested the Court permission to present its apologies directly" to them;
- b) regarding the "closing of the prosecution" ordered on may 14, 2004 in the inquest into the forced disappearance of Messrs. Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, such decision was notified to the victims, but they have failed to provide information that might enable the reopening of such inquest, and no new pieces of evidence as might guarantee such reopening thereof have appeared;
- c) the proceedings for the forced disappearance of Mr. Oscar José Blanco-Romero are at the "oral and public trial stage." However, it has not been possible to hold the hearing of the case because "the persons called to testify during the trial failed to appear", and they "are vital for the Prosecution to be able to establish the responsibility of the accused parties and therefore have them effectively punished"; and
- d) a statute has been enacted whereby forced disappearance has been described as a crime, which has appeared in the *Gaceta Oficial Extraordinaria* (Special Official Gazette) No. 5,768 of April 13, 2005, something which "decisively contributes to prevent [the] commission of such crimes." Furthermore, the "lecture programmes for public servants whose duties touch

upon citizen security, for the purpose of having them become aware of the respect due human rights” have continued to be held.

Considerations by the Court

93. In this chapter the Tribunal shall determine those measures of satisfaction aimed at providing reparation for non pecuniary damage, of a non pecuniary nature, as well as providing for public actions or works reaching the general public.⁵⁴

a) *Obligation to investigate into the events constituting the violations in the instant case, and to identify, prosecute, and punish those responsible*

94. The Tribunal has established that, after six years, impunity for the events in the instant case still prevails. The Court has defined impunity as the overall failure to investigate, pursue, capture, prosecute and convict those responsible for the violations of the rights protected under the American Convention.⁵⁵ The State has de obligation to struggle against such a state of affairs by all available means, for it fosters chronic recurrence of violations of human rights and renders the victims and their next of kin completely defenseless.⁵⁶

95. Likewise, the next of kin of victims of serious human rights violations have the right to know the truth. Such right to the truth, when recognized and exercised in a specific situation, becomes an important means of reparation for the victims and their next of kin and gives rise to an expectation the state must fulfill. On the other hand, knowing the truth makes it easier for Venezuelan society to look for other ways to prevent such kinds of violations in the future.⁵⁷

96. Consequently, the next of kin of the victims have the right, and the States the obligation, to have the events which affected the former effectively investigated by State authorities, to have the suspects of such offenses prosecuted and, were it the case, to have them punished as fit.⁵⁸

97. In view of the foregoing, the State must earnestly take all necessary action to identify, judge and punish all perpetrators and plotters of the violations committed to the detriment of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, to all criminal effects and to all other effects the investigation of the events might have, even in the cases of Messrs. Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández wherein the inquests were closed

⁵⁴ Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 294; *Case of Gutiérrez-Soler*, *supra* note 1, para. 93; and *Case of Acosta-Calderón*, *supra* note 44, para. 163.

⁵⁵ *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 295; *Case of Gutiérrez-Soler*, *supra* note 1, para. 95; and *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 170.

⁵⁶ Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 297; *Case of Gutiérrez-Soler*, *supra* note 1, para. 95; *Case of the Moiwana Community*, *supra* note 54, para. 203.

⁵⁷ Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 297; *Case of Gutiérrez-Soler*, *supra* note 1, para. 96; *Case of the Moiwana Community*, *supra* note 54, para. 204.

⁵⁸ Cf. 113; and *Case of the Serrano-Cruz Sisters*, *supra* note 43, para. Cf. *Case of 19 Tradesman*, *supra* note 42, para. 187; *Case of Las Palmeras*. Judgment of September 6, 2001. Series C No. 90, para. 65

by the Prosecution. The next of kin of the victims or their representatives must have full access and standing at all stages and levels of the domestic criminal proceedings instituted in the instant case, pursuant to domestic law and to the American Convention. The outcome of such proceedings must be publicly disseminated by the State, in a manner enabling Venezuelan society to know the truth about the events in the instant case.

98. Furthermore, as the Court has pointed out constantly in its case law⁵⁹no domestic law statute or rule—including amnesty laws and statutes of limitations—may prevent a State from complying with the order of the Court to investigate and punish those responsible for human rights violations. Specifically, amnesty provisions, statutes of limitations and rules excluding liability purporting to hinder investigation and punishment of those responsible for serious violations of human rights—such as those in the instant case, forced disappearances—are inadmissible, for such violations infringe upon non-derogable rights recognized under International Human Rights Law.

b) Obligation to search for the mortal remains of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, as well as to deliver them to their next of kin

99. The Commission and the representatives requested the Court, as a measure of satisfaction in the instant case, to order the State to find out where Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández are, so that their next of kin may complete mourning for their disappearance. In such sense, the Tribunal considers it mandatory for the State to take the necessary steps to find out where such persons are, as soon as possible. In case they be found dead, such steps are to be geared towards delivering the mortal remains to their next of kin, for them to be buried in the manner the latter may consider proper. In such event, the State must afford the necessary conditions to convey the remains to the place the next of kin may choose, and must provide an appropriate burial, at no cost for the aforementioned next of kin.

c) Publication of the instant Judgment

100. The acknowledgment of responsibility made by the State during the public hearing held on June 28, 2005 is a positive contribution to the advancement of these proceedings and to the effectiveness of the principles inspiring the American Convention, as the Court pointed out in its order of the same date. Likewise, the Tribunal notes with satisfaction that, during such public hearing, the State expressed “to the representatives of the next of kin of the victims [its] regrets for all the vicissitudes they have underwent throughout these proceedings” and requested to be allowed to “present [them its] apologies directly.”

101. The Court deems fit that, as an additional measure of satisfaction aimed at giving reparation for the harm suffered by the victims and their next of kin, as well as for the purpose of avoiding recurrence of events such as those in the instant case, the State disseminate the appropriate parts of the instant Judgment. In such sense, Venezuela must publish within a six-month delay, as from the date it be notified of

⁵⁹ Cf. *Case of the “Mapiripán Massacre”*, *supra* note 1, para. 304; *Case of Gutiérrez-Soler*, *supra* note 1, para. 97; and *Case of the Moiwana Community*, *supra* note 54, para. 206.

the instant Judgment, at least once, in the *Diario Oficial* (Official Gazette) and in another national daily newspaper with national coverage, the Section of the instant Judgment called Proven Facts, without its footnotes, paras. 54 to 65 in the Section of the instant Judgment called Merits, and the operative paragraphs (*infra* para. 125) herein.

d) *Implementing measures to render the writ of habeas corpus effective for cases of forced disappearance in Venezuela*

102. In the instant case the writs of *habeas corpus* requested in favor of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández were declared “not applicable” by the Second, Fifth and Sixth *Jueces de Control del Circuito Judicial Penal del Estado Vargas* (Control Judges of the Criminal Court Circuit for Vargas State), respectively, for they expressed that the victims were not deprived “neither unlawfully nor illegitimately” of their liberty by officers from the *DISIP*. Regarding the situation of Mr. Roberto Javier Hernández-Paz, the *Juez Sexto de Control* (Sixth Control Judge) expressed that no “record exist[ed] neither of the place of imprisonment nor of the authority which [was] allegedly holding him in detention.” Likewise, the writ requested in favor of Mr. Oscar José Blanco-Romero was declared “non-applicable” despite the fact that the Commander of the Army reported that on December 21, 1999, members of the Army arrested such person and delivered him to *DISIP* officers.

103. In turn, the Commission pointed out that “the judges deciding on the petitions for writs of *habeas corpus* did not request or inspect personally the registration or log books neither of the *DISIP* nor of the Army, in order to establish whether the victims had been effectively arrested, as well as the place, the circumstances and the agents involved.” On such matter, the Court observes that the expert witness Jesús María Casal mentioned that “the use of the writ of *habeas corpus* when facing the forced disappearance of persons” is an “aspect that is not clearly covered under the laws in force.” He also indicated that legislation is “outdated with respect to constitutional standards and to those of International Human Rights Law”, something which includes the existence of “gaps of a procedural nature.”

104. Because of the foregoing, the Court considers that the State must adopt, according to Articles 7(6), 25 and 2 of the American Convention, the legislative or other measures that may be necessary so that in Venezuela the writ of *habeas corpus* may be granted in an effective manner when facing situations of forced disappearance. For such purpose, the State must take into account the scope of the writ of *habeas corpus* in the light of international rules on the matter, and particularly of the case law established in this Tribunal, in the sense that such writ represents the effective means to ensure that people's life and physical integrity are respected, and to prevent their disappearance or the uncertainty about their place of detention.⁶⁰

e) *Adapting the description of the crime of forced disappearance to international standards on the matter*

⁶⁰ Cf. *Case of Acosta-Calderón*, *supra* note 44, para. 90; *Case of Tibi*, *supra* note 43, para. 123; and *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35.

105. The State must take the necessary action to reform, within a reasonable time, its criminal legislation for the purpose of rendering it compatible with the international standards for the protection of individuals as relating to the forced disappearance of persons, paying special attention to the provisions in the American Convention and in the Inter-American Convention on Forced Disappearance, so that its criminal statutes include the punishment “of those persons or groups of persons acting with “the authorization, support, or acquiescence of the state”, and not be limited to “public authorities” or “persons in the service of the state.” Furthermore, Venezuela shall take the necessary action to ensure that protection to a victim of forced disappearance be effective when deprivation of liberty is the case, “in any form”, and not limited to “illegitimate” deprivation of liberty.

f) Implementing a training and education programme on the prohibition of forced disappearance, torture and the disproportionate use of force

106. The representatives requested that the Court order the State to implement a training programme on the absolute prohibition of forced disappearance and torture addressed to the members of the security agencies of Venezuela. Taking into consideration the circumstances of the instant case, the Tribunal deems fit to reaffirm what it pointed out in the *Case of the Caracazo vs. Venezuela*,⁶¹ in the sense that the State must implement, in the educational and training programmes for Armed Forces and *DISIP* officers, a course on the principles and rules for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into account the case law of the Inter-American Protection of Human Rights System, as a way to prevent recurrence of events such as those in the instant case.

g) Taking steps to make it easier for the minor child Aleoscar Russeth Blanco-Iriarte to leave the country

107. The representatives requested the State be ordered to issue a certificate which would make it easier for the minor child Aleoscar Russeth Blanco-Iriarte to leave Venezuela, with the previous consent of her mother, Mrs. Alejandra Josefina Iriarte de Blanco, for she is currently going through judicial procedures for such purpose, in the course of which she is made to remember once again the events which befell her father, Mr. Oscar José Blanco-Romero, something which produces anguish in her. In such sense, the Court deems it necessary for the State to take steps in order to make it easier for Aleoscar Russeth Blanco-Iriarte to leave Venezuela, when she wishes to travel.

IX COSTS AND EXPENSES

Arguments by the Commission

108. The Commission asked that the State be ordered to pay those costs and expenses that have been duly evidenced by the representatives, considering the particular circumstances of the instant case.

⁶¹ *Case of the Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 127.

Arguments by the representatives

109. As regards the expenses and costs paid by the *COFAVIC*, the representatives stated as follows:

- a) said organization incurred expenses in connection with the case of Mr. Oscar José Blanco-Romero, both domestically and internationally, in its capacity as representative of Mrs. Alejandra Josefina Iriarte de Blanco and Mrs. Gisela Romero. It has further assisted Mrs. Blanco in obtaining the authorizations to leave Venezuela, as well as her daughter Aleoscar Russeth Blanco-Iriarte, who has required "travel authorizations" due to the absence of her father;
- b) the case of Mr. Oscar José Blanco-Romero was simultaneously prosecuted in Vargas State and the Capital District, which is why several of *COFAVIC*'s legal counselors had to be put on the case on a full-time basis;
- c) it has provided "psycho-social and communicational assistance" to the next of kin of Roberto Javier Hernández-Paz and Francisco José Rivas-Hernández; and
- d) the expenses claimed total US \$74,274.00 (seventy-four thousand two hundred and seventy-four United States dollars).

110. Regarding the costs and expenses incurred by the Episcopal Vicarship, the representatives stated as follows:

- a) said organization incurred expenses in connection with the litigation of the case of Messrs. José Francisco Rivas-Fernández and Roberto Javier Hernández-Paz, both domestically and before the Inter-American System, in its capacity as representatives of Mrs. Nérida Josefina Fernández-Pelicie, Mrs. Teodora Paz de Hernández and Mrs. Allied Maritza Hernández-Paz, and of Mr. Francisco Jeremías Rivas; and
- b) the expenses claimed total US \$61,173.00 (sixty-one thousand one hundred and seventy-three United States dollars).

111. As regards the costs and expenses incurred by *PROVEA*, the representatives stated as follows:

- a) such organization has incurred expenses in connection with the litigation of the case of Mr. Roberto Javier Hernández-Paz, both domestically and internationally; and
- b) the expenses claimed total US \$14,519.00 (fourteen thousand five hundred and nineteen United States dollars).

112. As regards the costs and expenses incurred by *CEJIL*, the representatives stated as follows:

- a) CEJIL has incurred expenses in connection with the litigation of the cases of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, both domestically and internationally; and
- b) the expenses claimed total US \$26,996.76 (twenty-six thousand nine hundred and ninety-six United States dollars and seventy-six cents).

Arguments by the State

113. The State has not submitted arguments on the subject of the costs and expenses arising both domestically and internationally in connection with the instant case.

Considerations of the Court

114. As previously stated by the Court,⁶² costs and expenses are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, since the victims' efforts to obtain justice both domestically and internationally entail disbursements that must be compensated when a condemnatory Judgment has declared the State internationally liable. As regards their reimbursement, the Court must prudently assess the extent of such costs and expenses, which include the expenses incurred when acting before the domestic authorities as well as those incurred in the course of proceedings before the Inter-American System, taking into account both the particular circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. Such assessment is to be based on the principle of equity, taking into account the expenses claimed and evidenced to have been incurred by the parties, provided that the amount thereof is reasonable.

115. In the light of the above, the Court considers it appropriate, on equitable grounds, to award a total of US\$ 40,000.00 (forty thousand United States dollars) or an equivalent amount in Venezuelan currency, out of which US\$ 13,333.33 (thirteen thousand three hundred and thirty-three United States dollars and thirty-three cents) shall be paid to each of Mrs. Alejandra Josefina Iriarte de Blanco, the wife of Mr. José Blanco Romero; Mrs. Teodora Paz de Hernández, the mother of Roberto Javier Hernández-Paz; and Mrs. Nélide Josefina Fernández-Pelicie, the mother of José Francisco Rivas-Fernández, on account of costs and expenses incurred in connection with the domestic proceedings and the international proceedings before the Inter-American System for the protection of human rights. Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Teodora Paz de Hernández and Mrs. Nélide Josefina Fernández-Pelicie shall deliver to their representatives such amount as may be appropriate, on the basis of the assistance provided by the latter.

X
METHOD OF COMPLIANCE

116. In order to comply with the instant Judgment, Venezuela shall make payment of the above-ordered compensations (*supra* paras. 80, 82, 88 and 89) and reimburse

⁶² Cf. *Case of the "Mapiripán Massacre"*, *supra* note 1, para. 322; *Case of Gutiérrez-Soler*, *supra* note 1, para. 116; and *Case of Girls Yean and Bosico*, *supra* note 2, para. 248.

the costs and expenses (*supra* para. 115) within one year from the date it is served notice of the Judgment. Regarding publication of the relevant sections of the Judgment (*supra* para. 101), the State shall comply with such measure within six months from the date it is served notice of the Judgment. Regarding the other measures ordered without a specified deadline for compliance, the State shall have a reasonable period as from notice of the instant Judgment to comply with them.

117. Payment of the compensations awarded for the benefit of the victims and their next of kin shall be effected as per paragraphs 72, 73, 80, 82, 88 and 89 hereof.

118. Payments on account of reimbursement of costs and expenses shall be made to Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Teodora Paz de Hernández and Mrs. Nérida Josefina Fernández-Pelicie, who shall in turn effect the required payments as per paragraph 115 hereof.

119. The State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount of the currency of the State of Venezuela, at the rate of exchange between both currencies prevailing in the market of New York, USA, on the day prior to the date of actual payment.

120. In the event that, due to reasons attributable to the beneficiaries of such compensation, it should be impossible for them to receive such payments within the aforementioned period of one year as from notice of the instant Judgment, then the State shall deposit said amounts into an account held in the beneficiaries' name or draw a certificate of deposit from a solvent Venezuelan financial institution, in United States dollars and subject to the most favorable financial terms permissible under the laws and banking practice in force. Should the compensation amounts remain unclaimed after a term of ten years, the money, plus accrued interest, shall be returned to the State.

121. As regards the compensation awarded to those beneficiaries who are not of legal age, the State shall deposit the relevant amounts in their name with a solvent Venezuelan financial institution, either in United States dollars or in Venezuelan currency, as their legal representative may choose. Such deposit shall be made within a period of one year, subject to the most favorable financial terms permissible under the laws and banking practice in force, until they come of age. Such deposit may be withdrawn by said beneficiaries upon their coming of age or when so ordered by a judicial authority of competent jurisdiction in the best interests of the minor. Should the amount remain unclaimed after a ten-year period as from the minor's coming of age, the money, plus accrued interest, shall be returned to the State.

122. The amounts awarded in the instant Judgment as compensation for pecuniary damage, non pecuniary damage, and costs and expenses shall not be affected, reduced or subjected to any condition on account of current or future tax-related reasons. Accordingly, such amounts shall be paid to the beneficiaries in full, as per the provisions of the instant Judgment.

123. Should the State fall into arrears, it shall pay interest on the amount outstanding, at the banking arrearage interest rate applicable in Venezuela.

124. Further to its consistent practice, the Court reserves its jurisdictional authority to monitor full compliance with the instant Judgment. The instant case shall

be closed once the State has fully complied with the provisions hereof. Within a year from the date of notice of the instant Judgment, Venezuela shall provide the Court with a report on the measures adopted in compliance with the instant Judgment.

**XI
OPERATIVE PARAGRAPHS**

125. Therefore,

The Court

DECIDES,

Unanimously,

1. To ratify its Order of June 28, 2005, whereby the State's acknowledgement of international liability was admitted.

DECLARES,

Unanimously, that:

2. The State has violated, to the detriment of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, their rights under Articles 4(1) (Right to Life); 5(1) and 5(2) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) (Right to Personal Liberty); 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, and has failed to comply with its obligations under Articles 1, 5, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Articles I(a) and I(b), X and XI of the Inter-American Convention on Forced Disappearance of Persons, as provided in paragraph 58 of the instant Judgment.

3. The State has violated the rights enshrined in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, namely: Alejandra Josefina Iriarte de Blanco, Gisela Romero, Aleoscar Russeth Blanco-Iriarte, Oscar Alejandro José Blanco-Iriarte, Orailis del Valle Blanco, Edwar José Blanco, Teodora Paz de Hernández, Roberto Aniceto Hernández, Nérida Marina Hernández-Paz, Aida Benirgía Hernández-Paz, Mirna Esperanza Hernández-Paz, Aleidy Maritza Hernández-Paz, Brizania Hernández-Paz, Reina Alejandra Antune-Paz, Ramón Alberto Paz, Carlos Paz, Nérida Josefina Fernández-Pelicie, Francisco Jeremías Rivas, Eneida Josefina Rivas-Fernández, Yelitza Isabel Rivas-Fernández, Luis Ernesto Rivas-Fernández, Rubén Alexis Rivas-Fernández, Miguel Enrique Galindo-Fernández, and José Daniel Rivas-Martínez. Likewise, the State has failed to comply with its obligation under Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the

detriment of the above-listed next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, as provided in paragraphs 59 to 61 of the instant Judgment.

4. The State has violated Article 8(2) (Fair Trial) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mrs. Alejandra Josefina Iriarte de Blanco, as provided in paragraph 61 of the instant Judgment.

5. The instant Judgment is, in and of itself, a form of reparation, as set forth in paragraph 87 hereof.

AND RULES,

Unanimously, that:

6. The State is to carry out investigations and effective, unbiased judicial proceedings on the three forced disappearances involved in the instant case, leading to the truth of the facts and the punishment of those responsible therefor, as per paragraphs 94 to 98 and 116 of the instant Judgment.

7. The State is to adopt such measures as may be necessary to establish the whereabouts of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández as soon as possible. Should they be found dead, such measures are to be directed at delivering their remains to their next of kin for burial as the latter may deem appropriate. Should this be the case, the State is to provide the conditions required to convey the victims' remains to such place as may be determined by their next of kin, and to give them decent burial at no expense for such next of kin, as per paragraphs 99 and 116 of the instant Judgment.

8. The State shall publish once, within a six-month delay as from the date it be notified of the instant Judgment, in the *Diario Oficial* (Official Gazette) and in another national daily newspaper with national coverage, the Section of the instant Judgment called Proven Facts, without its footnotes, paras. 54 to 65 in the Section of the instant Judgment called Merits, and the operative paragraphs (*infra* para. 125) herein, as per paragraphs 101 and 116 hereof.

9. In line with the provisions of Articles 7(6), 25 and 2 of the American Convention on Human Rights, the State is to pass such legislative or other measures as may be required in order for writs of *habeas corpus* to be effectively processed in Venezuela in cases of forced disappearance, as per paragraphs 104 and 116 hereof.

10. The State is to adopt, within a reasonable time period, such measures as may be necessary to reform its criminal laws so as to bring them in line with the international standards on the protection of individuals in connection with the forced disappearance of persons, as per paragraphs 105 and 116 of the instant Judgment.

11. The State is to include, as part of the education and training courses for the officers of the Armed Forces and the Office of the Sector Director General of the Intelligence and Preventive Services Bureau, a program regarding the principles and rules of human rights protection, particularly the prohibition against forced disappearance, torture and disproportionate use of force, taking into consideration the case-law of the Inter-American System for the Protection of Human Rights, as a

mechanism to prevent the recurrence of events such as the ones in the instant case, as per paragraphs 106 and 116 of the instant Judgment.

12 The State is to adopt the essential measures required to facilitate minor Aleoscar Russeth Blanco-Iriarte's departure from Venezuela, as per paragraphs 107 and 116 of the instant Judgment.

13. The State is to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 80 and 82 of the instant Judgment, within a period of one year, as compensation for pecuniary damage, as per paragraphs 72, 80, 82, 116 and 119 to 123 hereof.

14. The State is to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 88 and 89 of the instant Judgment, within a period of one year, as compensation for non pecuniary damage, as per paragraphs 72, 88, 89, 116 and 117 to 123 hereof.

15. The State shall pay the amount set forth in paragraph 115 hereof, within one year, on account of costs and expenses incurred both domestically and in the course of the international proceedings before the Inter-American System for the protection of human rights; such amount is to be delivered to Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Teodora Paz de Hernández and Mrs. Nélida Josefina Fernández-Pelicie, as per paragraphs 115, 116 and 118 to 123 of the instant Judgment.

16. The Court will monitor full compliance with the instant Judgment; the instant case shall be closed once the State has fully complied with the provisions hereof. Within a year from the date it is served notice of the instant Judgment, the State shall submit to the Court a report on the measures taken to comply herewith, as per paragraph 124 hereof.

Judge García-Ramírez and Judge Cançado Trindade informed the Court of their Concurring and Separate Opinion, respectively, which opinions are attached to the instant Judgment.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alesandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

**CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ
TO THE JUDGMENT BY THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
ON THE *CASE OF BLANCO-ROMERO ET AL V. VENEZUELA*
OF NOVEMBER 28, 2005**

In the instant case, the Inter-American Court examined, among other issues, the duty of the State to adapt its legislation to the Inter-American Convention on Forced Disappearance of Persons, of June 9, 1994. Such adaptation relates to the description in Article II of the aforementioned instrument on forced disappearance that should orient the wording of the criminal description in domestic law.

Since I have discussed the matter at some length in my *Concurrent Opinion* to the Judgment the Court has already rendered in the *Case of Gómez Palomino v. Perú*, of November 22, 2005, I refer to the considerations I put forth in such previous *Opinion*.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred in my opinion with the Judgment rendered by the Inter-American Court of Human Rights in the *Case of Blanco-Romero et al v. Venezuela*. Furthermore, I feel I have to put on record, in this Separate Opinion, the personal thinking the instant Judgment rendered by the Court has prompted in me, particularly regarding the issues of the right to know the truth and the forms reparations may adopt, as I have done, concerning this second issue, in my previous Separate Opinions in the *Case of Myrna Mack-Chang v. Guatemala* (Judgment of November 25, 2003), and the *Case of the Plan de Sánchez Massacre* (Judgment on reparations of November 19, 2004).

2. In the instant Judgment, the Court has considered favorably the acknowledgment of international responsibility effected by the State (para. 63), while it has also realized the importance of the right to know the truth, in both its individual (as a means of reparation for the victims and their next of kin) and social (concerning the social fabric as a whole) dimensions. The individual dimension has been pointed out by the Court ever since its Judgments in the cases of *Castillo-Páez versus Perú* (of November 3, 1997, para. 90), *Bámaca-Velásquez versus Guatemala* (of November 25, 2000, merits, para. 201), *Barrios Altos* concerning Peru (of March 14, 2001, paras. 47-48), *Paniagua-Morales et al versus Guatemala* (of May 25, 2001, reparations, para. 200), *Villagrán-Morales ("the Street Children") et al versus Guatemala* (of May 26, 2001, reparations, para. 100), *Cantoral Benavides versus Perú* (of December 3, 2001, reparations, para. 69), *Bulacio versus Argentina* (of September 18, 2003, para. 114), *Molina-Theissen versus Guatemala* (of July 3, 2004, reparations, paras. 80-81), and *the Gómez-Paquiyaury brothers versus Peru* (of July 8, 2004, paras. 229-230).

3. As from the Judgment on reparations in the memorable case of *Bámaca Velásquez versus Guatemala* (of February 22, 2002)—a renowned case with such a great cultural density—the Court went on to point out as well the social dimension (along with the individual one) of the right to know the truth, when determining that

"Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future" (para. 77).

The Court reaffirmed such social dimension in its Judgments in the cases of *Trujillo-Oroza versus Bolivia* (of February 27, 2002, reparations, para. 114), *Myrna Mack Chang versus Guatemala* (of November 25, 2003, para. 274), *Masacre de Plan de Sánchez* concerning Guatemala (of September 19, 2004, reparations, para. 98), *Carpio Nicolle et al versus Guatemala* (of November 22, 2004, para. 128), *Serrano-Cruz sisters versus El Salvador* (of March 1, 2005, paras. 62 and 169), *Huilca-Tecse versus Peru* (of March 3, 2005, paras. 107), *Moiwana Community versus Suriname* (of June 15, 2005, para. 204), *Gutiérrez Soler versus Colombia* (of September 12, 2005, para. 96), and *Mapiripán Massacre* regarding Colombia. (of September 15, 2005), para. 298).

4. In its Judgment (of July 5, 2004) in the *Case of the 19 Tradesmen versus Colombia*, the Court pointed out that the investigation of the events and the punishment of those responsible were measures benefiting not only the next of kin of the victims, but

" also society as a whole, because, by knowing the truth about such crimes, it can prevent them in the future" (para. 259).

The right to know the truth is connected with the unavoidable duty of the State to effect an earnest and effective investigation of the events resulting in human rights violations and to identify, prosecute and punish those responsible, as the Court points out in the instant Judgment on the *Case of Blanco Romero et al*; it is only thus —the Court adds— that it can be guaranteed that chronic recurrence of such violations and rendering "the victims and their next of kin completely defenseless" will be avoided (para. 93).

5. The Court warns, right afterwards, that according its *jurisprudence constante*

"no domestic law, statute or rule —including amnesty laws and statutes of limitations— may prevent a State from complying with the order of the Court to investigate and punish those responsible for human rights violations. Specifically, amnesty provisions, statutes of limitations and rules excluding liability purporting to prevent investigation and punishment of those responsible for serious violations of human rights —such as those in the instant case, forced disappearances— are inadmissible, for such violations infringe upon inderogable rights recognized under International Human Rights Law. (para. 97).

6. I understand such provisions to be inadmissible because they infringe *all* the rights forming the body of Human Rights International Law, —indivisible as they all are— both inderogable and derogable. This becomes particularly relevant in the struggle against impunity. In my experience for more that a decade serving on this Court, I have verified that the States Parties to the American Convention, and that are subject to the jurisdiction of the Court, find it less difficult to comply with pecuniary reparations than to comply with the duty to investigate as a form of non pecuniary reparation (giving satisfaction to the victims, to their next of kin, and to the social environment concerned).

7. Indeed, the provisions in Article 63(1) of the American Convention on Human Rights¹ effectively provide the Inter-American Court with quite an amount of leeway regarding reparations. In my opinion, as pointed out in the Separate Opinions referred to above, in the cases of *Myrna Mack Chang* (2003) and of the *Plan de Sánchez Massacre* (2004) and as reasserted herein, some reparations with dissuasive or exemplary purposes (related to *aggravated* liability) may contribute both to the struggle against impunity and to guarantee non-recurrence of the harmful events.

8. The entire chapter on reparations for human rights violations requires a greater development in concept and in case law, starting with the acknowledgment of the close relation between the right to reparations and the right to justice. Such development is particularly necessary in the event of serious and systematic violations of human rights

1 Article 63(1) of the American Convention provides that: "—If 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."



—as in the instant *Case of Blanco-Romero et al.*— that call for dissuasive reparations, precisely to ensure non-recurrence of such serious human rights violations.

9. As previously pointed out in my Separate Opinion in the *Case of Myrna Mack-Chang* (2003), on the actual *reparatio*,

"[contrary] to what the Inter-American Court maintained in the past,² it is my view that reparations can perfectly well be both compensatory and punitive, with the aim of putting an end to impunity and ensuring realization of justice —which is perfectly in accordance with the current stage of development of international law." (para. 46)

10. Indeed, reparations of dissuasive or exemplary nature can already be found in the precedents of this Court. Thus, for instance, in the *Case of Aloeboetoe v. Suriname* (Judgment of September, 10, 1993), the Court ordered to reopen a school and establish a foundation to assist the beneficiaries. In the *Case of Villagrán-Morales et al. v. Guatemala* (case of the "Street Children," Judgment of May 26, 2001), the Court ordered once again that an education center be named after the victims of the case; similarly, in the *Case of Trujillo-Oroza v. Bolivia* (Judgment of February 27, 2002), the Court again ordered that an educational establishment be given the name of the victim.

11. I find particularly significant and exemplary the reparation measures aimed at recognizing the suffering of the victims and preserving their collective memory. We can mention at this point some other pertinent examples in precedents of the Court. In the *Case of Cantoral Benavides v. Peru* (Judgment of December 3, 2001), for instance, the Court ordered the State to provide a university-level educational scholarship to the victim. In the *Case of Barrios Altos v. Peru* (Judgment of November 30, 2001), the Court ordered reparations to be made effective through education-related benefits and payment of expenses for health services.

12. Moreover, in the *Case of Durand and Ugarte v. Peru* (Judgment of December 3, 2001), the Court once again ordered payment of health care services or expenses and psychological support. In the *Case of Myrna Mack-Chang v. Guatemala* (Judgment of November 25, 2003), the Court ordered reparations³ of both compensatory and punitive nature, for dissuasive or exemplary purposes, in order to preserve the memory of the violations occurred, to satisfy (in the sense of serving the interests of justice) the next of kin of the victim, and to contribute to guarantee non-recurrence of such violations.

13. Such exemplary reparations are similar to "punitive damages" which, contrary to what some hasty authors aver, do exist. "Punitive damages" —a notion which is not strange to comparative domestic case law and to arbitration international law⁴— may, in

². In the judgments on "compensatory damages" (of 1989) in the cases of *Velásquez Rodríguez y Godínez Cruz, cit. supra* n. (47).

³. Such as the ones in operative paragraphs 6 to 11 of the Judgment in that case.

⁴. Cf., for example, *inter alia*, R.W. Hodgins y E. Veitch, "Punitive Damages Reassessed", 21 *International and Comparative Law Quarterly* (1972) pp. 119-132. There are even those who perceive a clear recognition of "punitive damages" in international law; cf., for example, N.H.B. Jorgensen, "A Reappraisal of Punitive Damages in International Law", 68 *British Year Book of International Law* (1997) pp. 247-266. And, for a draft of a jurisprudential construct, cf. G.

my opinion, be easily conceived in this sense, akin to "obligations to do" that are both compensatory and punitive.⁵

14. "Punitive damages," thus characterized (beyond the merely pecuniary meaning inadequately given to them) can be an appropriate response or reaction of the legal order against particularly serious human rights violations. Thus understood, "punitive damages" —as I observed in my Separate Opinion on the *Case of Myrna Mack-Chang* (para. 52) have already been actually applied, for a long time, in the domain of international human rights protection —which makes us recall the phrase uttered by Molière's famous character, Monsieur Jourdain, *qui parlait la prose sans le savoir...*⁶

15. Similarly, as I explained in my Separate Opinion on the *Case of the Plan de Sánchez Massacre* (Reparations, 2004):

"Whether the reparations ordered in the instant Judgment of the Court are called punitive damages (...) or "exemplary reparations," or any other expression of this type, their basic purpose remains the same: they recognize the extreme gravity of the facts, punish the State responsible for the grave violations committed, acknowledge the extreme sacrifice of the victims who died and alleviate the sacrifice of the surviving victims, and establish a guarantee of non-recurrence of the harmful acts. Whatever they are called, their basic purpose is always the same, they are for the benefit of the victims (direct and indirect) and the population of the defendant State as a whole, because their purpose is to rebuild the damaged social fabric." (para 25)

16. In its instant Judgment on the *Case of Blanco Romero et al.*, the Inter-American Court has ordered, as one of the reparation measures, as a form of *satisfaction* and as a *guarantee of non-recurrence* of the harmful events, that the State implement a human rights education and training programme for the security forces. In the words of the Court,

"(...) Taking into consideration the circumstances of the instant case, the Tribunal deems fit to reaffirm what it pointed out in the *Case of the Caracazo v. Venezuela* [reparations, 2002], in the sense that the State must implement, in the educational and training programmes for Armed Forces and [*Dirección General Sectorial de los Servicios de Inteligencia y Prevención* (Office of the Sector Director General for Intelligence and Preventive Services)] officers, a course on the principles and rules for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into account the case law of the Inter-American

Arangio-Ruiz, "Second Report on State Responsibility", in United Nations, *Yearbook of the International Law Commission* (1989)-II, part I, pp. 31-35, 40-43 y 47-54.

⁵. Thus bridging the gap between civil and criminal, specific to the regulation of responsibility under domestic law.

⁶. M. Jourdain: - "(...) Il y a plus de quarante ans que je dis de la prose, sans que j'en susse rien, et je vous suis le plus obligé du monde de m'avoir appris cela". Molière, *Oeuvres Complètes* (*Le bourgeois gentilhomme*, 1670, Act II, Scene V), Paris, Éd. Seuil, 1962, p. 515.

Protection of Human Rights System, as a way to prevent recurrence of events such as those in the instant case." (para. 105)

17. As it is clearly deduced therefrom, the human rights education measures concern, at the same time, both *reparation* and *prevention* of human rights violations, revealing the *temporal dimension* of human rights safeguards. Hence the capital importance of such educational programmes, precisely in order to ensure human rights effectiveness. In the medium term and in the long term, it will only be possible to meet effectively many of the national and international challenges to human rights protection through education.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary