

Inter-American Court of Human Rights
Case of Carpio-Nicolle *et al.* v. Guatemala

Judgment of November 22, 2004
(*Merits, Reparations and Costs*)

In the *Case of Carpio Nicolle et al.*,

the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American 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
Diego García-Sayán, Judge, and
Oscar Luján Fappiano, Judge *ad hoc*;

also present,

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

pursuant to Articles 29, 31, 53(2), 56 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”),¹ and with Article 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), delivers this judgment.

I
INTRODUCTION OF THE CASE

1. On June 13, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed an application before the Court against the State of Guatemala (hereinafter “the State” or “Guatemala”), originating from petition No. 11,333, received by the Secretariat of the Commission on July 12, 1994.

2. The Commission filed the application based on Article 61 of the American Convention, for the Court to decide whether the State had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of

¹ This judgment is delivered under the terms of the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial reform adopted by the Court at its sixty-first regular session in an order of November 25, 2003, in force since January 1, 2004.

Thought and Expression), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the said Convention, all of them in relation to Article 1(1) (Obligation to Respect Rights) thereof. The application indicated that on July 3, 1993, "the delegation [of the journalist and politician Jorge Carpio Nicolle²] was [allegedly] surrounded by more than 15 armed men in the proximity of the place known as Molino El Tesoro, in the municipality of Chichicastenango, [El] Quiché, and when they had identified him, they [allegedly] shot him at pointblank range. During the [alleged] attack, the following persons were killed: [Jorge Carpio Nicolle,] Juan Vicente Villacorta [Fajardo]³, Alejandro Ávila Guzmán and Rigoberto Rivas González, and Sydney Shaw [Díaz]⁴ was injured." The Commission alleges that Jorge Carpio Nicolle and his delegation, composed of Martha Arrivillaga de Carpio,⁵ Juan Vicente Villacorta Fajardo, Mario Arturo López Arrivillaga,⁶ Sydney Shaw Arrivillaga,⁷ Ricardo San Pedro Suárez, Alejandro Ávila Guzmán, Rigoberto Rivas González and Sydney Shaw Díaz, were supposedly attacked by members of the Self-Defense Patrols (hereinafter "the PAC") of San Pedro de Jocopilas. It alleged that there were irregularities in the subsequent domestic criminal proceedings, as well as a lack of investigation and criminal sanction of those who perpetrated and masterminded the attack.

3. The Commission also asked the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt specific measures of reparation indicated in the application. Lastly, it requested the Inter-American Court to order the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system.

II JURISDICTION

4. Guatemala has been a State Party to the American Convention since May 25, 1978, and recognized the contentious jurisdiction of the Court on March 9, 1987. Therefore, the Court has jurisdiction to hear this case in the terms of Article 62 and 63(1) of the Convention.

III

² This name also appears as "Jorge Rafael Carpio Nicolle." Hereinafter, the Court will use "Jorge Carpio Nicolle" or "Mr. Carpio Nicolle."

³ This name also appears as "Juan Vicente Roberto Villacorta Fajardo" and as "Juan Vicente Villacorta." Hereinafter, the Court will use "Juan Vicente Villacorta Fajardo" or "Mr. Villacorta Fajardo."

⁴ This name also appears as "Sydney Eduard Collin Ryley Shaw Díaz", "Sidney Eduard Collin Ryley Shaw Díaz", "Sidney Shaw" and "Sidney Shaw Díaz." Hereinafter, the Court will use the name "Sydney Shaw Díaz."

⁵ This name also appears as "Marta Arrivillaga de Carpio" and as "Martha Elena Arrivillaga Orantes." Hereinafter, the Court will use "Martha Arrivillaga de Carpio" or "Mrs. Arrivillaga de Carpio."

⁶ This name also appears as "Mario López Arrivillaga". Hereinafter, the Court will use "Mario Arturo López Arrivillaga" or "Mr. López Arrivillaga."

⁷ This name also appears as "Sidney Shaw Arrivillaga" and as "Sydney Eduardo Shaw Arrivillaga." Hereinafter, the Court will use "Sydney Shaw Arrivillaga" or "Mr. Shaw Arrivillaga."

PROCEEDING BEFORE THE COMMISSION

5. On July 12, 1994, Martha Arrivillaga de Carpio and Karen Fischer,⁸ the Human Rights Office of the Archbishopric of Guatemala, the Center for Justice and International Law, Human Rights Watch/Americas and the International Human Rights Law Group filed a petition before the Inter-American Commission.

6. On August 27, 1996, the Commission made itself available to the parties in order to reach a friendly settlement.

7. On September 27, 1996, the petitioners informed the Commission of their willingness to take part in the proposed friendly settlement.

8. On October 30, 2001, the Commission proceeded to open the case as No. 11,333, and postponed examining admissibility until the discussion and decision on merits, in application of the provisions of Article 37(3) of its Rules of Procedure.

9. On March 4, 2003, having examined the positions of the parties and considering that the friendly settlement stage had concluded, the Commission adopted the Report on admissibility and merits No. 27/03, in which it recommended that the State:

1. Carry out a complete, impartial and effective investigation into the reported facts in order to prosecute and punish the perpetrators of the human rights violations committed against Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán, Rigoberto Rivas and Sydney Shaw.

2. Adopt the necessary measures to ensure that Sydney Shaw and the next of kin of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán and Rigoberto Rivas receive adequate, prompt reparation for the violations [...] established.

3. Adopt the necessary measures to avoid similar acts occurring in future, in accordance with the obligation to prevent and guarantee the fundamental rights recognized in the American Convention.

10. On March 13, 2003, the Commission forwarded the above report to the State, granting it two month from the date of transmittal, to report on the measures adopted to comply with the above recommendations.

11. On June 10, 2003, the Commission decided to file the instant case before the Court, in view of the lack of a response from the State regarding compliance with its recommendations, and the provisions of Article 44(2) of its Rules of Procedure.

IV PROVISIONAL MEASURES

12. On June 1, 1995, at the request of the petitioners, and based on alleged threats and intimidation against Martha Arrivillaga de Carpio, Karen Fischer, Mario Arturo López Arrivillaga, Ángel Isidro Girón Girón and Abraham Méndez García, the Commission requested the Inter-American Court to order provisional measures in favor of these persons.

13. In an order of June 4, 1995, the President of the Court (hereinafter "the President") ordered urgent measures, in which he requested the State to protect the

⁸ This name also appears as "Karen Fisher", "Karen Marie Fischer Pivaral" and as "Karen Fischer de Carpio." Hereinafter, the Court will use "Karen Fischer" or "Mrs. Fischer."

lives and integrity of the abovementioned persons. Subsequently, on July 26, 1995, the President included Lorraine Marie Fischer Privaral, Karen Fischer's sister, who also alleged that she had been constantly followed and threatened, as a beneficiary of the measures.

14. In an order of the Court of September 19, 1995, the Court ratified the measures adopted by its President on June 4 and July 26, 1995. On February 1, 1996, the Court decided to extend the measures ordered on September 19, 1995. The order of the Court of September 10, 1996, ratified the measures required in the order of September 19, 1995, and extended by the order of February 1, 1996. Subsequently, in the order of the Court of September 19, 1997, the Court required the State to provide information on "specific progress made in the investigations" in the case and to continue reporting to the Court on the said measures every two months.

15. In an order of the Court of June 19, 1998, the Court lifted the provisional measures ordered in favor of Mario Arturo López Arrivillaga, Ángel Isidro Girón Girón, Abraham Méndez García and Lorraine Marie Fischer Pivaral, and maintained the measures with regard to Martha Arrivillaga de Carpio and Karen Fischer. The order of the Court of November 27, 1998; declared, *inter alia*, that the State should adopt the pertinent measures "to resolve the actual and future situation of Karen Fischer." In orders of the Court of September 30, 1999, and September 5, 2001, the Court required, *inter alia*, that these measures should be maintained to protect the lives and integrity of Martha Arrivillaga de Carpio and Karen Fischer.

16. On July 8, 2004, the Court ratified all the terms of the order of September 5, 2001, regarding the provisional measures ordered in favor of Mrs. Arrivillaga de Carpio and Mrs. Fischer. It also called upon the State to expand these measures to protect the lives and personal integrity of Jorge and Rodrigo Carpio Arrivillaga, Abraham Méndez García and his wife and children, and the adolescents, Rodrigo and Daniela Carpio Fischer, should the latter return to Guatemala.

V

PROCEEDING BEFORE THE COURT

17. On June 13, 2003, the Inter-American Commission filed the application before the Court (*supra* para. 1), appointing Susana Villarán and Santiago Canton as delegates, and Lisa Yagel and María Claudia Pulido as legal advisers.

18. On August 1, 2003, after the President had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, together with its appendixes and informed the latter of the time limits for answering it and appointing its representatives in the proceeding. The same day, on the instruction of the President, the Secretariat informed the State of its right to appoint a judge *ad hoc* to take part in considering and deciding the case.

19. On August 4, 2003, in accordance with the provisions of 35(1)(d) and (e) of the Rules of Procedure, the Secretariat notified the application to the Center for Justice and International Law (hereinafter "CEJIL" or "the representatives"), in their capacity as original petitioner and representative of the alleged victims and their next of kin, and informed it that it had 30 days to present the brief with requests, arguments and evidence (hereinafter "requests and arguments brief"). Furthermore, on August 1, 2003, pursuant to Article 35(1)(d) of the Rules of Procedure, the

Secretariat notified the application to Human Rights Watch and to the Human Rights Office of the Archbishopric Guatemala, and on August 4, 2003, to the International Human Rights Law Group, all the foregoing in their capacity as original petitioners. Also, on August 1 and 7, 2003, pursuant to Article 35(1)(e) of the Rules of Procedure, the Secretariat notified the application to the next of kin of the alleged victims.

20. On August 13, 2003, the State appointed Oscar Luján Fappiano as Judge *ad hoc*.

21. On September 29, 2003, the State appointed Conrado Arnulfo Reyes as its agent and Joel López y López as its deputy agent.

22. On October 3, 2003, after an extension had been granted, the representatives presented the requests and arguments brief. In this brief, CEJIL stated that, in addition to the articles indicated by the Inter-American Commission in its application (*supra* para. 2), the State had violated Article 23 (Right to Participate in Government) of the American Convention. The representatives also requested specific reparations and the payment of costs and expenses.

23. On November 18, 2003, the State requested an extension of the time limit for answering the application, which had expired on October 1, 2003. On November 26, 2003, the Secretariat informed the State that the Court, in plenary, had rejected this request because it was time-barred.

24. On February 3, 2004, the State advised that it had appointed Sandra Elizabeth Ruano Arriola as its agent, in substitution of Conrado Reyes (*supra* para. 21).

25. On March 1, 2004, the State requested that it be allowed to substitute Judge *ad hoc*, Oscar Luján Fappiano (*supra* para. 20), by Alejandro Sánchez Garrido. On March 5, 2004, the Secretariat informed the State that the President had been informed of its request to substitute the judge *ad hoc*.

26. On March 3, 2004, the State communicated that it had appointed Rosa del Carmen Bejarano Girón as its agent, in substitution of Sandra Elizabeth Ruano Arriola (*supra* para. 24).

27. On April 6, 2004, the State advised that it had appointed Herbert Estuardo Meneses Coronado as its agent, in substitution of Rosa del Carmen Bejarano Girón (*supra* para. 26), and Luis Ernesto Cáceres Rodríguez as its deputy agent.

28. On April 29, 2004, the Court issued an order in which it rejected the proposed substitution of Judge *ad hoc* Oscar Luján Fappiano by Alejandro Sánchez Garrido, on the following grounds:

3. That the condition of the judge *ad hoc* is identical to that of the other judges who compose the Court, in the sense that they do not represent a specific State, but incorporate the Court in their personal capacity, in accordance with Article 52(1) of the American Convention, and also Article 55(4) thereof. [...]

4. That, in this regard, the Court has indicated: “[t]he incorporation in their personal capacity of all the permanent and *ad hoc* judges of the Court is based on and must take into account the need to protect the independence and impartiality of an international tribunal.” [...]

5. That the functions of the judge *ad hoc* commence from the moment he accepts the position and takes the oath established in Article 11 of the Court's Statute. [...]

6. That, in the instant case, Judge *ad hoc* Oscar Luján Fappiano has already remitted the sworn declaration accepting the position of judge *ad hoc*. Following his designation and acceptance, he has incorporated the Court and, accordingly, has received the documentation on the Case of Carpio Nicolle et al.. Consequently, the substitution requested by the State is not admissible [...].

29. On May 26, 2004, the President issued an order in which, pursuant to Article 47(3) of the Rules of Procedure, he required Fernando Linares Beltranena, proposed as a witness by the Commission and endorsed by the representatives; Alfredo Skinner Klee, proposed as a witness by the Commission; Mario Arturo López Arrivillaga, Ricardo San Pedro Suárez, Oscar Abel García Arroyo, Rodrigo Carpio Arrivillaga, Sydney Shaw Díaz and Rodrigo Asturias, proposed as witnesses by the representatives, and Alberto Bovino, César Augusto Alba Cije and Ana Deutsch, proposed as expert witnesses by the representatives, to provide their testimony and expert reports by affidavit (sworn statements before notary public). The President granted a non-extendible period of 10 days from the reception of these affidavits for the Inter-American Commission, the representatives, and the State to present any comments on these statements of the witnesses and reports of the expert witnesses presented by the other parties they deemed appropriate. In this order, the President also convened the parties to a public hearing to be held at the seat of the Inter-American Court, starting on July 5, 2004, to hear their final oral arguments on merits and possible reparations and costs, and also the testimony of Mrs. Arrivillaga de Carpio, Mrs. Fischer and Mr. Méndez García, proposed as witnesses by the Commission and endorsed by the representatives, and of Jorge Carpio Arrivillaga, Sydney Shaw Arrivillaga and Silvia Arrivillaga Orantes,⁹ proposed as witnesses by the representatives, and the expert report of Marco Antonio Sagastume Gemmell, proposed as expert witness by the representatives. In addition, in this order, the President informed the parties that they had until August 5, 2004, to present their final written arguments on merits and possible reparations and costs.

30. On June 16, 2004, the Commission presented the affidavit made by Alfredo Skinner Klee. The same day, the representatives presented the affidavits made by Mario Arturo López Arrivillaga, Ricardo San Pedro Suárez, Rodrigo Carpio Arrivillaga and Sydney Shaw Díaz, and also the expert report made before notary public (affidavit) by César Alba Cije (*supra* para. 29).

31. On June 17, 2004, the Secretariat noted that it had not received the affidavits of Oscar Abel García Arroyo, Rodrigo Asturias, Alberto Bovino and Ana Deutsch, offered by the representatives, or that of Fernando Linares Beltranena, offered jointly by the representatives and the Commission; all of them requested in the above-mentioned order of the President (*supra* para. 29).

32. On June 18, 2004, the Commission indicated "its intention of desisting from submitting [the affidavit it had offered from the witness Fernando Linares Beltranena]" (*supra* para. 29).

⁹ This name also appears as "Silvia Ester Arrivillaga Orantes", "Silvia Esther Arrivillaga Orantes", "Silvia Arrivillaga de Villacorta" and "Silvia Esther Arrivillaga de Villacorta". Hereinafter, the Court will use "Silvia Arrivillaga de Villacorta" or "Mrs. Arrivillaga de Villacorta".

33. On June 24, 2004, the representatives advised that they desisted from submitting the following testimonies and expert reports; Oscar Abel García Arroyo, Rodrigo Asturias, Alberto Bovino and Ana Deutsch (*supra* para. 29).

34. On July 2, 2004, the representatives communicated that “Sydney Shaw Arrivillaga was prohibited from leaving Guatemala.” On July 3, 2004, the President remitted a note to the Minister of External Affairs of Guatemala, requesting “his collaboration to ensure the appearance of [Mr. Shaw Arrivillaga]” at the public hearing to be held commencing on July 5, 2004.

35. On July 3, 2004, the President also remitted a note to the parties informing them of the request he had made to the Minister of External Relations of Guatemala (*supra* para. 34). He also stated that, should it not be possible for Mr. Shaw Arrivillaga to appear before the Court at the said public hearing, the representatives could present his statement made before notary public (affidavit) by July 12, 2004, at the latest.

36. On July 3, 2004, the State submitted a brief in which it declared that:

a) It acknowledged the facts invoked in the application of the Inter-American Commission and in the petitioners’ brief with requests, arguments and evidence, and accepted the State’s international responsibility for the human rights violations committed against Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán, Rigoberto Rivas and Sydney Shaw, owing to the events that occurred on July 3, 1993.

b) It requested the Court, in the context of the contentious proceeding, to obviate the hearing on merits and continue on to establish the corresponding measures of reparation, in order to discuss and argue the claims of the Commission and the representatives of the alleged victims.

c) It asked the Inter-American Court whether the financial reparations to the next of kin of the victim [could] be made by the State in 2005, owing to the country’s actual fiscal deficit.

[...] In view of the foregoing, it requested that the nature of the hearing convened be changed, and circumscribed to examining and determining the reparations, and for reasons of procedural economy, only those witnesses and expert witness related to this aspect should be called to give testimony.

37. On July 5 and 6, 2004, the Court received the statements of the witnesses and the report of the expert witness proposed by the Inter-American Commission and by the representatives, at a public audience. The Court also heard the final oral arguments of the parties.

There appeared before the Court:

for the Inter-American Commission:

Susana Villarán, delegate
Santiago Canton, delegate
María Claudia Pulido, adviser
Juan Pablo Albán, adviser
Lilly Ching, adviser, and
Michael G. Thomas, adviser;

for the representatives:

Viviana Krsticevic, Executive Director, CEJIL
 Soraya Long Saborío, lawyer, CEJIL, and
 Leonardo Crippa, lawyer, CEJIL;

for the State of Guatemala:

Herbert Estuardo Meneses Coronado, agent
 Luis Ernesto Cáceres Rodríguez, deputy agent
 Frank La Rue, President of COPREDEH;

witnesses proposed by the Inter-American Commission and endorsed by the representatives:

Martha Arrivillaga de Carpio
 Karen Fischer, and
 Abraham Méndez García;

witnesses proposed by the representatives:

Jorge Carpio Arrivillaga, and
 Silvia Esther Arrivillaga Orantes;

Expert witness proposed by the representatives:

Marco Antonio Sagastume Gemmell.

38. During the first public hearing and in a brief presented on July 5, 2004, the State declared that it acknowledged its responsibility, as follows:

1. Since it did not answer the application filed by the Commission or present comments on the petitioners' brief at the procedural opportunity [...], it would appreciate the Court providing it with the opportunity to express the position of the actual Government in the instant case, and the new human rights policy that it is promoting. In this regard, on the instructions of the Constitutional President of the Republic, Oscar Berger Perdomo, [the agent] manifest[ed] the acknowledgement of the State's international responsibility for the human rights violations committed as of July 3, 1993, to the detriment of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán, Rigoberto Rivas González, Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez and the next of kin of the victims, based on the provisions of the American Convention on Human Rights.

2. Based on the above, the State acknowledge[d] its international responsibility for the violation of Article 4(1) of the American Convention, because it had not ensured the right to life of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán and Rigoberto Rivas.

3. It acknowledge[d] its international responsibility for the violation of Article 5 of the American Convention, because it had not guaranteed the right to humane treatment of Sydney Shaw Díaz, and the right to mental integrity of the next of kin of the victims.

4. It acknowledge[d] its international responsibility for the violation of Article 19 of the American Convention, because it had not provided special measures of protection for the child, Sydney Shaw Díaz, in relation to the provisions of Article 1[1] thereof.

5. It acknowledge[d] its international responsibility for the violation of Articles 8(1) and 25 of the American Convention, because it had not provided the right to a fair trial and effective judicial protection, and had also failed to comply with the general obligation to respect rights, established in Article 1[1] thereof, owing to the existing impunity with regard to the murder of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán and Rigoberto Rivas, and the injuries caused to Sydney Shaw Díaz.

6. It acknowledge[d] its international responsibility for the violation of Articles 13(1), 13(2)(a), 13(3), 2[3](1)(a), (b) and (c) of the American Convention, to the detriment of Jorge Carpio Nicolle.¹⁰

7. The State's representatives, aware that the Court is now empowered to take a decision with regard to individual responsibilities, [...] put on record, owing to the political and juridical implications that this could have in the domestic legal system, that the acknowledgement of international responsibility it had made did not preclude the consideration or determination of possible criminal responsibilities in this case.

8. The State acknowledged its responsibility for having complied partially with the provisional measures requested and ordered, but undertook to make such measures effective, when it ha[d] created the Coordination Unit for the Protection of Human Rights Defenders, Justice Administrators and Agents, and Journalists, of the Presidential Human Rights Commission, whose purpose was to draw up a list of measures in order to standardize them; and, to this end, taking advantage of the presence of the members of the Commission, it requested the latter's advisory services through the respective Unit of the Commission.

9. It request[ed] the Court, in the context of the contentious proceeding, to obviate the hearing on merits and to continue on to establishing the corresponding measures of reparation, in order to discuss and argue the claims submitted by the Commission and the representatives of the alleged victims. Consequently, it requested that the nature of the hearing be changed, so that it would be circumscribed to examining and determining the reparations and, for reasons of procedural economy, only those witnesses and expert witnesses who would refer to that issue would be convened, without detriment to respect for the right of the victims to present their testimony publicly before the Court.

39. Furthermore, during this public hearing, the State apologized and expressed "its profound respect and consideration for the victims and their next of kin" and acknowledged "the atrocities that had occurred in the country and the errors that the Guatemalan State had committed in the past."

40. In response to questions posed by the Court, Guatemala stated that the acknowledgement of responsibility was total as regards the facts contained in the application and in the requests and arguments brief, without detriment to the contents of paragraph 7 of its own brief (*supra* para. 38). Regarding this paragraph, the State clarified that it was based on considerations of domestic law relating to the investigation into the facts that would be conducted in the domestic jurisdiction, because it did not want to prejudge the result of the criminal investigation, so as not to violate the right to presumption of innocence. The State indicated that this did not mean that it did not acknowledge its international responsibility deriving from the facts of the case and its responsibility to provide justice within the domestic legal system.

41. The Commission stated, *inter alia*, that it considered positively the State's declaration acknowledging its international responsibility for the violation of Articles 4, 5, 8, 13, 19 and 25 of the Convention, as alleged in the application, and also of Article 23 thereof, alleged in the requests and arguments brief. In this regard, the Commission requested the Court to determine the effects of the State's acknowledgement of responsibility, in accordance with Article 53(2) of the Rules of Procedure, to conclude the merits stage, and to commence the proceeding to determine the pertinent reparations.

42. The representatives also accepted the State's acknowledgement of international responsibility. Consequently, they requested the Court to deliver

¹⁰ During the public hearing, the State made a clarification regarding a typing error in the sixth paragraph of its brief, to the effect that it should read a violation of Article 23 and not Article 25 of the American Convention, since the latter is included in the fifth paragraph of this brief.

judgment "establishing the political motivation for the execution of the victims, the institutional agents involved in the facts, the denial of justice in this particular case, the acts and omissions of the State that engaged its international responsibility, among other relevant legal considerations and facts to clarify the truth and avoid such irregular facts as those involved [...] and acknowledged by the State happening again." In this way, the Court could "provide [...] an official version of the facts [...], bearing in mind the testimonies of the next of kin, witnesses and expert witnesses proposed in the context of the public hearing."

43. On July 5, 2004, both the Inter-American Commission and the representatives ratified in writing their verbal acceptance of the State's acknowledgement of responsibility.

44. Of July 5, 2004, following the conclusion of the first part of the public hearing, the Court issued an order (*infra* para. 80), in which it decided, *inter alia*, to admit the State's acknowledgement of international responsibility and to continue holding the public hearing, but circumscribing its purpose to reparations and costs. The statements of the witnesses and the expert witness were heard during this hearing and also the arguments of the Inter-American Commission, the representatives, and the State.

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45. During the public hearing the Inter-American Commission and the representatives presented different documents to the Court.

46. On July 8, 2004, the representatives forwarded the original of the statement made before notary public (affidavit) of Sydney Shaw Arrivillaga, in response to the note of the President of July 3, 2004, because this witness could not attend the public hearing (*supra* para. 35).

47. On August 3, 2004, the State presented its final written arguments. On August 5, 2004, both the Commission and the representatives presented their final written arguments.

48. On August 9, 2004, Fernando Linares Beltranena submitted an *amicus curiae* brief.

49. On October 27, 2004, on the instructions of the President, the Secretariat requested the Commission, the representatives and the State to present certain documents as helpful evidence by November 5, 2004, at the latest.

50. On November 5 and 9, 2004, the representatives presented the documentary evidence that had been requested as helpful evidence.

51. On November 5, 2004, the State requested an extension for presentation of the evidence requested. However, as the Court already had this documentation, which had been provided by the representatives, it considered it unnecessary to grant the requested extension. On November 16, 2004, the Secretariat transmitted the helpful evidence to the respective parties.

52. On November 17, 2004, the Inter-American Commission stated that it had been “informed by the representatives [...] that they ha[d] presented all the documentation” regarding the requested evidence.

VI EVIDENCE

53. Before examining the evidence received, the Court will make some observations in light of the provisions of Articles 44 and 45 of the Rules of Procedure, which are applicable to this specific case, most of which have been developed in its case law.

54. In probative matters, the adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence; it is one of the principles on which Article 44 of the Rules of Procedure is based, concerning the time at which the evidence should be submitted to ensure equality between the parties.¹¹

55. In the matter of receiving and weighing evidence, the Court has indicated previously that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties.¹² Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the *quantum* of evidence needed to support a judgment.¹³ This criterion is especially true for international human rights courts, which have greater latitude to evaluate the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience, in order to determine the international responsibility of a State for the violation of human rights.¹⁴

56. Based on the foregoing, the Court will now proceed to examine and weigh all the elements of the body of evidence in this case within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

57. The Inter-American Commission provided documentary evidence when it presented its application brief (*supra* para. 1).¹⁵

¹¹ Cf. *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 66; *Case of the “Juvenile Reeducation Institute”*. Judgment of September 2, 2004. Series C No. 112, para. 63; and *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 47.

¹² Cf. *Case of Tibi*, *supra* note 11, para. 67; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 64; and *Case of Ricardo Canese*, *supra* note 11, para. 48.

¹³ Cf. *Case of Tibi*, *supra* note 11, para. 67; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 64; and *Case of Ricardo Canese*, *supra* note 11, para. 48.

¹⁴ Cf. *Case of Tibi*, *supra* note 11, para. 67; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 64; and *Case of Ricardo Canese*, *supra* note 11, para. 48.

¹⁵ Cf. file with appendixes to the application, tome 1 vol. 1 and 2, and tome 2 vol. 1 and 2, appendixes 1 to 21, folios 1041 to 1270.

58. The representatives provided documentary evidence when they submitted their requests and arguments brief (*supra* para. 22).¹⁶

59. The State did not provide documentary evidence, because it did not submit its brief in answer to the application (*supra* para. 23).

60. The Inter-American Commission forwarded the affidavit (statement sworn before notary public) of Alfredo Skinner Klee (*supra* para. 30), as required by the President in an order of May 26, 2004 (*supra* para. 29).¹⁷ The Court will now summarize the relevant parts of this statement:

a) Testimony of Alfredo Skinner Klee, former leader of the National Union of the Center political party

From 1986 to 1994, he was Secretary for Electoral Affairs of the National Executive Committee of the National Union of the Center political party (hereinafter "UCN").

He got to know Mr. Carpio Nicolle in 1983. They developed a relationship based on mutual trust.

Mr. Skinner Klee accompanied Mr. Carpio Nicolle to a meeting with Mr. Serrano Elías, who had carried out a self-inflicted coup d'état. During the meeting, the latter provided an explanation about the crisis and offered a solution, which Mr. Carpio Nicolle refused. Members of the Army, including General Domingo Samayoa; attended the meeting and Mr. Serrano Elías made Mr. Carpio Nicolle aware that the Army firmly supported his stance.

When Mr. Serrano Elías resigned, Vice President Espina Salguero requested a private meeting with Mr. Carpio Nicolle, to which Mr. Skinner Klee accompanied him. At the meeting, Mr. Carpio Nicolle stated that the Vice President should resign as he had collaborated with Mr. Serrano Elías.

During the session of Congress at which Mr. Serrano Elías's successor was to be elected, the stance assumed by the UCN created an *impasse*. In the face of Mr. Carpio Nicolle's refusal, none of the political parties or their leaders wanted to adopt the legislative initiative containing the amnesty decree.

Mr. Carpio Nicolle's murder had considerable impact on all sectors. There was great dismay because it was the first violent death of a political leader since the 1970s. His death also caused substantial concern in political circles where it was thought that it signified the onset of political harassment. The UCN demanded that then President De León investigate and clarify the circumstances of Mr. Carpio Nicolle's death, and prosecute all those involved.

The death of Mr. Carpio Nicolle resulted in the fragmentation of the UCN. By law, the party ceased to exist when it obtained poor results in the elections.

61. The representatives forwarded the sworn statements of Rodrigo Carpio Arrivillaga, Mario Arturo López Arrivillaga, Sydney Shaw Díaz and Ricardo San Pedro

¹⁶ Cf. file of appendixes to the requests and arguments brief, appendix 1, 15 tomes; and brief on merits, reparations, and costs, tome I, appendixes 2 to 14, folios 244 to 287.

¹⁷ Cf. brief on merits, reparations, and costs, tome II, folios 553 to 564.

Suárez, and also the expert report of César Alba Cije, all of them made before notary public (affidavits) (*supra* para. 30), as required by the President in an order of May 26, 2004 (*supra* para. 29).¹⁸ The Court will now summarize the relevant parts of these statements:

a) Testimony of Rodrigo Carpio Arrivillaga, son of Mr. Carpio Nicolle

He was a journalist with "*El Gráfico*" from 1979 to 1998. He was Managing Director of the company that owned this newspaper from 1979 to 1989 and Director General from 1989 to 1994.

"*El Gráfico*" reflected the opinions of a democratic newspaper, and the philosophy, image and activities of the UCN. The newspaper had the technology to produce publications, and radio and television broadcasts in the same building, which made it easy to alternate the work of the newspaper with that of the UCN, since they were complementary. "*El Gráfico*" was the newspaper with the second highest circulation in Guatemala, and its prestige and democratic principles had converted it into a defender of the less privileged grass-roots population.

Mr. Carpio Nicolle was Director General of the newspaper for many years. In addition to managing the newspaper, he held meetings with UCN members in his offices. General Secretaries of departments, deputies and candidates frequented the offices of "*El Gráfico*," and party assemblies, workshops and strategy planning meetings were held there.

From the inception of the UCN, Mr. Carpio Nicolle entrusted Mr. Carpio Arrivillaga with the task of communicating its political messages via the press, radio and television. Hence, he was the Organization and Propaganda Secretary of the UCN National Executive Committee. Within the UCN, he helped define the party's long-term political vision and designed strategies for the 1994 presidential elections; statistical figures showed that Mr. Carpio Nicolle was the "unstoppable" winner.

The UCN was a party with a centrist ideology. The essential purpose of its centrism was to create a new society where everyone would participate and benefit. The party's record of total respect for democracy and its actions and influence in the 1980s is irrefutable; its legacy is still in evidence.

Mr. Carpio Nicolle's murder was a political crime, the result of a politico-military conspiracy, planned with malice, premeditation and to benefit those sectors. The murder showed how to silence the ideas of a brilliant, democratic leader in Latin America. Mr. Carpio Nicolle wanted to be President of the Republic of Guatemala; he wanted to be a national leader and be remembered as such; he was a political leader with good intentions and unyielding integrity. His failure to negotiate with enemy groups was his only error of any significance and, because of this, he was murdered.

Mr. Carpio Arrivillaga had always had a very close relationship with his father. At the professional level, his work was directly related to Mr. Carpio Nicolle,

¹⁸

Cf. brief on merits, reparations, and costs, tome II, folios 566 to 620.

the UCN and "*El Gráfico*." The loss of his father was extremely distressing and left him "up in the air" for many years.

After Mr. Carpio Nicolle's death, the UCN rapidly began to disperse. Eventually, it did not obtain enough votes to continue being a political party and broke up. "*El Gráfico*" became a newspaper focused on clarifying the death of Mr. Carpio Nicolle and those who had accompanied him. From 1993 to 1998, its main pages contained articles and information on the Carpio case and related development in the political and judicial spheres.

"*El Gráfico*" closed, above all, because the PAN Government, under President Álvaro Arzú, strangled it commercially. The boycott, designed by the President himself, who was bitter enemy of Mr. Carpio Nicolle in the 1990 elections, was due particularly to the insistence of the Carpio Arrivillaga family and the newspaper in escalating the investigations into Mr. Carpio Nicolle's murder. Also, the absence of Mr. Carpio Nicolle's image weakened the image of "*El Gráfico*," which made it even more vulnerable to this boycott.

In the absence of "*El Gráfico*," he was unable to finance his children's education or pay off his employees, and had to "start again, from below."

He asked the Court for justice and that the State should be declared guilty for its lack of interest in the case. He also requested that the designation of a street, avenue or park in Antigua, Guatemala, with his name, and the creation of postgraduate grants with the name of Jorge Carpio Nicolle for young journalists and politicians at prominent international universities should be done to honor Mr. Carpio Nicolle posthumously. He also requested financial compensation for the Carpio family and the next of kin of the other victims, because the State had not provided justice.

b) Testimony of Mario Arturo López Arrivillaga, businessman

He had a professional relationship with Mr. Carpio Nicolle and the latter was his uncle-in-law on the maternal side, and next of kin to the third degree on the paternal side. Mr. López Arrivillaga loved Mr. Carpio Nicolle as a father; he admired him greatly and believed in him.

In 1983, Mr. Carpio Nicolle invited him to work on his political project in the UCN for the 1985 general elections. He occupied several positions within the UCN. In 1992, the UCN won the presidency of the Legislature and Mr. López Arrivillaga was appointed Executive Secretary to the presidency. In 1993, he was sworn in as a deputy of the Congress of the Republic. He hoped to make a political career in the UCN, allowing him to accede to the highest decision-making positions in the party. His effort and dedication were acknowledged.

On July 3, 1993, Mr. Carpio Nicolle and a UCN delegation were traveling to El Quiché when a group of more than twenty armed men with balaclava helmets intercepted them. The men made them get out of their vehicle, placed weapons a few centimeters from their heads, and searched them to see whether they were armed. Other members of the group identified Mr. Carpio Nicolle.

The witness saw how they shot Mr. Rivas González, who was traveling in the delegation's other vehicle. At the same time, he heard more shots that came

from the other side of the "pick-up." An individual kicked him and ordered him to board the microbus. Mr. López Arrivillaga heard when the leader of the group gave the order to kill Mr. Carpio Nicolle and observed how they shot him at pointblank range when he stepped forward to protect his wife, Mrs. Arrivillaga de Carpio.

When the men departed, the delegation went to Chichicastenango. Mr. Carpio Nicolle was still alive, but he was bleeding heavily. Mr. Villacorta Fajardo died in the vehicle. When they reached Chichicastenango, they went to a small clinic. However, they decided to take Mr. Carpio Nicolle to the departmental capital, Santa Cruz de El Quiché.

Mr. Carpio Nicolle's execution had a tremendous impact on the UCN. Some party members chose to leave the party, fearing reprisals. There was no one with the leadership qualities required to replace Mr. Carpio Nicolle, and, consequently, there was total disarray within the party. An effort was made to unite all the sectors of the party, but this was not possible.

One year after Mr. Carpio Nicolle's murder, Mr. López Arrivillaga was third on the list of candidates for deputy, but the party only obtained one seat in Congress. He was a member of a slate formed to take control of the party in order to focus it on the plans left to it by Mr. Carpio Nicolle. However, he chose to resign, even after he had won. Mr. Carpio Nicolle's death destroyed his political and legislative career, which had given him political and financial stability.

The events of July 3, 1993, had a severe impact on the witness, thinking that he could have been one of those who died. The tragedy had consequences on the family he had just formed. He carried a weapon all the time and began to drink too much. He felt a growing concern for his wife and children, because the situation was very tense, particularly when one of the people investigating the case was murdered. The threats increased for several people who were involved in the proceedings.

For the good of his family and owing to his neighbor's fears, he had to leave his home and visited a psychiatrist on several occasions. Subsequently, he was divorced and his household broke up. He abandoned the construction of a house and, consequently, lost all he had invested in it. He had expenses due to living in a different house from his wife and children; and also related to food and other payments for a security agent.

Even though he has overcome many of his fears, the damage is done, and it is something he has to deal with. He lives with the anxiety of being ambushed or executed. He is also worried, because he is sure that some people are displeased that this proceeding has been filed.

He requests that those responsible be captured, that the State assume its responsibility, and that the next of kin be compensated for the loss of their loved ones. Lastly, he requests that, based on fairness, just compensation be established for the damage to his life project.

c) Testimony of Sydney Shaw Díaz, student

Currently he works and is preparing his thesis for a licentiate degree in Anthropology.

His relationship with Mr. Carpio Nicolle was that of a grandchild towards its grandfather. He began working in the UCN, distributing propaganda among the youth of the country.

He was in the caravan that accompanied Mr. Carpio Nicolle on July 3, 1993; he was responsible for organizing the youth in the different departments that the delegation would visit, and also in charge of sound, lighting and the distribution of party propaganda material.

During the attack, men with balaclava helmets took the witness and Mr. Rivas González from the van and began to search them. He heard one of the men say "they are heavily armed" and saw how they shot Mr. Rivas González pointblank. At the same time he saw Mr. Ávila Guzmán, who was less than two steps away from him, fall; he felt something hot hit his right leg and cried out begging them not to throw any more stones. In reaction, he threw himself on the ground and only saw boots and another car. Then he heard a voice that cried out very clearly: "that's him, that's Jorge Carpio, kill him." He heard more shots and shouts.

Several hooded men approached Mr. Ávila Guzmán, kicked him and moved him. Then they kicked the witness, who was crying in fright. The hooded men asked him for the second time if he was armed; he replied that he was not and asked for help. The men did not reply and again shot at the witness on the ground. He was able to see the hooded man from his knees downwards and observed his military-type boots. Something exploded in front of his face and blinded him momentarily. He felt his face spattered with something hot and only heard a strong buzzing sound.

For a time, he remained lying in the rain and he became aware that a vehicle had been obliged to stop. The hooded men interrogated the passengers of this vehicle. He heard a discussion, more shots and people shouting and crying. Then the hooded men disappeared and he asked the people in that vehicle for help. A young man helped him get up and placed him in the pick-up; the young man said they could not take the witness with them because those who had been traveling in the vehicle had also been injured.

Very soon the firemen appeared and gave him first aid. They told him that Mr. Ávila Guzmán and Mr. Rivas González were dead. He was transferred to the Chichicastenango hospital and then to the Santa Cruz del Quiché military hospital in a special military vehicle, in which an officer asked him various questions.

As a result of the incident he had a fracture in his right leg from a 38 mm. caliber bullet. He has three scars in his back from a bullet that grazed him when he threw himself on the ground. On account of this incident, he was hospitalized for 15 days and convalescing at home for another 15 days. During this time, he was absent from school. He had to undergo therapy to regenerate the injured nerves and muscles in his right leg. The therapy was the most painful part. Even today, his leg has not recovered totally, and some parts of his foot are still "damaged."

The events of July 3, 1993, marked his life forever, leaving him heartbroken, a wound that has not completely healed. The immense impact of those events, considering that he was only 15 years old at the time, resulted in psychological damage that sometimes makes him sad, and also makes him doubt and distrust security agents and the Government.

As an individual, as a victim, and as a Guatemalan, he asks that the State publicly acknowledge its guilt in the Carpio case. He asks for reparation but, above all, he asks for justice and that the murderers who planned everything, and who were members of the President's staff be punished.

d) Testimony of Ricardo San Pedro Suárez, business administrator

He formed part of the management of "*El Gráfico*" from 1977 to 1996. Together with Mr. Carpio Nicolle, he was also a co-founder of the UCN. He accompanied him in 90% of his political tours throughout Guatemala until the day of his murder. For 10 years, he was an adviser to the UCN. He had also been a friend of Mr. Carpio Nicolle and his family for many years.

On July 3, 1993, the witness left with Mr. Carpio Nicolle on a political tour. Their purposes were to present the party's proposed agenda and begin preparing the ground for the 1995 elections.

On the way to Chichicastenango, fifteen to twenty individuals ambushed them with their faces covered by balaclava helmets. The men threw the witness on the ground, and he heard several shots. The men pointed their weapons at him and kicked him. He was able to see two bodies on the pavement behind the microbus. Then, the men fled.

The witness boarded the vehicle and they left the site. Mr. Carpio Nicolle and Mr. Villacorta Fajardo were injured. They went to Chichicastenango and arrived at the hospital of "the good Samaritan." After leaving Mr. Carpio Nicolle in the hospital, he returned to the vehicle together with Mr. Shaw Arrivillaga to help Mr. Villacorta Fajardo, but it appeared that the latter was already dead. One of the hospital doctors told them that it would be better to transfer Mr. Carpio Nicolle to El Quiché, because they did not have adequate equipment to look after him. Consequently, he went by ambulance with Mr. Carpio Nicolle and Mrs. Arrivillaga de Carpio to the hospital in Santa Cruz del Quiché, where Mr. Carpio Nicolle died a few minutes after they arrived.

Mr. Carpio Nicolle's murder was a political crime, owing to his critical stance against the Government's activities, in both the political sphere and as a journalist and, particularly, owing to his attitude during the events of May 1993, when constitutional provisions were violated and he refused to accept the draft amnesty laws designed to benefit those who had taken part in the fake coup d'état that the President had organized on May 25, 1993.

The above events have affected him psychologically and emotionally for a long time, at both the personal and the family level. The damage is irreversible. The best compensation would be to see that justice was done, the case clarified, and those responsible punished.

e) Expert report of César Alba Cije, accountant

Mr. Alba Cije made an independent audit of the general balance sheets of "*El Gráfico*" from June 30, 1990, to June 30, 1999, and also of the corresponding statements of financial results and shareholders' equity. The expert witness's responsibility was to issue a report on the financial situation of the company based on his audit, in accordance with the relevant international auditing standards. However, his analysis "is not an audit report."

From the expert witness's report, it can be inferred that, in 1992 and 1993, "*El Gráfico*" was a fairly profitable business. However, as of 1994, its profits declined considerably. The recovery of the investment in fixed assets was slower and the gross profit margin fell gradually. "*El Gráfico*" reached a critical point in 1999.

62. On June 18, 2004, the Commission desisted from submitting Fernando Linares Beltranena's affidavit, "taking into account that it [was] evidence proposed by the Commission that ha[d] not yet been incorporated into the proceeding" (*supra* para. 32).

63. On June 24, 2004, the representatives desisted from submitting the testimonies of Rodrigo Asturias and Oscar Abel García Arroyo, and also the reports of the expert witnesses Alberto Bovino and Ana Deutsch, because "in some case, it was impossible [...] to contact the witnesses, and in others [they considered] that the statements already provided, the evidence that already appear[ed] in the file, and the statements that [would] be heard in the hearing convened by the Court include[ed] the purpose of these testimonies" (*supra* para. 33).

64. On July 2, 2004, the representatives informed the Court that Mr. Shaw Arrivillaga was prohibited from leaving Guatemala (*supra* para. 34); he was supposed to give testimony during the public hearing in response to the President's requirement in an order of May 26, 2004 (*supra* para. 29). They therefore requested the Court to ask the State to authorize his departure.

65. On July 3, 2004, the President requested the State to intervene to allow Mr. Shaw Arrivillaga to appear (*supra* para. 34). The same day, the President informed the representatives that he had sent a note to the State and told them that if, despite this measure, it was not possible for this witness to appear at the public hearing, the representatives could present his statement made before notary public (affidavit) (*supra* para. 35).

66. The representatives forwarded Mr. Shaw Arrivillaga's sworn statement (affidavit) (*supra* para. 46). The Court will now summarize the relevant parts of this statement:

a) Testimony of Sydney Shaw Arrivillaga, businessman

Currently, he works with his own company. He had been associated with Mr. Carpio Nicolle since the creation of the UCN. He had held several positions, especially head of the electoral campaign and coordinator of party organization.

At the time of Mr. Carpio Nicolle's death, the UCN held a sizable advantage over the other parties in the country. It was very probable that it would win the next elections, because there was no other party with a similar organization or number of members.

On July 3, 1993, visits to the party headquarters in Huehuetenango, Totonicapán and El Quiché had been planned. They were ambushed when they reached the turning to El Molino. Mr. Shaw Arrivillaga saw someone carrying a military-type rifle, who opened the door of the microbus, and he heard shots behind the back-up car. He saw how they shot Mr. Rivas González and Mr. Ávila Guzmán. They then shot Mr. Carpio Nicolle.

The man who killed Mr. Ávila Guzmán shot Sydney Shaw Díaz, Mr. Shaw Arrivillaga's son, who was traveling in the back-up car, several times in the back, so the witness thought he had been killed. Then they shot Mr. Carpio Nicolle again and they also shot Mr. Villacorta Fajardo in the leg. Then a voice ordered the men to withdraw.

The microbus passengers took the injured Mr. Carpio Nicolle to the local hospital in Chichicastenango. Mr. Shaw Arrivillaga left Mr. Carpio Nicolle there and, in the same microbus, returned to the place of the ambush to look for his son. On the way out of the town, there was a patrol of soldiers under a young officer who, very nervously, asked them to take him to El Molino. On the road, he only heard the soldiers loading their rifles and the officer giving them orders to follow the ambushers. When they arrived at the place, he did not find his son, but Manolo Rodríguez told him that the firemen had taken him to El Quiché and that they had also taken Mr. Carpio Nicolle there.

In El Quiché, there was great confusion in the hospital. There was no doctor on duty, only a young medical student and a nurse. He helped give Mr. Carpio Nicolle saline solution. When he saw that his son had arrived, he stopped helping Mr. Carpio Nicolle. He was concerned about the wounds in his son's back, because there were several bullet holes and he spent some minutes examining them. When he was sure that Sydney Shaw Díaz was not in danger, he returned to Mr. Carpio Nicolle, but "it was too late."

Mr. Carpio Nicolle's death totally changed his life, because his life project was linked to the former. Mr. Shaw Arrivillaga's plans were that the UCN would be elected and that Mr. Carpio Nicolle would be President. He had worked side by side with Mr. Carpio Nicolle for more than ten years. Consequently, when the latter died, he had no plans for the future and no employment. He could not find work for several months following Mr. Carpio Nicolle's death. Consequently, with Mr. Carpio Nicolle's death, the future plans and political career of Mr. Shaw Arrivillaga died also.

The aspect of the attack that affected him most was the thought that his son had died, because, for almost half an hour, he was sure his son was dead. The stage of his son's recovery also had a strong impact on him. He finds it difficult to remember what he thought and what his son thinks, because he left him alone at the site of the ambush.

The State should provide justice in this case and not only acknowledge its perpetration of the facts. He therefore asked the Court to order the necessary compensation and declare the State guilty of the murder of Mr. Carpio Nicolle.

67. During the public hearing, the witnesses Karen Fischer and Abraham Méndez García, proposed by the Inter-American Commission, and also the witness Jorge Carpio Arrivillaga and the expert witness Marco Antonio Sagastume Gemmell, proposed by the representatives, submitted various document.¹⁹

68. On November 5 and 9, 2004, the representatives presented the documentary evidence that had been requested as helpful evidence (*supra* para. 50).²⁰

B) TESTIMONIAL AND EXPERT EVIDENCE

69. On July 5 and 6, 2004, the Court received the statements of the witnesses proposed by the Inter-American Commission and by the representatives, and also the report of the expert witness proposed by the representatives. The Court will now summarize the relevant part of these statements:

a) Testimony of Martha Arrivillaga de Carpio, Mr. Carpio Nicolle's widow

She was married to Mr. Carpio Nicolle for 37 years, and they had two sons. She has a degree in philosophy from the Universidad de San Carlos and is currently retired.

She met Mr. Carpio Nicolle when she was 17 years old and they had been together since then. Mr. Carpio Nicolle was characterized by his capacity for work, his immense thirst for knowledge, and his profound commitment to democracy. As a husband and father he was an extraordinary individual.

Mr. Carpio Nicolle founded the "*El Gráfico*" company, which had three owners, but shortly thereafter he bought out the other two partners. In addition to being the founder and owner, for a long time he was the director general of "*El Gráfico*," which was a very innovative and successful newspaper at the national level, and even throughout the Central American isthmus and in South America. He opened the pages of his newspaper to all lines of thought, which led to threats against them. "*El Gráfico*" and "*Prensa Libre*" were the national newspapers with the highest circulation figures. Mr. Carpio Nicolle was President of the Central American Press Association and the Guatemalan Press Association.

Mr. Carpio Nicolle founded the UCN in 1983; it was a well-organized, innovative party, represented in many municipalities. Mr. Carpio Nicolle opened up a space in the center to try and establish a country where there was national reconciliation and forgiveness. The UCN became the largest political party in the country and admitted political pluralism into its ranks. The leaders took the decisions within the UCN. The party did not belong to Mr. Carpio Nicolle. Only a few months after it had been founded, it managed to elect the greatest number of deputies to the National Assembly for the reform of the Constitution. The UCN was supported by, on the one hand, donations and contributions from friends and people with a similar ideology to

¹⁹ Cf. brief on merits, reparations, and costs, tome III, folios 679 to 721.

²⁰ Cf. brief on merits, reparations, and costs, tome III, folios 832 to 898.

Mr. Carpio Nicolle and, on the other hand, the obligation of the deputies to make a monthly contribution (under the party's internal regulations).

Mr. Carpio Nicolle was a candidate for the presidency in 1985 and came in second. Mrs. Arrivillaga de Carpio left her teaching position in the Universidad de San Carlos to work on her husband's campaign. During Mr. Carpio Nicolle's second attempt to be elected President of the Republic, some people might have been upset by the appearance of new elements in the party, but it had thousands of members. In those elections, Mr. Carpio Nicolle won the first round but, in the second round, all the parties joined Mr. Serrano Elías.

When Mr. Carpio Nicolle entered politics, his two sons became managing directors of "*El Gráfico*" and he became President of the company. The most important decisions were taken together and Mr. Carpio Nicolle provided guidelines to his sons. The only person in charge of the editorial line and the information content was Mr. Carpio Nicolle, because he wanted to maintain independence. Only Mr. Ricardo San Pedro, who worked in the industrial division of "*El Gráfico*," occupied a management position in the UCN.

Despite Mr. Carpio Nicolle's participation in politics, "*El Gráfico*" was democratic, "even though some people said it was not"; space was given to all the other political parties and it tried to be objective. Mr. Carpio Nicolle maintained objectivity between his work with the newspaper and his participation in politics. 1983 to 1993 was the period during which "*El Gráfico*" achieved its highest sales. Consequently, Mr. Carpio Nicolle's participation in politics did not affect the newspaper.

When Mr. Serrano Elías organized the coup d'état against himself, Mr. Carpio Nicolle condemned it because he considered it unconstitutional. Moreover, Mr. Carpio Nicolle was under considerable pressure from different sectors and "from the Presidents of the five Central American countries and from the United States Embassy," who asked him to support this fake coup d'état. After the fall of Mr. Serrano Elías, some people wanted to enact an amnesty law, but Mr. Carpio Nicolle "ordered his deputies not to" adopt it. Consequently, he was harassed and threatened by General García Samayoa, José Lobo, President of the Congress, and Vice President Gustavo Espina, among others.

On July 3, 1993, Mr. Carpio Nicolle's delegation was traveling along the road to Chichicastenango, where there was always a checkpoint; however, on that day there was nothing. Subsequently, some men surrounded them and, when they saw her husband, they said: "you are Jorge Carpio; we are going to destroy you." Then they hit him with a pistol and there was "a horrendous hail of shots." The man who gave the orders said: "kill Jorge, kill Carpio." Then, another man "shot him three times and he fell onto [his wife's] knees." When the men left, the delegation took Mr. Carpio Nicolle to a clinic. Then, they took Mr. Carpio Nicolle in an ambulance to Santa Cruz de El Quiché, but he only lived for about ten minutes after their arrival. Mr. Villacorta Fajardo, Mrs. Arrivillaga de Carpio's sister's husband, and Mr. Rivas González and Mr. Ávila Guzmán died also. Sydney Shaw Díaz, Mrs. Arrivillaga de Carpio's nephew, was seriously wounded. This was "a premeditated, malicious murder."

Mr. Carpio Nicolle could have been murdered "for many reasons." However, Mrs. Arrivillaga de Carpio stated "that the most likely reason" was his opposition to the amnesty, because many people were adversely affected.

Mrs. Arrivillaga de Carpio intervened because it was not possible that her husband and other good and honorable individuals could be killed in such a despicable way; she had to find the inner force to demand that justice be done. At first, when they still had the newspaper and many accusations were made in it, she and Mrs. Fischer received numerous threats. A few months after her husband's death, she realized that justice would not be done in Guatemala, so she sought international help; her first step in this regard was to take her case to Geneva. Nobody is paying for the crime that was committed; furthermore, evidence has been lost, an attempt was made to set fire to the office where the case file was kept and, on the order of then Minister of the Interior, Arnoldo Ortiz Moscoso, the weapon allegedly used to carry out the murders was taken out of the country. Accordingly, the Carpio Nicolle case is paradigmatic and an example of the lack of justice in Guatemala.

Her husband's death had a "disastrous" impact on the UCN, because he was a national leader and "the party's wellbeing depended on him." After Mr. Carpio Nicolle's death, the UCN took part in one more presidential election and in the most recent elections only had candidates for deputy, because the party was "splintered" and there was no leader with "the charisma" of Mr. Carpio Nicolle to support a party of that size. In the most recent elections, it did not obtain sufficient votes for deputy, so that, based on the electoral laws, it was dissolved.

Her sons' families, and also that of Mr. Carpio Nicolle and herself, depended solely on the family company, "*El Gráfico*"; her husband's absence was critical for the newspaper, because he had been its guiding light. From the time of Mr. Carpio Nicolle's death until 1999, Mrs. Arrivillaga de Carpio and her sons did everything possible for "*El Gráfico*," but "Jorge Carpio's image was too strong." Moreover, Mrs. Arrivillaga de Carpio's sons were "very young, they were in their early 30s," and she had never worked on a newspaper, so "there was a lack of confidence in the management of the paper and many advertisers withdrew." In addition, to this President Álvaro Arzú established a financial boycott of "*El Gráfico*" four or five years after Mr. Carpio Nicolle's murder. This boycott was established because the newspaper underscored when international organizations provided help to the case, which "annoyed [this President...] because it reflected badly on his Government."

The corporate assets of "*El Gráfico*" deteriorated until they had to close it down because Mrs. Arrivillaga de Carpio and her sons could not maintain it. They had to sell properties and even use Mrs. Arrivillaga de Carpio's patrimony to pay off the newspaper's creditors. The "*El Gráfico*" company does not exist any longer, because the newspaper ceased to exist.

Mr. Carpio Nicolle's death was a "tremendous blow" for Mrs. Arrivillaga de Carpio and her sons, because "he was everything [to them], he was the most important part of [their] lives." The impact of impunity is "tremendous"; it has caused them anger, impotence and sadness, and they have felt "totally defenseless." In addition, she is in a difficult financial situation because she has no pension and does not receive any salary. Her sons maintain her.

She would like the State's decision accepting the contents of the "application," such as the anomalies in the proceeding and that it was a political crime, to be published. Also, there should be a public act of reparation during which the State's lack of interest for all these years should be acknowledged, and when it is recognized that she was "right to fight for justice to be done." Moreover, the people of Guatemala should know that Mr. Carpio Nicolle died "as he would have wished, as a national leader, trying to do what was best for his country." She also requested that study grants should be established, and a contest to study and examine Mr. Carpio Nicolle's life and work in journalism and in politics, because he wanted to be remembered as someone who had worked for the wellbeing of his country. She also requested that reparations should be made, insofar as possible, for the damage and grief caused to four families. Nevertheless, she stated that nothing could compensate the lack of her husband, from an affective, financial and personal security point of view for herself and her sons. Moreover, a valuable political figure had been lost.

She fears that something could happen to her sons, "or that something will happen," since the parallel powers that masterminded her husband's murder still exist.

b) Testimony of Karen Fischer, lawyer and Mr. Carpio Nicolle's former daughter-in-law

She is a lawyer and notary. She was a prosecutor for corruption cases and had to resign, because they wanted her to file the corruption cases against former President Alfonso Portillo, the former Vice President and other high-ranking officials. Currently, she has her own law office. She was married to Rodrigo Carpio, the son of Mr. Carpio Nicolle, and the latter was like her second father.

Mr. Carpio Nicolle decided to go into politics. Despite this, as director of "*El Gráfico*" and as Secretary General of the UCN, he did not use the newspaper's resources to support the party or vice versa. He was always careful to maintain his family's capital assets. However, he did use "his newspaper" to publicize his tours. There was no direct connection between the UCN and "*El Gráfico*"; in other words, the newspaper was not a spokesman for the UCN; the former dealt with journalistic issues, the latter with political issues.

Mrs. Fischer began to work with Mr. Carpio Nicolle and became his private secretary, the finance secretary for the two political campaigns, and the liaison between the UCN Executive Committee and its deputies in Congress.

Subsequently, there were three draft amnesty laws that attempted to cover up political and common crimes from 1986 to the fake coup d'état. Mr. Carpio Nicolle rejected these draft laws totally.

Mrs. Fischer stated that Mr. Carpio Nicolle died because of his opposition to the political amnesty. Since the amnesty was not adopted, General José Domingo García Samayoa, who had directly threatened Mr. Carpio Nicolle, was discharged.

Regarding the judicial proceeding, Mrs. Fischer stated, *inter alia*, that: a) it was significant that they had photographs of all the alleged accused; b) the four autopsies disappeared, but she managed to “recover extra-legally, through a friend,” the photographs of the autopsy of Mr. Carpio Nicolle; c) someone attempted to set fire to the case file at the El Quiché court; d) the case file was lost for ten days and appeared in the departmental office of the Ministry of the Interior in El Quiché; e) the file in the Attorney General's office (*Ministerio Público*) disappeared; f) the file in the Archbishopric of Guatemala disappeared; g) the then Head of General Staff of Defense refused to provide information on the Commander of Military Zone No. 20 of the Department of El Quiché; h) the Commander of Military Zone No. 20 refused to provide the name of the officer and soldiers who arrived on the site of the event before the National Police; i) the former Minister of the Interior denied that he had sent the arm confiscated in Guatemala to the United States; j) three ballistic reports were lost and only one recovered; and k) a few weeks before the hearing before the Inter-American Court, the Secretariat of the Attorney General's office told her that the file had disappeared once again.

Nine judges and 12 prosecutors had taken part in the proceedings. The prosecutors, Abraham Méndez and Ramiro Contreras, had to go into exile. The nine prosecutors before Abraham Méndez refused to take the case and excused themselves, the thirteenth did nothing. They murdered Commissioner Mérida who was investigating the case in the Department of El Quiché. Subsequently, nobody in the Police wanted to investigate the case internally. Also, the first lawyer on the case, Guillermo Porrás, was held up at gunpoint and they took his pick-up, which was parked in front of the Army's honor guard.

Mrs. Fischer feels great frustration about the proceedings in this case, “as a lawyer, as a citizen, and as someone who truly loved Jorge Carpio very much.” In Guatemala, there are still parallel powers operating in the administration of justice. Those who have been involved in the case were distressed when the judgment in first instance left them with a “scapegoat” and did not leave the proceeding open to find the other perpetrators and masterminds. However, she continues pressing for an investigation and denouncing impunity, because she found it very hard not have a leader and her second father, who “had been riddled with bullets, as if he were a dog, and did not merit dying in that way.” Also, this case “creates a juridical precedent for the murder of journalists.”

Mrs. Fischer and her direct family have been the victims of threats, harassment, and telephone intervention, and had to go into exile. In July 1994, after a threat that she and her family would be “crushed,” she went into exile in the United State with her two young children. Subsequently, they threatened her sisters. The Vice Minister of the Interior, who was Director of the Intelligence Services when Mr. Carpio Nicolle was murdered, also threatened her, because he did not want Mrs. Fischer to testify about the intellectual authorship of the case. He told her that if she did so, “she would perish like one [...] more communist.” However, she testified about this intellectual authorship and filed a complaint before the Attorney General's office. The same day, the Prosecutor General came to her house and told her that he did not want to know the name of the official who had threatened her. Subsequently, on June 19, 2004, Mrs. Fischer was attacked and one of her

security agents was injured. She paid 8,000 dollars in hospital expenses for her escort and he will have to have another operation. The people in charge of her protection do not have adequate equipment or identification. Owing to the attack, Mrs. Fischer took her daughter out of the country. “[S]he is depressed that [...] all the good people have to leave Guatemala and the bad people remain living there in complete tranquility.”

The impunity in this case “reveals that it was masterminded by the powers that have always kept our countries in a state of upheaval.” The Army and the upper classes in Guatemala have made a “blood-stained agreement” and, as a result, there is still total impunity in this case. Additionally, Mr. Carpio Nicolle’s death was a message to let Ramiro de León Carpio know that “it was the Army that continue[d] to give orders in Guatemala.” The Carpio Arrivillaga family and Mrs. Fischer have fought for 11 years and, finally, see “a light” with the proceeding before the Inter-American Court.

The UCN fell apart little by little after Mr. Carpio Nicolle’s death, because he was its center and driving force. Following his death, no one had strong enough leadership qualities to replace him and the people who were close to Mr. Carpio Nicolle abandoned the party. Many party members remained to continue the struggle, because they hoped that Mrs. Arrivillaga de Carpio would take up the party reins. However, she did not do so, because, together with Mrs. Fischer, she devoted herself to the investigation and clarification of Mr. Carpio Nicolle’s murder. The UCN took part in one election after his death and, since it did not obtain a certain percentage of the votes, based on Guatemala legislation, the party was disbanded. However, there was a lack of organization and prevision in the party. Moreover, “*El Gráfico*” suffered from the lack of Mr. Carpio Nicolle’s “driving force” and also from an advertising boycott by President Arzú. With Mr. Carpio Nicolle’s murder, they also murdered “*El Gráfico*” and the UCN.

For 11 years Mrs. Fischer and her children have endured “a nightmare.” Her two children “come and go; nowadays, they are practically unaware of where they are and [...] this has not been fair.” Mr. Carpio Nicolle meant a great deal to her children and they had to be treated by psychologists and psychiatrists, because “they did not have a normal childhood.” Mrs. Fischer had to pay for the treatment, the doctors’ fees and the medication. Also, she and her children have suffered social repercussions and been marginalized. She therefore requests financial reparation for her children Rodrigo and Daniela Carpio Fischer, who are not with her in Guatemala.

As a result of the investigations in the case, Mrs. Fischer incurred expenses ranging from photocopies to a trip to San Salvador and another to Costa Rica. In exile, she had to cover many expenses herself, particularly when “*El Gráfico*” started to fail and her former husband stopped child support payments. Also, as a result of her involvement in the investigation into Mr. Carpio Nicolle’s death, her professional image in Guatemala has been adversely affected; however, she considers that nothing can be done in this regard.

Mr. Carpio Nicolle cannot be brought back to life, but it is important that a new investigation be conducted and that a public apology be made to the next of kin of the victims; this should be televised and published in the media.

In addition, both the prosecutor, Abraham Méndez, and Fernando Penagos, who led the investigation conducted by the Archbishopric's human rights office, should be given public recognition. Also, an international journalism study grant should be established in the name of Mr. Carpio Nicolle, for journalists from a disadvantaged background. A school should also bear his name.

The Carpio Nicolle case demonstrates how weak the administration of justice is. The Army continues to interfere, not only in the Attorney General's office (*Ministerio Público*), but also in the Judiciary. It is therefore very important to strengthen the Attorney General's office, because the necessary changes have not been made and personnel do not have adequate training. Moreover, there is no effective law to protect witnesses and a structural reform of the administration of justice is needed. Furthermore, a ballistics laboratory is needed and the domestic agencies need to reach consensus in order to take advantage of an offer from the United States in this regard.

In order to achieve real justice in the case, Mrs. Fischer considered that, at the very least, the following persons, "with their full names," should receive a moral censure: General José Domingo García Samayoa, General José Luis Quilo, General Víctor Augusto Vázquez Echeverría, former President Ramiro De León, Colonel Ricardo Bustamante, Colonel Mario Alfredo Mérida González, lieutenant colonels and today colonels, Víctor Rosales and Mario Enrique Gómez, Arnoldo Ortiz Moscoso, and the former Director of the Police, Mario René Cifuentes. Pressure should also be put on the authorities, since, at the date of the hearing, the cartridge cases relating to the facts were unavailable and the file had disappeared from the Attorney General's office.

c) Testimony of Abraham Méndez García, former prosecutor of the Carpio case

He is currently a Judge of the Guatemalan Court of Appeal for matters relating to children and adolescents.

He was involved in the proceeding on the facts that occurred in the instant case as special prosecutor.

The copies that should have been in the Attorney General's office were not there, because the testimonies had disappeared. Consequently, the witness referred to the original file, he acquired "inputs," he examined all the proceedings and requested that the case be opened to take evidence, suggesting the type of evidence he considered pertinent. Following the admission of the probative evidence proposed in the individual complaint and by the Attorney General's office, he devoted himself to monitoring that this probative evidence was obtained. During the reconstruction of the facts, he found it anomalous that the lawyers of the accused and the civilian patrolmen traveled in vehicles of military zone No. 20 that were evidently armored. The civilian patrolmen conducted threatening activities during the procedure, taking the data of the vehicle in which Mr. Méndez García was traveling. Subsequently, prior to the day of the trial, when most of the proposed probative evidence had been substantiated, an attack was made on his life. The prosecutor responsible for investigating this attack did not probe into it;

he told Mr. Méndez García that he knew where the attack came from, but that it was “better” not to investigate it.

The UCN members of Congress summoned him to explain the case. Consequently, members of the President’s staff entered the premises of the Attorney General’s office in order to question him; the witness did not permit this. As of that time, he was subjected to “similar acts and to being followed constantly.”

During the proceeding, there was a pseudo line of investigation, which was partially true, in which a band of civilian self-defense patrolmen (PAC) were accused. Mr. Méndez García, who was carrying out his functions independently, was able to rectify the investigation by establishing that it had been manipulated. The line taken by the investigation pointed towards the perpetrators, and clues were beginning to appear that could have led to the masterminds. These clues led to “well-known people” related to the Army, who had been involved in the preparation, guarding and cleaning-up of the crime scene.

Obstacles were put in the way of the witness’s work as prosecutor; he had no logistic support, because, at the start, he had only been assigned two officials with minimum technical capacity to assist him. These officials were afraid and one of them warned him that he could not continue with the proceeding because the work they were doing was dangerous. Subsequently, he was had to continue alone. The Prosecutor General began to assume an attitude that was incongruous with his position: he began to withdraw support from Mr. Méndez García, who did not have an office, or officials to assist him, and was told that he should defer to the Prosecutor General’s office.

Mr. Méndez García started ordering the Minister of Defense and other relevant entities to forward him any documentation they considered would allow him to learn more about the case. However, this attitude alarmed those who did not want the case to be investigated. In September 1995, the Intelligence Commission of the United States Senate invited him to explain the case; but the Prosecutor General opposed this and issued an order disallowing it; despite this, Mr. Méndez García attended this meeting.

When the witness had established the connection leading to the intellectual authorship of these events, an overt psychological war was waged against him, which affected his health. Despite this, he did not leave the case at that time. Nevertheless, when he had assembled and submitted the probative evidence, he withdrew from the case and went into exile on November 7, 1996, with his family.

During his time in exile, Mr. Méndez García only received help as a refugee; in other words, he was unable to work and was under surveillance. The income he received during his time in exile could not compare with his status as a professional. He indicated that being a refugee involved humiliation, ignorance, alienation and “obliteration of awareness.” Mr. Méndez García, his four children and his wife, were in exile for nearly a year.

Guatemala requires a guaranteed democratic State. The justice sector needs “a profound re-oxygenation and re-engineering,” because neither the

Judiciary nor the Attorney General's offices are respected. For example, judges cannot be insured, because "they are in constant danger." Even though there is a law to protect witnesses, the institutions are weak. Moreover, budgetary matters are very problematic, because needs are not prioritized. Currently, about 700 million quetzals from the general budget of the Republic of Guatemala are allocated to the administration of justice or to the Judiciary. This amount has no comparison with the budgets of other ministries or the requirements of the justice sector.

The Carpio Nicolle case reveals the general framework of ineffectiveness or inefficiency of the Judiciary. Consequently, he considers it a challenge to re-open the investigation into the facts and that satisfactory infrastructure and coordination, meticulous analysis, and independence are needed.

d) Testimony of Jorge Carpio Arrivillaga, Mr. Carpio Nicolle's son

He began working in "*El Gráfico*" when he was 20 years old. He worked first in administration and, subsequently, in the journalism division. His university training is in political science, although he did not complete his studies, owing to the dictatorship. Currently he heads a financial newspaper.

When his father died, Mr. Carpio Arrivillaga was General Manager of "*El Gráfico*" and was responsible for the company's administrative functions, sales, accounting and finance.

His father, who was also President of the Guatemalan and the Central American Press Associations, managed the journalism division of "*El Gráfico*." He delegated journalism functions to Jorge López Selva, his editor-in-chief. "*El Gráfico*" and Mr. Carpio Nicolle provided each other with mutual support. Mr. Carpio Nicolle represented the image of "*El Gráfico*." Evidently, as a political figure, his father appeared in the newspaper a great deal, because he was a public personality and a great national leader.

"*El Gráfico*" provided an opportunity for all sectors to express themselves, despite the financial boycotts, the attacks and the threats it had to face. "*El Gráfico*" always gave space to reports of human rights violations in Guatemala, through advertisements or paid announcements and in its information. As an informative, journalistic and democratic mechanism during the dictatorship and, subsequently, with the onset of democracy, the newspaper was a constant source of criticism of governmental errors. It was a permanent monitor of the actions of Guatemala's first democratic government. After the attack on Mr. Carpio Nicolle and his collaborators, other media have been too frightened to continue providing information with reports on human rights violations, particularly on issues related to the Army.

For 30 years, the newspaper grew constantly, without setbacks. On June 20, 1993, three days before his father's death, and the day the fiscal year ended, the newspaper recorded the highest sales and profits in its history, even though the national currency had been devalued by 100% in 1992.

"*El Gráfico*" was the only source of the family's income, since his father, his brother and he all worked there. After his father's death, his mother, his

brother and he, as members of the Board of Directors, took decisions by consensus.

There was a direct relationship between the disappearance of "*El Gráfico*" and the disappearance of Mr. Carpio Nicolle, because, after his death, the paper began to decline and to lose credibility. A few months after his father's death, the situation of the paper "was deteriorating," as regards the number of subscribers and advertisers. It was the sale of advertising that decreased most rapidly.

The witness stated that it was important to note that the change in the trend of the profit margin of "*El Gráfico*" occurred after 1993. The newspaper began to deteriorate in 1994, because Mr. Carpio Nicolle was closely linked to "*El Gráfico*"; everyone knew that he was the owner, since he even signed the leading articles. In 1995, they put in place a strong promotional strategy that mitigated the financial crisis experienced by the paper. As of 1994 and 1995, sales began to decrease slowly and, from 1996 on, the decrease was much more pronounced. In 1996 and 1997, they faced another financial boycott, which consisted in the withdrawal of numerous "State announcements," following reports in the paper on obstruction, irregularities and obstacles in the investigation into the perpetrators and masterminds of the murder of Mr. Carpio Nicolle and the others. It finally closed in 1999.

Before his father died, the newspaper had less loans and debts. In the years before his death, the debt level was about 67%; it then decreased to 57% between 1993 and the beginning of 1994. However, it increased rapidly as of 1995, and at one time nearly reached 100%.

His father did not use the newspaper's resources for his campaign; consequently, his participation in politics cannot be related to the fall of "*El Gráfico*."

Mr. Carpio Nicolle's death was totally unexpected, not only for his family but for all Guatemalan society. Many people attended his funeral. With his disappearance, the Carpio family assumed a considerable responsibility. As General Manager, Jorge Carpio Arrivillaga took many decisions; however, it was his father who took the final decision for the company. Consequently, with Mr. Carpio Nicolle's death, Jorge Carpio Arrivillaga felt responsible for maintaining the patrimony that his father had built up with so much effort and creativity.

Currently the "*El Gráfico*" company is inactive. Jorge Carpio Arrivillaga founded a new newspaper, but he is still carrying debts from "*El Gráfico*," because he had to invest a great deal of money to try and maintain this patrimony. He therefore had to take out loans with increasingly higher interest rates, which put the company into debt.

There should be three types of reparation. The first is in the area of political justice; here, the State should propose to make an exhaustive study of Mr. Carpio Nicolle's ideas contained in the 1985 Constitution; to that end, it should consult those who were deputies in the Assembly that reformed the Constitution, because it is fair that "history should recognize" his input. Also, his father's work should be acknowledged by naming a street, a well, a

school, a sports center with Mr. Carpio Nicolle's name, because all the peoples of Guatemala owe their independence to him. The country's judicial system also needed to be strengthened, because in Guatemala there are parallel powers, very powerful powers, so that the law has to be very strong in order to combat them and avoid impunity. Lastly, he requested fair and equitable compensation for the family, his father's heirs, for the irreparable loss.

e) Testimony of Silvia Arrivillaga de Villacorta, Mr. Villacorta Fajardo's widow

She married Mr. Villacorta Fajardo in 1964, and they had two daughters and three sons. He was an excellent husband, father and grandfather. He maintained the Villacorta Arrivillaga family and always provided it with a status that was "more than respectable." When they were recently married, they established a school on their farm and, as governor of the Department of Quetzaltenango, he also established many schools.

From the time of their marriage, the principal family income came from the Monte Rosa farm, which her husband had owned for more than 30 years and which, in addition to providing financial wellbeing, had great sentimental value for the family. Her children attended the best schools, went abroad to study, and studied in the best universities in Guatemala.

Within the UCN, Mr. Carpio Nicolle had entrusted her husband with general coordination in the western area of the country. The Monte Rosa farm was located in this area, so Mr. Villacorta was able to continue managing the farm, with the collaboration of a manager, who had worked for him for approximately 30 years.

She learned of her husband's death through a telephone call from Mr. López Arrivillaga. The first impact was the shock of "seeing him leave, full of life [and] illusions" and, the following day, receiving his dead body. Mr. Villacorta Fajardo's death left Mrs. Arrivillaga de Villacorta with a feeling of emptiness. Moreover, she felt defenseless when she realized that she, a housewife, was in sole charge of five children. At the time of her husband's death her children were 17, 20, 24, 25 and 28 years old.

The coffee harvest started a month after her husband's death. Amid the "chaos" resulting from his death, the harvest was a complete failure, because he was the person who knew how to negotiate the financing for the farm work and the harvest with the banks. The results of the sale of that harvest could have been used to pay off the loans that were owed, or renegotiate the debt, but "there was nothing" to repay the loan. In addition, after her husband's death, the entity that financed them raised the interest rate from 16% to almost double. The funds from the sale of the farm were used to pay off all the debts, because Mrs. Arrivillaga de Villacorta wanted to ensure that her husband's name was "clean".

After Mr. Villacorta Fajardo's death, her youngest son shut himself up in his room. He had to leave the college in which he was studying and enroll in a "very simple college." Her two elder sons, who were in the country's best universities, had to abandon them. One of her daughters wanted to study medicine, but had to abandon her studies. It was a devastating experience for

Mrs. Arrivillaga de Villacorta because, without any work experience, her sons had to look for work, thus terminating her husband's hopes of ensuring they had professional degrees.

In 1996, Mrs. Arrivillaga de Villacorta began to work, but when her children found work, she stopped working. At one time, her children lost their jobs and the family spent eight months without electric light, and the water and telephone services were cut off. Currently, her income depends on one of her children who lives with her.

Her husband would have liked to be remembered by the establishment of a school in his memory, which could be near the Monte Rosa farm, in the municipality of La Reforma, Department of San Marcos. Additionally, she requested that the street on which the house in which Mr. Villacorta Fajardo grew up with his mother was located should bear his complete name, including his mother's last name.

She was grateful for the "historical opportunity" to be heard by the Court and hopes that a precedent in international justice is set, because there is no justice in Guatemala. She considers that both she and her children "have the right to reparation, and the State of Guatemala has the obligation to repair to some extent all the damage and suffering that it has caused [them]." She also stated that she hopes that the investigation into the case continues and that the Guatemalan Government fulfills its commitments, because many families have been destroyed, left helpless, with their hopes and dreams cut short, and with serious psychological, emotional and financial injuries.

f) Expert report of Marco Antonio Sagastume Gemmell, professor of the Universidad de San Carlos de Guatemala and President of the Guatemalan Human Rights Academy

Mr. Carpio Nicolle was not only a well-known politician but also the first graduate of the School or Faculty of Political Science of the Universidad de San Carlos; he was a businessman and, above all, a journalist.

In 1992, Mr. Carpio Nicolle proposed that a special National Assembly should be convened in order to reform errors in the Constitution. Mr. Carpio Nicolle stated that it was necessary to construct a new political project that "led to the establishment of human dignity."

It appeared that Mr. Carpio Nicolle would win the 1994 elections, because he had a large following and defended the necessary respect of human rights, particularly for the indigenous peoples of Guatemala.

On July 3, 1993, Mr. Carpio Nicolle was arbitrarily or extra-legally executed by the Civilian Self-Defense Patrols (PAC), who were legalized and financed by Guatemala's military sector, which also controlled them. Thus, even though the said PAC did not take a political stance, the head of the presidential staff at the time of the extrajudicial execution of Mr. Carpio Nicolle already appeared to be a possible presidential candidate in future elections for the "*El Patriota*" Party. The PAC of San Pedro Jocopilas had so much power that they could establish a curfew and carry out kidnappings and torture.

With Mr. Carpio Nicolle's death "the peoples of Guatemala were robbed" of a political project aimed at commencing a rapid and flexible peace process. Mr. Carpio Nicolle also proposed that it was necessary to acknowledge the internal armed conflict, which had already been recognized by the United Nations.

It could be considered that the UCN was the only political party in Guatemala as of 1985 or 1986. However, the project of the UCN "disintegrated" with the physical elimination of Mr. Carpio Nicolle. The same thing happened to the "*El Gráfico*" newspaper.

After Mr. Carpio Nicolle's murder, "unfortunately [...] there was no other newspaper" like "*El Gráfico*" to take up the defense of human rights issues. Also, with his death, a shadow was cast on the right to provide information and the right of the Guatemalan people to be informed.

Although the PAC have been "officially abolished" and apparently disbanded, in practice they are present as "a parallel power group." Currently, there are two unified executive councils of former patrolmen organized in a manner that is "dangerous" for the State. "The [only] way to disband [them] is for international pressure to be exerted on the Guatemalan Army, which controls the situation."

The PAC are a risk factor for democracy and governance. Currently, it would appear that the PAC have almost 970,000 members; they constitute an "electoral group which can be manipulated dangerously [and, also,] a group that has threatened to violate the right to freedom of movement in Guatemala." These people continue to be protected by the military sector.

A few days prior to the hearing before the Inter-American Court, the PAC (who are apparently disbanded), threatened the whole population and the Government that they would paralyze the country if there were not paid a certain amount, even though the Constitutional Court had decided that this payment was unconstitutional. The payment requested corresponded to their work during the internal armed conflict.

International reparation should be carried out at two levels. On the one hand, the victims' next of kin should receive reparation for the non-pecuniary and pecuniary aspects. On the other hand, the Guatemalan people are also victims in this case. Consequently, quite apart from the public apologies to the next of kin and to the Guatemalan people, a report should be written and a video made, to be published and broadcast, respectively, "throughout the hemisphere." Furthermore, the State should be requested to investigate the parallel military power that still exists in Guatemala, in conjunction with the Organization of American States (OAS) and the United Nations.

There should be a governmental institution to monitor that State officials respect human rights and that to promote the adaptation of domestic legislation to international human rights treaties. Nowadays, the figure of Ombudsman is generating increasing credibility.

The national budget for the Guatemalan Army is 1,000 million quetzals; however, a “sort of transfer provides double this amount,” while the Judiciary “does not even have the budget to continue functioning.”

C) ASSESSMENT OF THE EVIDENCE

Assessment of the Documentary Evidence

70. In this case as in others,²¹ the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence, that were not contested or opposed, and whose authenticity was not questioned.

71. The Court considers that the statements of the alleged victims and of their next of kin, who have a direct interest in the case, must be assessed together with all the evidence in the proceeding. The statements of the victims are useful with regard to both merits and reparations, insofar as they can provide more information on the consequences of the violations that may have been perpetrated.²²

72. With regard to the sworn statement of the expert witness, César Alba Cije, the State indicated that this report “[did] not constitute an audit as stated in [the said] report,” so that the Court should reject it²³ (*supra* paras. 30 and 61(e)). Although this expert report was contested by the State, the Court admits it, insofar as it accords with its purpose, taking into account the objections raised by the State, and assesses it with the body of evidence, applying the rules of sound criticism.²⁴

73. In the case of the sworn statement (affidavit) made before notary public by Mr. Shaw Arrivillaga (*supra* para. 46 and 66(a)), this Court admits it insofar as it agrees with its purpose, in light of Article 44(3) of the Court’s Rules of Procedure.

Assessment of the Testimonial and Expert Evidence

74. As indicated above (*supra* para. 71), this Court considers that the statements of the alleged victims, who have a direct interest in this case, must be assessed within the whole body of evidence in the proceeding. Their statements are useful with regard to both merits and reparations, since they can provide more information on the consequences of any violations that may have been perpetrated

75. In light of the above, the Court will assess the probative value of the documents, statements and expert reports presented in writing or made before it. The evidence presented during the proceeding has been incorporated into a single body of evidence, which is considered as a whole.²⁵

²¹ Cf. *Case of Tibi*, *supra* note 11, para. 77; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 80; and *Case of Ricardo Canese*, *supra* note 11, para. 61.

²² Cf. *Case of Tibi*, *supra* note 11, para. 86; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 83; and *Case of Ricardo Canese*, *supra* note 11, para. 66.

²³ Cf. brief on merits, reparations, and costs, tome III, folio 748.

²⁴ Cf. *Case of Tibi*, *supra* note 11, para. 88; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 85; and *Case of Ricardo Canese*, *supra* note 11, para. 62.

²⁵ Cf. *Case of Tibi*, *supra* note 11, para. 89; *Case of the “Juvenile Reeducation Institute”*, *supra* note 11, para. 100; and *Case of Ricardo Canese*, *supra* note 11, para. 68.

VII PROVEN FACTS

76. In accordance with the State's acknowledgement of responsibility and the body of evidence in this case, the Court considers that the following facts have been proved:

The internal armed conflict in Guatemala and the Civilian Self-Defense Patrols

76(1) In Guatemala, there was an internal armed conflict from 1962 to 1996, during which it has been calculated that there were more than 200,000 victims of arbitrary executions and forced disappearances as a result of the political violence. The State's forces and paramilitary groups, such as the Civilian Self-Defense Patrols (PAC) or the Voluntary Self-Defense Committees, committed most of these human rights violations.²⁶

76(2) The Civilian Self-Defense Patrols emerged at the beginning of the 1980s as groups of civilians formed under coercion by the Army. In April 1983, Governmental Agreement 222-83 gave them legal recognition, through the creation of the National Leadership for Coordination and Control of Civilian Self-Defense. The main objectives of the PAC were to organize the civilian population against the guerrilla movements and gain control over it.

76(3) The Civilian Self-Defense Patrols had an institutional relationship with the Army, carrying out support activities for the functions of the Armed Forces; furthermore, they received resources, arms, training and orders directly from the Guatemalan Army, and operated under its supervision. Various human rights violations were attributed to these patrols, including summary and extrajudicial executions, and forced disappearances of persons.²⁷

76(4) In 1993, the year in which the events of the instant case took place, it was known that the Civilian Self-Defense Patrols of San Pedro de Jocopilas violated the civil rights of the inhabitants of this region, where they enjoyed sufficient political power to unilaterally establish a curfew, demand monetary contributions from their members, impose disciplinary measures and punishments, and also kidnap and torture neighbors. During this period, these patrols were responsible for various murders, for which impunity was practically guaranteed.

The political situation in Guatemala between 1985 and 1993

76(5) In 1985, a period of transition to democracy began in Guatemala; its progress was hindered by attempted coups d'état by the Army in 1987, 1988 and 1989.

76(6) In 1990, general elections were held, and Mr. Serrano Elías won the presidential elections in the second electoral round with 24.8% of the electorate; he obtained 10 seats in Congress and 3% of the municipalities. The National Union for the Center, headed by Jorge Carpio Nicolle, obtained 40 deputies in Congress; that is to say, 34.5% of this body.

²⁶ Paragraphs 76(1) to 76(65) of this judgment are uncontested facts, that this Court considers established based on the State's acknowledgement of responsibility.

²⁷ Cf. *Case of Blake*. Judgment of January 24, 1998. Series C No. 36, para. 76(

76(7) On 1992, Mr. Serrano Elías sought the political support of the Christian Democracy Party and the UCN, with whom he made an agreement to alternate the presidency of the Congress and to have them as allies in legislative votes and decisions.

76(8) On 1993, on the occasion of the municipal elections, the Christian Democracy Party announced a populist and national convergence program, and decided to dissolve the alliance in Congress with the UCN and the Government, so the latter lost control of the legislature and the other State apparatus. Consequently, the military high command remained the Government's only ally.

76(9) On May 25, 1993, Mr. Serrano Elías carried out a coup d'état against himself and announced to the Guatemalan people that he had dissolved the Congress of the Republic, the Supreme Court of Justice, and the Constitutional Court, and had also suspended the positions of Attorney General (*Procurador General*) and Ombudsman. On the same date, the President issued a decree suspending fundamental rights. Moreover, radio, television and written media were censored.

76(10) Mr. Serrano Elías justified the coup d'état by the need to end the mafia and corruption in the legislative and judicial powers, and promised to call immediately for legislative elections to re-establish the constitutional order.

76(11) As of May 25, 1993, Jorge Carpio Nicolle received national and international pressure to support Mr. Serrano Elías's coup d'état. However, Jorge Carpio Nicolle remained opposed to it.

76(12) On June 1, 1993, the Constitutional Court repudiated Mr. Serrano Elías's powers as President. The Supreme Electoral Tribunal refused to allow Congress to reform the Constitution and to call for new elections. Consequently, Mr. Serrano Elías was dismissed from power and fled to El Salvador.

76(13) The Vice President in Mr. Serrano Elías's government, Gustavo Espina, proclaimed himself *ad interim* President of the Republic and summoned the National Congress to ratify him as President. On September 19, 1993, the Constitutional Court repudiated Mr. Espina as President and granted 24 hours to appoint a new head of the Executive.

76(14) On June 6, 1993, Congress appointed the former Ombudsman, Ramiro de León Carpio, Jorge Carpio Nicolle's cousin, President of the Republic.

The activities of Jorge Carpio Nicolle in journalism and politics

76(15) Jorge Carpio Nicolle was a very well-known journalist and politician in Guatemala, with more than 30 years' experience in the world of journalism at the time of his death. In 1963, he founded the newspaper that would later be called "*El Gráfico*" and, in 1983, the UCN. In 1985, he came second in the first round of the general elections for the presidency, and in 1990 he came first in the first round, but lost in the second round to Mr. Serrano Elías (*supra* para. 76(6)).

76(16) The May 26, 1993, issue of "*El Gráfico*," in which Jorge Carpio Nicolle criticized Mr. Serrano Elías's coup d'état was censored by the State. The UCN also

condemned the coup d'état and rejected the rupture of the constitutional order; this led to its members being threatened by the police and the military forces.

76(17) On May 31, 1993, Mr. Serrano Elías summoned Jorge Carpio Nicolle, as the leader of the UCN, to request the latter's support, so that he could continue governing; however, Jorge Carpio Nicolle refused and indicated the need to return to the democratic constitutional order.

76(18) As of June 5, 1993, several draft amnesty laws were proposed informally in the National Congress to benefit the authors, accomplices and accessories of the coup d'état of May 25, 1993. On June 8, 1993, Jorge Carpio Nicolle, as Secretary General of the UCN and in representation of its deputies, stated in "*El Gráfico*" that he rejected the possible granting of an amnesty to the authors, accomplices and accessories of the coup d'état. Finally, these draft laws were not adopted owing to the opposition of the members of the UCN, headed by Jorge Carpio Nicolle, and the pressure this party exercised through the different media.

76(19) Jorge Carpio Nicolle, in addition to opposing the successive attempts to usurp power by unconstitutional mechanisms by Mr. Serrano Elías and later Gustavo Espina, and the intent to give amnesty to the authors of the coup d'état, developed a political strategy for a return to the democratic constitutional order. In this regard, after Mr. Serrano Elías's coup d'état, the UCN and Jorge Carpio Nicolle promoted a "Political commitment to normalize the constitutional and institutional order," defining the steps needed to restore democracy in Guatemala.

76(20) Subsequently, Jorge Carpio Nicolle's efforts were addressed at establishing the so-called National Consensus Forum, which was composed of representatives of political parties, business associations, trade unions, cooperatives, multi-sector groupings and universities. This group was summoned, led and supported by Jorge Carpio Nicolle.

The attack on Jorge Carpio Nicolle and his delegation

76(21) On July 3, 1993, during a proselytizing tour in the departments of Totonicapán, Huehuetenango and El Quiché, Jorge Carpio Nicolle and his delegation, comprising Martha Arrivillaga de Carpio, Juan Vicente Villacorta Fajardo, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Mario Arturo López Arrivillaga, Alejandro Ávila Guzmán and Rigoberto Rivas González, and Sydney Shaw Díaz, who was a minor at the time, were intercepted by more than 15 armed men who had covered their faces with balaclava helmets. When they had identified Jorge Carpio Nicolle, the armed men shot him at pointblank range, causing serious injuries, which led to his death. This took place in "*Molino del Tesoro*," located at kilometer 141 of the highway to Chichicastenango, El Quiché, near Military Base No. 20.

76(22) During the same events, Juan Vicente Villacorta Fajardo, who was traveling in the same vehicle as Jorge Carpio Nicolle, was murdered, and also Alejandro Ávila Guzmán and Rigoberto Rivas González, who were traveling in a double-cabin pick-up together with Sydney Shaw Díaz, who was a minor at the time and who was seriously injured. Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Sydney Shaw Arrivillaga, Mario Arturo López Arrivillaga and Ricardo San Pedro Suárez, survivors of the attack, were treated with cruelty, owing to the extreme violence of the events.

The domestic investigation into the facts and the domestic proceedings

1 *Irregularities concerning evidence*

76(23) On July 3, 1993, the survivors of the events handed an empty cartridge case, and a bullet head they had found in the microbus in which Jorge Carpio Nicolle was traveling, to Military Base No. 20, posted in El Quiché. Nevertheless, these elements were not sent to the Identification Unit of the National Police Directorate General.

76(24) On July 4, 1993, the police searched the site of the facts and found three bullet heads and one cloth backpack with clothes and nine rounds of assorted caliber. All of this was sent to the Identification Unit of the National Police Directorate General. In official communication No. 394 of August 13, 1993, Police Commissioner Alejandro García Mejía provided information on this evidence and forwarded it to the magistrate of Chichicastenango; but it was never incorporated into the case file.

76(25) On July 7, 1993, an expert evaluation was carried out on the nine rounds and three bullet heads of assorted caliber found near the site of the facts. On October 17, 1995, copies of the original official communications had to be sent, because the original report on this expert evaluation had been lost.

76(26) Oscar Abel García Arroyo, ballistics expert, examined the firearm confiscated from Juan Acabal Patzán and concluded that this weapon was the one that had fired the rounds that produced the empty cartridges found at the site of the facts. On May 25, 1994, this expert sent his evaluation report to the Fifth Criminal Court of First Instance, and testified on it before the judicial authority on April 22, 1997. However, the weapon confiscated from Juan Acabal Patzán was taken out of Guatemala without any authorization or judicial order. In this way, the chain of custody of this evidence was broken.²⁸

76(27) The autopsies carried out on the corpses of Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González were mislaid for about a year.

76(28) On July 7, 1993, the National Police spokesman, Darwin de León Palencia, had a car accident when traveling to San Pedro de Chichicastenango, during which various elements collected from the site of the facts were lost. The spokesman indicated that, when he entered the hospital, he handed the evidence to the agent on duty, asking the latter to deliver it to the National Police General Directorate; however, the evidence was never recovered. Mr. de León Palencia stated that the accident was due to a failure in the braking system.²⁹

76(29) On January 19, 1994, the office of the judicial agency where the Carpio Nicolle case file was supposedly kept – the Santa Cruz de El Quiché Registry – was set on fire; remains of Molotov cocktails were found among the ashes. The file appears to have been mislaid for ten days.

76(30) In January 1994, at Guatemala's request, the Ballistics Department of the Attorney General's office (*Procuraduría General de Justicia*) of Mexico, D.F.,

²⁸ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece V).

²⁹ Cf. complaint filed by the prosecutor, Abraham Méndez García, on February 8, 1995, before the United Nations Verification Commission for Guatemala (file with appendixes to the application, appendix 10, tome I, vol. 2, folio 643).

evaluated several cartridge cases and bullets related to the facts and, the same year, delivered the originals of the report to Alfonso Reyes Calderón, Second Vice Minister of the Interior of Guatemala.³⁰ However, this report was not presented to the court until 1996.

76(31) On February 8, 1995, the prosecutor from the Attorney General's office, Abraham Méndez García, reported a series of irregularities to the United Nations Verification Mission. These included, in particular, the disappearance of a bullet head found inside the vehicle in which Jorge Carpio Nicolle was traveling, the disappearance of the autopsy photographs of the bodies of the victims, and the disappearance of the evidence transported by the National Police spokesman.³¹

76(32) On February 25, 1997, following a judicial inspection in the Identification Unit of the National Police, it was found that the bullet heads used in the attack were not there. There was merely an official communication recording that they had been forwarded to the Fifth Criminal Court of First Instance, which was hearing the case. However, this court had no information on the whereabouts of this evidence. The cartridges and bullets extracted from the bodies of the victims had also disappeared.

76(33) On November 12, 1997, the person in charge of the Ballistics Laboratory of the Identification Unit of the National Police addressed an official communication to the First Judge of First Instance for Criminal Affairs, responding to the latter's request of September 24, 1997, that he carry out an expert evaluation of the weapon confiscated from Mr. Acabal Patzán and of additional evidence related to the facts. In this regard, he informed that an exhaustive search had been made, and it had been concluded that this evidence had never been received by the Unit, because its reception was not recorded in the respective ledger kept by the Evidence Control Section, or in the internal control ledgers. He also stated that the evidence that existed and that apparently belonged to the Carpio Nicolle case was not fully identified, with the exception of some bullets and some empty cartridge cases, which had supposedly been collected from the site of the facts.³²

2. *The domestic proceeding*

76(34) From the time of the armed conflict and up until today, the Guatemalan courts of justice have not investigated, prosecuted, tried and punished those responsible for human rights violations. In the instant case, the courts of justice have acted without independence and impartiality, applying legal norms and provisions that are contrary to due process or failing to apply the appropriate ones.

76(35) The judicial proceeding to determine the criminal liability of the perpetrators of the attack against Jorge Carpio Nicolle and his delegation began in July 1993 and ended in August 1999, with the acquittal of all the accused.

³⁰ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XX).

³¹ Cf. complaint filed by the prosecutor, Abraham Méndez García, on February 8, 1995, before the United Nations Verification Commission for Guatemala (file with appendixes to the application, appendix 10, tome I, vol. 2, folios 635 to 659).

³² Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

76(36) On July 6 and 7, 1993, 13 members of a band of common criminals were arraigned before the magistrate for Criminal Affairs of Chichicastenango, Department of El Quiché, as perpetrators of the attack against Jorge Carpio Nicolle and his delegation. Subsequently, nine of the 13 were released and four of them, Marcelino Tuy Taniel, Nazario Tuy Taniel, Tomás Pérez Pérez and Jesús Cuc Churunel, remained detained for ten months for the crimes of murder, injuries, aggravated robbery, carrying weapons, and also for possessing and manufacturing explosive materials for the Army's exclusive use.³³

76(37) The proceeding in the Carpio Nicolle case was heard by the El Quiché First Criminal Court of First Instance. On December 8, 1993, this court disqualified itself and, on January 25, 1994, the Ninth Chamber of the Court of Appeal declared that this disqualification was in order, and decided to refer the proceeding to the Second Criminal Court of First Instance.³⁴ However, as the Second Judge of First Instance for Criminal Affairs in charge of the case excused himself on February 8, 1994, the file was forwarded to be heard by the Fifth Criminal Court of First Instance on May 13, 1994.³⁵

76(38) On May 19, 1994, the Fifth Criminal Court of First Instance revoked the pre-trial detention order against Marcelino Tuy Taniel, Nazario Tuy Taniel, Tomás Pérez Pérez and Jesús Cuc Churunel for the crimes of murder, injuries and aggravated robbery.³⁶ Marcelino Tuy Taniel and Nazario Tuy Taniel remained in prison for the crime of the manufacture or possession of explosive materials. On May 24, 1994, the Attorney General's office filed an appeal against this decision.³⁷ On August 4, 1994, the Tenth Appeals Chamber confirmed the contested decision.³⁸ On December 8, 1994, the private complainant, Martha Arrivillaga de Carpio, requested the renewal of the pre-trial detention order against those accused; she also filed an appeal in case the request was refused³⁹ (*infra* para. 76(42)).

76(39) In June 1994, the Prosecutor General, Ramsés Cuestas Gómez, provided the criminal proceeding with a report prepared by the Homicide Section of the Criminal Investigations Department of the National Police. The report consisted of an expanded version of the results of the investigation into the death of Jorge Carpio

³³ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Pieces I and VI).

³⁴ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Pieces IV and V).

³⁵ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Pieces IV and V).

³⁶ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece V).

³⁷ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece V).

³⁸ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece IX).

³⁹ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVI).

Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González, and established various facts based on the evidence recovered, the ballistics tests, and witness's statements.⁴⁰

76(40) The report named 11 individuals, most of them members of the Civilian Self-Defense Patrols, but also some officials of the Government at that time, as possible direct participants in the acts in which Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González lost their lives.⁴¹ However, the only person who remained detained during the proceeding was Juan Acabal Patzán, who was accused in this report of being one of the possible perpetrators of the acts that occurred on July 3, 1993.⁴²

76(41) On December 5, 1994, a public hearing was held during which Martha Arrivillaga de Carpio filed an complaint before the Fifth Criminal Court of First Instance, charging Juan Acabal Patzán with the murder of Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González, and with seriously injuring the minor, Sydney Shaw Díaz. The private complainant requested that the crime committed against the minor should be reclassified to attempted murder.⁴³

76(42) On March 13, 1995, the Fifth Criminal Court of First Instance decided not to renew the pre-trial detention order and admitted the appeal filed additionally by the private complainant (*supra* para. 76(38)).⁴⁴

76(43) On April 18, 1995, the Tenth Chamber of the Court of Appeal decided the appeal of March 13, 1995 (*supra* para. 76(42)), modifying the classification of the crime of injuries to that of attempted murder to the detriment of Sydney Shaw Díaz, and decided that "the judge *a quo* [shall] amend the order remitting the case to trial."⁴⁵

76(44) On May 18, 1995, in response to the order of the Tenth Chamber of the Court of Appeal (*supra* para. 76(43)), the Fifth Criminal Court of First Instance issued a decision amending the pre-trial detention order issued against Jesús Cuc Churunel, Nazario Tuy Taniel, Marcelino Tuy Taniel, Tomás Pérez Pérez, Juan Acabal

⁴⁰ Cf. report of the Criminal Investigations Department of the National Police, Homicide Section, presented on May 25, 1994, to the Fifth Criminal Court of First Instance (file with appendixes to the application, appendix 15, tome II, vol. 1, folios 888 and 900).

⁴¹ Cf. report of the Criminal Investigations Department of the National Police, Homicide Section, presented on May 25, 1994, to the Fifth Criminal Court of First Instance (file with appendixes to the application, appendix 15, tome II, vol. 1, folios 893 to 894).

⁴² Cf. report of the Criminal Investigations Department of the National Police, Homicide Section, presented on May 25, 1994, to the Fifth Criminal Court of First Instance (file with appendixes to the application, appendix 15, tome II, vol. 1, folio 902).

⁴³ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XV).

⁴⁴ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

⁴⁵ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

Patzán and Francisco Ixcoy López and rectified the proceeding. However, it did not refer to facts that had been brought to light when the case had been opened for evidence, and continued to consider the matter as if it related to ordinary criminal activities. Consequently, on July 7, 1995, the private complainant filed a petition for clarification of certain points and expansion and, on July 14, 1995, the Attorney General's office took steps to ensure that this petition was declared admissible.⁴⁶

76(45) On May 19, 1995, the Fifth Criminal Court of First Instance, "owing to a procedural element and considering [it] admissible," revoked the pre-trial detention order (*supra* para. 76(44)) issued against Jesús Cuc Churunel, Francisco Ixcoy López and Tomás Pérez Pérez for allegedly committing the crime of attempted murder.⁴⁷

76(46) On August 9, 1995, the Fifth Criminal Court of First Instance declared the petition for clarification and expansion filed by the private complainant inadmissible (*supra* para. 76(44)).⁴⁸

76(47) On August 16, 1995, the private complainant filed an appeal before the Fifth Criminal Court of First Instance against the decision of May 18, 1995 (*supra* para. 76(44)). On August 29, 1995, this court admitted the appeal. On September 11, 1995, the Attorney General's office endorsed the appeal.⁴⁹

76(48) On October 16, 1995, the Tenth Chamber of the Court of Appeal decided this appeal, and "validated and retained the legal effects of the notifications, the hearings of the parties to the proceedings, and the procedure of receiving all the evidence collected during the probative stage"; it revoked the part of the contested order referring to the renewal of the pre-trial detention order against Marcelino Tuy Taniel, Nazario Tuy Taniel, Tomás Pérez Pérez, Jesús Cuc Churunel and Francisco Ixcoy López for the crime of injuries, which had been amended to the crime of attempted murder; in the contested order, it revoked the justiciable facts formulated against these amendments; it ordered the judge *a quo* to restore the procedural measures according to law,⁵⁰ and referred the case to the First Criminal Court of First Instance.

76(49) On January 24, 1996, the judge *a quo* of the First Criminal Court of First Instance, instead of executing the decisions of the Tenth Chamber of the Court of Appeal concerning the renewal of the pre-trial detention order (*supra* para. 76(48)), notified an order requiring additional steps to be taken and did not grant further hearings to the parties so that they could submit evidence relating to the new classification of the crime. On January 26 and 31, 1996, the Attorney General's office and the private complainant, respectively, filed appeals against the decision of January 24, 1996. Accordingly, on April 15, 1996, the Tenth Chamber of the Court

⁴⁶ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

⁴⁷ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

⁴⁸ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

⁴⁹ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVII).

⁵⁰ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVIII).

of Appeal revoked the decision of the First Criminal Court of First Instance and ordered it to adapt its proceedings to the corresponding legal procedural principles.⁵¹

76(50) On April 22, 1996, the judge of the First Criminal Court of First Instance excused himself from continuing to hear the case.⁵² On April 23, 1996, the Attorney General's office challenged this judge. The case was transferred to the Second Criminal Court. On June 10, 1996, this Court filed a question on jurisdiction before the Supreme Court of Justice and, on July 23, 1996, the case was transferred to a new judge of the First Criminal Court of First Instance.⁵³

76(51) On August 12, 1996, in keeping with the decision of the Tenth Chamber of the Court of Appeal (*supra* para. 76(48)), the First Criminal Court of First Instance decided to revoke the release order of May 19, 1994, issued in favor of Nazario Tuy Taniel, Marcelino Tuy Taniel, Jesús Cuc Churunel, Tomás Pérez Pérez and Francisco Ixcoy López (*supra* para. 76(38)). It also renewed the pre-trial detention orders against these individuals, and also against Juan Acabal Patzán, for the crimes, *inter alia*, of murder, attempted murder, and aggravated robbery.⁵⁴

76(52) On April 21, 1997, a public hearing was held in the First Criminal Court of First Instance.⁵⁵

76(53) On October 15, 1997, judgment was delivered, and the First Judge of First Instance for Criminal Affairs decreed, based on sound criticism and without invoking any legal provision, the absolute disqualification of the statements of the eyewitnesses to the facts, considering that they had been made by the victims and, consequently, the interested parties in the results of the trial. The proceeding against Tomás Pérez Pérez, Jesús Cuc Churunel and Francisco Ixcoy was left open and Marcelino Tuy Taniel and Nazario Tuy Taniel were acquitted of the crimes of murder and attempted murder and sentenced to five years' imprisonment, with possible commutation of sentence, for the crime of the manufacture or possession of explosive materials. Juan Acabal Patzán was sentenced to 30 years' imprisonment as a perpetrator of the murder of Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González, and also of the murder of Francisco Ajnac Ixcoy and Juan Patzán Pérez; this case was processed during the same trial.⁵⁶

⁵¹ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVIII).

⁵² Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XVIII).

⁵³ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Pieces XVIII and XIX).

⁵⁴ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XIX).

⁵⁵ Cf. public hearing held on April 21, 1997, in the First Criminal Court of First Instance (file with appendixes to the application, appendix 17, tome II, vol. 1, folio 1017); and copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XXX).

⁵⁶ Cf. judgment of October 15, 1997, delivered by the First Criminal Court of First Instance (file with appendixes to the application, appendix 20, tome II, vol. 2, folios 1104 to 1183); and copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

76(54) In this judgment, the judge considered that political motivation was not relevant in relation to the facts investigated. Moreover, the judge did not investigate the disappearance of the evidence, or the fire in the registry where the file was kept; he did not refer to the Army's refusal to summon soldiers to give testimony; he left the case open against some of the accused – mostly civilian patrolmen – and indicated that Juan Acabal Patzán did not belong to these patrols, despite the existence of evidence that he was a PAC commander. This demonstrates the negligence and lack of independence and impartiality that characterized the judicial authorities who intervened in the case.

76(55) On November 26, 1997, the Attorney General's office filed an appeal against the judgment of October 15, 1997, because it had closed the possibility of investigating those who masterminded the facts and had not ruled on the crime of perjury committed by the high command of the State's security forces.⁵⁷

76(56) On November 28, 1997, the private complainant filed a petition for clarification and expansion regarding the judgment of October 15, 1997, before the First Criminal Court of First Instance, in which she requested, *inter alia*, clarification of: the criminal liability of Juan Acabal Patzán for the four crimes; the disappearance of the bullet heads which killed Jorge Carpio Nicolle; the arbitrary action of removing the weapon with which the latter had been murdered from Guatemalan jurisdiction; and the failure to rule on the crime of perjury committed by several soldiers. She also requested that Juan Acabal Patzán be declared responsible for the crime of attempted murder against the minor, Sydney Shaw Díaz.⁵⁸

76(57) On December 19, 1997, the First Criminal Court of First Instance declared the petition for clarification and expansion of the judgment of October 15, 1997, filed by the private complainant, admissible and decided that Juan Acabal Patzán was guilty of the crime of murder and of the attempted murder of Sydney Shaw Díaz, and left open the proceeding with regard to the perpetrators, accomplices and accessories to the facts.⁵⁹

76(58) On December 26, 1997, the private complainant filed an appeal against the judgment of October 15, 1997, before the First Criminal Court of First Instance, which admitted it on December 29, 1997.⁶⁰ This appeal pointed out a series of arbitrary acts committed during the proceeding. One of these arbitrary acts referred to the failure of the Army to provide information on the name of the military officer who was based in Chichicastenango, and who carried out a search of the site of the facts, half an hour after they had taken place. Other arbitrary acts referred to the loss of evidence and bullet heads, to the simultaneous scheduling of probative procedures in different parts of the country prejudicing the right to defense, to the presentation of false statements by Army officers, and also to the unjustified rejection of probative evidence.

⁵⁷ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

⁵⁸ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

⁵⁹ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

⁶⁰ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

76(59) On April 28, 1999, almost 18 months after the appeal against the judgment of first instance had been filed (*supra* para. 76(58)), the Third Chamber of the Court of Appeal revoked the judgment of October 15, 1997 (*supra* para. 76(53) and 76(54)) and acquitted Juan Acabal Patzán, the only person sentenced in first instance for the execution of Jorge Carpio Nicolle and the members of his delegation, and for the attempted murder of Sydney Shaw Díaz, due to lack of evidence, ordering his immediate release. Regarding the lack of evidence, the Chamber considered that, since there was no official record of the entry and registration of this evidence in the Evidence Control Section (*supra* para. 76(33)), it was not possible to know what objects the ballistics expert, Oscar Abel García Arroyo, had evaluated (*supra* para. 76(26)); also, if the evidence was not fully identified, that expert report or any other could not be taken into consideration. However, in the same judgment, the Chamber decided that political motivation possibly existed, principally with regard to Jorge Carpio Nicolle, it therefore left the proceeding open against those who might be found to have masterminded the crime. The Chamber also left open the proceeding for perjury against Mr. García Arroyo, who had provided the ballistics report.⁶¹

76(60) On June 25, 1999, the Attorney General's office filed a petition for annulment, to demonstrate the defects *de facto* and *de jure* and to contest the judgment of second instance handed down by the Third Chamber of the Court of Appeal⁶².

76(61) On August 30, 1999, the Criminal Chamber of the Supreme Court of Justice rejected outright, the petition for annulment and considered, *inter alia*, that the prosecutor had not accredited who he was representing or indicated an address to receive notifications; that the petition did fulfill the requirements for a first request, and that, in the motives for annulment, the argument relating to each of the laws reportedly violated had not been stated.⁶³

The threats and other acts against the persons involved in the proceeding

76(62) The magistrate, Ernesto Solís Chávez, who was involved in the Carpio Nicolle case, reported that he was threatened by the Civilian Self-Defense Patrols; he asked to be transferred to another jurisdiction.

⁶¹ Cf. copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

⁶² Cf. petition for annulment filed by the Attorney General's office (*Ministerio Público*) before the Supreme Court of Justice on June 25, 1999, against the judgment of April 28, 1999 (file with appendixes to the application, appendix 20, tome II, vol. 2, folios 1049 to 1063).

⁶³ Cf. judicial decision of the Supreme Court of Justice, Criminal Chamber, rejecting the petition for annulment filed by the Attorney General's office on June 25, 1999 (file with appendixes to the application, appendix 20, tome II, vol. 2, folios 1064 and 1065); and copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, Piece XLIV).

76(63) On February 8, 1995, the prosecutor from the Attorney General's office, Abraham Méndez García, reported a series of harassment, threats and attacks against him owing to the procedural activities in the Carpio Nicolle case to the United Nations Verification Mission (*supra* para. 76(31)). On October 21, 1995, the prosecutor, Méndez García, submitted his irrevocable resignation to the Prosecutor General, Héctor Hugo Pérez Aguilera, and left the country on November 7, 1995.

76(64) On October 12, 1995, Police Commissioner César Augusto Medina Mateo was murdered; he had ordered the arrest of the commanders and members of the Civilian Self-Defense Patrols accused of perpetrating the execution of Mr. Carpio Nicolle and the members of his delegation.

76(65) Since the next of kin of Jorge Carpio Nicolle, and also the witnesses and members of the judiciary, were and continue to be subject to threats and intimidation, urgent and provisional measures have been adopted to ensure the protection of their lives and safety, in orders of the President of the Court of June 4 and July 26, 1995, and orders of the Court of September 19, 1995, February 1 and September 10, 1996, June 19 and November 27, 1998, September 30, 1999, September 5, 2001, and July 8, 2004 (*supra* paras. 12 to 16). The following persons have benefited or still benefit from these measures: Martha Arrivillaga de Carpio, Karen Fischer, Mario Arturo López Arrivillaga, Ángel Isidro Girón Girón, Abraham Méndez García and his wife and children, Lorraine Marie Fischer Pivaral, Jorge and Rodrigo Carpio Arrivillaga, and Rodrigo and Daniela Carpio Fischer.

The "El Gráfico" newspaper

76(66) "*El Gráfico*" was a successful newspaper at both the national and the Central American level; it was the newspaper with the second highest circulation in Guatemala. This newspaper gave space to reports on human rights violations in Guatemala and was a constant source of criticism of the Government. Six years after Mr. Carpio Nicolle's death, publication of "*El Gráfico*" ceased.⁶⁴

The environment of politics and journalism in Guatemala after Jorge Carpio Nicolle's death

76(67) After the attack against Jorge Carpio Nicolle and his collaborators, other Guatemalan media have been intimidated from pursuing a line of information that receives complaints about human rights violations, particularly on issues related to the Army.⁶⁵

76(68) Following this attack, some members of the UCN withdrew from the party for fear of reprisals. In the national political environment, it was believed that Jorge Carpio Nicolle's death would mark the onset of political persecution.⁶⁶

⁶⁴ Cf. testimony of Jorge Carpio Arrivillaga before the Inter-American Court during the public hearing held on July 6, 2004; testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; and testimonial statement made by Rodrigo Carpio Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 568).

⁶⁵ Cf. testimony of Jorge Carpio Arrivillaga before the Inter-American Court during the public hearing held on July 6, 2004; and expert report of Marco Antonio Sagastume Gemmell given before the Inter-American Court during the public hearing held on July 6, 2004.

⁶⁶ Cf. testimonial statement made by Mario Arturo López Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 594); and testimonial statement made by Alfredo Skinner Klee before notary public on June 16, 2004 (brief on merits, reparations, and costs, tome II, folio 563).

76(69) Six years after Jorge Carpio Nicolle's death, the UCN was dissolved by legal mandate, because it did not obtain a certain number and percentage of votes.⁶⁷

Specific facts concerning the alleged victims

1. *the Jorge Carpio Nicolle family*

76(70) Jorge Carpio Nicolle was married to Martha Arrivillaga Orantes for 37 years.⁶⁸ His children are Jorge and Rodrigo Carpio Arrivillaga.⁶⁹ At the time of Jorge Carpio Nicolle's death, his daughter-in-laws were Karen Fischer Pivaral, wife of Rodrigo Carpio Arrivillaga,⁷⁰ and Katia Leporowski,⁷¹ wife of Jorge Carpio Arrivillaga. His grandchildren are Rodrigo and Daniela Carpio Fischer,⁷² and Katia María, Ana Isabel, Andrea and Jorge Carpio Leporowski.⁷³

76(71) The next of kin of Jorge Carpio Nicolle have suffered pecuniary and non-pecuniary damage as a result of his death and owing to the difficulties of accessing justice; this has had an impact on their social and work-related relations, changed the family dynamics and, in some cases, placed the lives and safety of some of the members at grave risk. Dealing with this damage has involved expenditure for the Jorge Carpio Nicolle family.⁷⁴

⁶⁷ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; testimonial statement made by Alfredo Skinner Klee before notary public on June 16, 2004 (brief on merits, reparations, and costs, tome II, folio 564); and expert report of Marco Antonio Sagastume Gemell given before the Inter-American Court during the public hearing held on July 6, 2004.

⁶⁸ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; and identity cards of Martha Arrivillaga de Carpio and Jorge Carpio Nicolle (brief on merits, reparations, and costs, tome III).

⁶⁹ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; birth certificate of Rodrigo Carpio Arrivillaga (brief on merits, reparations, and costs, tome III, folio 838); and identity cards of Rodrigo and Jorge Carpio Arrivillaga (brief on merits, reparations, and costs, tome III, folios 840 and 854).

⁷⁰ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; and marriage certificate of Karen Fischer and Rodrigo Carpio Arrivillaga (brief on merits, reparations, and costs, tome III, folio 835).

⁷¹ Cf. identity card of Katia Leporowski (brief on merits, reparations, and costs, tome III, folio 862). This name also appears as "Katia Irene Leporowski Fernández" and "Kattia Leporouski." Hereinafter, the Court will use the name "Katia Leporowski." The maternal last name "Leporowski" appears as "Leporouski" or "Leporowski" with regard to her children, Katia María, Ana Isabel, Andrea and Jorge. Hereinafter, the Court will use the last name "Leporowski" for them.

⁷² Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; and birth certificates of Daniela and Rodrigo Carpio Fischer (brief on merits, reparations, and costs, tome III, folios 844 and 848).

⁷³ Cf. birth certificates and passports of Andrea and Jorge Carpio Leporowski (brief on merits, reparations, and costs, tome III, folios 841 to 846); and identity cards of Katia María and Ana Isabel Carpio Leporowski (brief on merits, reparations, and costs, tome III, folios 850 and 863).

⁷⁴ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; testimony of Jorge Carpio Arrivillaga before the Inter-American Court during the public hearing held on July 6, 2004; testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; and testimonial statement made by Rodrigo Carpio

76(72) The family of Mrs. Arrivillaga de Carpio and Jorge Carpio Nicolle, as well as the families of Rodrigo and Jorge Carpio Arrivillaga, depended financially on the "*El Gráfico*" newspaper,⁷⁵ a family company that closed down in 1999. In order to pay off the debts of "*El Gráfico*" after Jorge Carpio Nicolle's death, the Carpio Arrivillaga family had to sell properties, and even use Mrs. Arrivillaga de Carpio's patrimony.⁷⁶ Currently, the "*El Gráfico*" company is inactive; however, it still has debts.⁷⁷

a. *The specific situation of Karen Fischer*

76(73) Mrs. Fischer's children are Rodrigo and Daniela Carpio Fischer.⁷⁸

76(74) Mrs. Fischer worked with Mr. Carpio Nicolle from when she was young and became his private secretary, the finance secretary for his two political campaigns, and the liaison between the UCN Executive Committee and its deputies in Congress. Jorge Carpio Nicolle was like her second father.⁷⁹

76(75) For several years, Mrs. Fischer, together with Mrs. Arrivillaga de Carpio, has promoted the proceedings to seek justice in this case at the national level, which has involved expenditure. As a result of her constant participation in these proceedings, she has been the victim of threats, harassment and her telephoned has been intercepted.⁸⁰

76(76) In July 1994, Mrs. Fischer and her children, Rodrigo and Daniela Carpio Fischer, had to leave Guatemala for six months, because of the threats she had received. In exile, Mrs. Fischer had to cover substantial expenses.⁸¹

Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 568 and 569).

⁷⁵ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; testimony of Jorge Carpio Arrivillaga before the Inter-American Court during the public hearing held on July 6, 2004; and testimonial statement made by Rodrigo Carpio Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 569).

⁷⁶ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004.

⁷⁷ Cf. testimony of Jorge Carpio Arrivillaga before the Inter-American Court during the public hearing held on July 6, 2004.

⁷⁸ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; and birth certificates of Daniela and Rodrigo Carpio Fischer (brief on merits, reparations, and costs, tome III, folios 844 and 848).

⁷⁹ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004.

⁸⁰ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004; and testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004.

⁸¹ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004.

76(77) On June 19, 2004, a few days prior to the public hearing before the Inter-American Court, Mrs. Fischer was attacked when she arrived at her house in Guatemala City; one of her security agents was seriously injured; she paid for his medical expenses.⁸²

76(78) Rodrigo and Daniela Carpio Fischer received psychological treatment owing to the loss of their grandfather, Jorge Carpio Nicolle, and also to the situation of exile and social marginalization. Mrs. Fischer paid the costs of treatment and medication.⁸³

2. *The next of kin of Juan Vicente Villacorta Fajardo*

76(79) Juan Vicente Villacorta Fajardo was responsible for the general coordination of the UCN in western Guatemala and owned the farm "Monte Rosa."⁸⁴ He had been married to Silvia Arrivillaga Orantes since 1964.⁸⁵ His children are Álvaro Martín,⁸⁶ Silvia Piedad, Juan Carlos,⁸⁷ María Isabel and José Arturo Villacorta Arrivillaga.⁸⁸

76(80) The principal income of the Villacorta Arrivillaga family came from the Monte Rosa farm,⁸⁹ which was sold on October 4, 1994, to pay off pending debts.⁹⁰

76(81). The next of kin of Juan Vicente Villacorta Fajardo have suffered from his death, which has had an impact on their social relationships and changed the family dynamics.⁹¹

⁸² Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004.

⁸³ Cf. testimony of Karen Fischer before the Inter-American Court during the public hearing held on July 5, 2004.

⁸⁴ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004; and attestation of Mr. Carpio Nicolle for Mr. Villacorta Fajardo regarding the general coordination of the UCN in western Guatemala (brief on merits, reparations, and costs, tome I, appendix 8 to the brief with arguments and evidence, folio 260).

⁸⁵ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004; and marriage certificate of Silvia Arrivillaga Orantes and Juan Vicente Villacorta Fajardo (brief on merits, reparations, and costs, tome III, folios 887 to 890).

⁸⁶ This name also appears as "Álvaro Martín Ignacio de Loyola Villacorta Arrivillaga." Hereinafter, the Court will use the name "Álvaro Martín Villacorta Arrivillaga."

⁸⁷ This name also appears as "Juan Carlos de Jesús Villacorta Arrivillaga." Hereinafter, the Court will use the name "Juan Carlos Villacorta Arrivillaga."

⁸⁸ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004; and identity cards of Álvaro Martín, José Arturo, Juan Carlos, María Isabel and Silvia Piedad Villacorta Arrivillaga (brief on merits, reparations, and costs, tome III, folios 849, 856, 857, 865 and 881).

⁸⁹ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004; and testimony of Martha Arrivillaga de Carpio before the Court on July 5, 2004.

⁹⁰ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004; and copy of the notarized deed for the purchase of the farm, "Monte Rosa" (brief on merits, reparations, and costs, tome I, appendix 5 to the requests and arguments brief, folio 252).

⁹¹ Cf. testimony of Silvia Arrivillaga de Villacorta before the Inter-American Court during the public hearing held on July 6, 2004.

3. *Sydney Shaw Arrivillaga and Sydney Shaw Díaz*

76(82) Sydney Shaw Arrivillaga worked with Jorge Carpio Nicolle for ten years; he occupied various positions, such as head of the electoral campaign and organizational coordinator of the UCN. He is the father of Sydney Shaw Díaz.⁹²

76(83) The events that took place on July 3, 1993, caused Sydney Shaw Arrivillaga pecuniary and non-pecuniary damage, which has had an impact on his social and work-related relations and altered his relationship with his son. Dealing with this damage has involved expenditure for Sydney Shaw Arrivillaga, such as the medical expenses for his son following the attack of July 3, 1993.⁹³ The aspect that made the greatest impression on him was to believe for almost half an hour that his son was dead, since he saw how he was shot. He suffers because he left his son alone on the highway, at the site of the attack.⁹⁴

76(84) As a result of the facts, Sydney Shaw Díaz fractured his right leg and had injuries to his back. The events of the day of the attack have caused him profound suffering and have left physical and psychological aftereffects.⁹⁵

4. *The next of kin of Alejandro Ávila Guzmán*

76(85) Alejandro Ávila Guzmán worked in "*El Gráfico*" as Jorge Carpio Nicolle's personal driver.⁹⁶ He was married to Sonia Lisbeth Hernández Saraccine.⁹⁷ His children are Alejandro⁹⁸ and Sydney Roberto Ávila Hernández;⁹⁹ his mother is María Nohemi Guzmán,¹⁰⁰ and the Ávila Hernández lived in her house.¹⁰¹

⁹² Cf. testimonial statement made by Sydney Eduardo Shaw Arrivillaga before notary public on July 5, 2004 (brief on merits, reparations, and costs, tome III, folios 675 and 678); and identity cards of Sydney Shaw Díaz and Sydney Shaw Arrivillaga (brief on merits, reparations, and costs, tome III, folios 884 and 885).

⁹³ Uncontested fact.

⁹⁴ Cf. testimonial statement made by Sydney Eduardo Shaw Arrivillaga before notary public on July 5, 2004 (brief on merits, reparations, and costs, tome III, folio 678).

⁹⁵ Cf. testimonial statement made by Sydney Shaw Díaz before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folios 578).

⁹⁶ Cf. Certification of salary, issued by "El Gráfico" with regard to Alejandro Ávila Guzmán (brief on merits, reparations, and costs, tome I, appendix 7 to the requests and arguments brief, folio 258).

⁹⁷ Cf. identity card of Sonia Lisbeth Hernández Saraccine (brief on merits, reparations, and costs, tome III, folio 883). This name also appears as "Sonia Lisbeth Hernández Sarachini." Hereinafter, the Court will use the name "Sonia Lisbeth Hernández Saraccine."

⁹⁸ This name also appears as "Renato Wladimir Alejandro Ávila Hernández" and "Vladimir Alejandro Ávila Hernández." Hereinafter, the Court will use the name "Alejandro Ávila Hernández."

⁹⁹ Cf. identity cards of Sydney Roberto and Alejandro Ávila Hernández (brief on merits, reparations, and costs, tome III, folios 886 and 871). The name "Sydney Roberto Ávila Hernández" also appears as "Sydney Ávila Hernández." Hereinafter, the Court will use the name "Sydney Roberto Ávila Hernández."

¹⁰⁰ Cf. birth certificate of Alejandro Ávila Guzmán (brief on merits, reparations, and costs, tome III, folio 895); and identity card of María Nohemy Guzmán (brief on merits, reparations, and costs, tome III, folios 895 and 896). This name also appears as "María Noemí Guzmán," "Noemí Guzmán," "María Nohemy Guzmán" and "María Nohemi Guzmán." Hereinafter, the Court will use the name "María Nohemi Guzmán."

¹⁰¹ Uncontested fact.

76(86) The next of kin of Alejandro Ávila Guzmán have suffered from his death, which has had an impact on their social relations and changed the family dynamics.¹⁰²

5. *The next of kin of Rigoberto Rivas González*

76(87) Rigoberto Rivas González received a salary from "*El Gráfico*"¹⁰³ and was responsible for Jorge Carpio Nicolle's personal security.¹⁰⁴ He was married to Rosa Everlida Mansilla Pineda.¹⁰⁵ His children are Nixon Rigoberto,¹⁰⁶ Lisbeth Azucena, Dalia Yaneth and César Aníbal Rivas Mansilla.¹⁰⁷ His mother was María Paula González Chamo,¹⁰⁸ who depended on him affectively and financially.¹⁰⁹

76(88) The next of kin of Rigoberto Rivas González have suffered from his death, which has had an impact on their social relations and changed the family dynamics.¹¹⁰

6. *Mario Arturo López Arrivillaga*

76(89) Mario Arturo López Arrivillaga worked with Jorge Carpio Nicolle for several years, because he occupied different positions within the UCN and was a deputy in the Congress of the Republic.¹¹¹

76(90) The events of July 3, 1993, caused him pecuniary and non-pecuniary damage, which has had an impact on his social and work-related relations and

¹⁰² Uncontested fact.

¹⁰³ Cf. certification of salary, issued by "*El Gráfico*" with regard to Rigoberto Rivas González (brief on merits, reparations, and costs, tome I, appendix 6 to the requests and arguments brief, folio 256).

¹⁰⁴ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004.

¹⁰⁵ Cf. identity card of Rosa Everilda Mansilla Pineda (brief on merits, reparations, and costs, tome III, folio 878). This name also appears as "Rosa Everilda Mancilla Pineda." Hereinafter, the Court will use the name "Rosa Everilda Mansilla Pineda." In the case of her children, Lisbeth Azucena, Dalia Yaneth, César Aníbal and Nixon Rigoberto the maternal last name, "Mansilla," appears as "Mancilla". Hereinafter, the Court will use the last name "Mansilla" for them.

¹⁰⁶ This name also appears as "Nixon Rivas Mansilla." Hereinafter, the Court will use the name "Nixon Rigoberto Rivas Mansilla."

¹⁰⁷ Cf. identity cards of César Aníbal, Dalia Yaneth, Lisbeth Azucena and Nixon Rigoberto Rivas Mansilla (brief on merits, reparations, and costs, tome III, folios 851, 852, 864 and 870).

¹⁰⁸ Cf. identity card of María Paula González Chamo (brief on merits, reparations, and costs, tome III, folio 897). This name also appears as "María Paula González Chano." Hereinafter, the Court will use the name "María Paula González Chamo".

¹⁰⁹ Uncontested fact.

¹¹⁰ Uncontested fact.

¹¹¹ Cf. testimonial statement made by Mario Arturo López Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folios 580 and 582).

seriously affected the cohesion of his recently-formed family. Dealing with this damage has involved expenditure for Mario Arturo López Arrivillaga, related, *inter alia*, to his personal security and mental health. He still suffers from the anxiety of being ambushed or executed.¹¹²

7. *Ricardo San Pedro Suárez*

76(91) Ricardo San Pedro Suárez worked in "*El Gráfico*" from 1977 to 1996. He founded the UCN, together with Mr. Carpio Nicolle. He had been a friend of Jorge Carpio Nicolle and his family for many years.¹¹³

76(92) He has been affected psychologically and emotionally, at the personal and the family level, by the death of Jorge Carpio Nicolle and by the attack of July 3, 1993, which he witnessed firsthand.¹¹⁴

The legal representation of the alleged victims and the corresponding expenses

76(93) The alleged victims have been represented by national lawyers in the domestic sphere and by CEJIL in the proceedings before the Commission and the Court, so that some of the alleged victims and CEJIL incurred a series of expenses related to these measures.¹¹⁵

VIII MERITS

Considerations of the Court

77. The Court considers that, in the instant case, the body of evidence provides sufficient proof to conclude that the extrajudicial execution of Jorge Carpio Nicolle was politically motivated.

78. Furthermore, the Court considers that, during the domestic proceedings in this case, there was continual obstruction of the investigations by State agents and

¹¹² Cf. testimonial statement made by Mario Arturo López Arrivillaga before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folios 592 to 596).

¹¹³ Cf. testimonial statement made by Ricardo San Pedro Suárez before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 571).

¹¹⁴ Cf. testimonial statement made by Ricardo San Pedro Suárez before notary public on June 15, 2004 (brief on merits, reparations, and costs, tome II, folio 572).

¹¹⁵ Cf. testimony of Martha Arrivillaga de Carpio before the Inter-American Court during the public hearing held on July 5, 2004; testimony of Karen Fischer before the Court on July 5, 2004; copy of the domestic judicial file of the Carpio case (file of appendixes to the requests and arguments brief, appendix 1, 15 tomes); copies of various judicial procedures in the domestic proceeding (file with appendixes to the application, appendix 20, tome II, vol. 2, folios 1049 to 1218); and documents supporting the expenditure incurred by CEJIL (brief on merits, reparations, and costs, tome I, appendixes 10 to 14 to the requests and arguments brief, folios 269 to 287).

the so-called “parallel groups” in power, and also a lack of diligence in conducting the investigations, all of which has signified that, to date, there is total impunity with regard to the facts that occurred on July 3, 1993 (*supra* para. 76(23) to 76(65)). All this has been accompanied by constant threats and intimidation of the next of kin, witnesses and members of the judiciary.

79. Article 53(2) of the Rules of Procedure of the Court establishes that:

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

80. The order of the Court delivered on July 5, 2004, in this case, which indicated in its considering paragraphs:

1. That the State [...] acknowledg[ed] the facts and its international responsibility for the violation of Articles 1(1), 4(1), 5, 8(1), 13(1), 13(2)(a), 13(3), 19, 23 and 25 of the American Convention on Human Rights in the instant case, without detriment to the scope of this acknowledgement being embodied in the judgment that this Court [will] deliver, in which the facts that occurred in the instant case [will] appear.
2. That the said acknowledgement made by the State [...] [would] not interrupt the process of receiving the evidence requested with regard to reparations and costs.

Then, the Court declared:

1. That [...] the dispute concerning the facts ha[d] ceased and, consequently, the stage on merits [was] terminated.

And finally decided:

2. To admit the acknowledgement of international responsibility made by the State in the terms of the first and second considering paragraphs of [the said] order.
3. To continue holding the public hearing convened in an order of the President of the Inter-American Court of Human Rights of May 26, 2004, and to circumscribe its purpose to reparations and costs in the instant case.

[...]

81. The Court deems that the facts referred to in paragraph 76 of this judgment have been proved and, based on them and weighing the circumstances of the case, it will proceed to specify the different violations found in the articles cited.

82. Consequently, the Court considers that the State incurred international responsibility for the violation of the rights embodied in the following articles of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof:

- a) 4(1) (Right to Life), to the detriment of Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González;
- b) 5(1) (Right to Humane Treatment), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney

Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán;

c) 5(2) (Right to Humane Treatment), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Sydney Shaw Arrivillaga, Mario Arturo López Arrivillaga and Ricardo San Pedro Suárez;

d) 19 (Rights of the Child), to the detriment of Sydney Shaw Díaz, who was a minor at the time;

e) 13(1), 13(2)(a), and 13(3) (Freedom of Thought and Expression), to the detriment of Mr. Carpio Nicolle;

f) 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán; and

g) 23(1)(a), (b) and (c) (Right to Participate in Government), to the detriment of Mr. Carpio Nicolle.

83. In accordance with its order of July 5, 2004 (*supra* para. 80), the Court will proceed to determine the scope and amount of the reparations and costs.

84. The Court considers that the State's acknowledgment of international responsibility constitutes, once again, a positive contribution to the development of this proceeding and to respect for the principles that inspire the American Convention.

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

OBLIGATION TO REPAIR

85. In its constant case law, the Court has established that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately.¹¹⁶ In this regard, Article 63(1) of the American Convention establishes 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.

86. As the Court has indicated, Article 63(1) of the American Convention contains a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility. Thus, when an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the relevant international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused.¹¹⁷

87. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation paid for the damage caused.¹¹⁸ The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law.¹¹⁹

88. As it has already been indicated, in many cases of human rights violations, such as the instant case, *restitutio in integrum* is not possible; therefore, bearing in mind the nature of the juridical right affected, reparation is made, *inter alia*, according to international case law, by means of fair indemnity or pecuniary compensation. It is also necessary to add any positive measures the State must adopt to ensure that the harmful acts, such as those that occurred in this case, are not repeated.¹²⁰

89. As the term implies, reparations are measures intended to erase the effects of the violations committed. Their nature and amount depend on the damage caused at

¹¹⁶ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 257; *Case of Ricardo Canese*, *supra* note 11, para. 192; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 187.

¹¹⁷ Cf. *Case of Tibi*, *supra* note 11, para. 223; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 258; and *Case of Ricardo Canese*, *supra* note 11, para. 193.

¹¹⁸ Cf. *Case of Tibi*, *supra* note 11, para. 224; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 259; and *Case of Ricardo Canese*, *supra* note 11, para. 194.

¹¹⁹ Cf. *Case of Tibi*, *supra* note 11, para. 224; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 259; and *Case of Ricardo Canese*, *supra* note 11, para. 194.

¹²⁰ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 260; *Case of Ricardo Canese*, *supra* note 11, para. 195; and *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 189.

both the pecuniary and the non-pecuniary levels.¹²¹ Reparations are not meant to enrich or impoverish the victim or his next of kin.¹²² In this regard, the reparations established should be in relation to the violations that have previously been declared.¹²³

90. The Court considers that the State's initiative acknowledging its international responsibility makes a positive contribution to its compliance with its commitments arising from the American Convention.

91. In accordance with the evidence gathered during the proceedings and in light of the above criteria, the Court proceeds to consider the claims presented by the Commission and by the representatives concerning reparations, in order to determine, first, who are the beneficiaries, and then to establish the measures of reparation to repair the pecuniary and non-pecuniary damage and other forms of reparation and, lastly, with regard to costs and expenses

A) BENEFICIARIES

92. The Court will now summarize the arguments of the Inter-American Commission, the representatives, and the State regarding who should be considered the beneficiaries of the reparations ordered by the Court.

Arguments of the Commission

93. The Commission considered that:

- a) The persons directly prejudiced by the facts of the violation have a right to reparation; in this case the Carpio, Villacorta, Rivas and Ávila families and Sydney Shaw Díaz;
- b) The obligation to repair does not arise from domestic law, but from the American Convention; consequently, in order to demand compensation, the beneficiaries only have to accredit their family relationship, but are not obliged to follow the procedure laid down by domestic legislation with regard to questions of inheritance, and
- c) If the beneficiaries were established according to domestic law, Karen Fischer could not be a beneficiary, and this would be "a terrible injustice."

Arguments of the representatives

94. The representatives alleged that:

¹²¹ Cf. *Case of Tibi*, supra note 11, para. 225; *Case of the "Juvenile Reeducation Institute"*, supra note 11, para. 261; and *Case of Ricardo Canese*, supra note 11, para. 196.

¹²² Cf. *Case of Tibi*, supra note 11, para. 225; *Case of the "Juvenile Reeducation Institute"*, supra note 11, para. 261; and *Case of Ricardo Canese*, supra note 11, para. 196.

¹²³ Cf. *Case of the "Juvenile Reeducation Institute"*, supra note 11, para. 261; *Case of Ricardo Canese*, supra note 11, para. 196; and *Case of the Gómez Paquiyauri Brothers*, supra note 116, para. 190.

a) It is important to distinguish those who are considered victims in order to establish adequate reparations for the damage suffered, and then proceed to determine the beneficiaries when applicable. Accordingly, the victims are:

i. The persons who were arbitrarily executed: Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González;

ii. The persons who survived the attack: Martha Arrivillaga de Carpio, Sydney Shaw Arrivillaga, Mario Arturo López Arrivillaga and Ricardo San Pedro Suárez. The minor, Sydney Shaw Díaz, who suffered serious injuries from the shots he received, is a victim who deserves special mentioned; and

iii. The next of kin of the victims who were executed, because they could not obtain justice in Guatemala for the serious irregularities committed during the investigation. The next of kin are:

Next of kin of Jorge Carpio Nicolle: Martha Arrivillaga de Carpio, wife; Jorge Carpio Arrivillaga, son; Rodrigo Carpio Arrivillaga, son; Rodrigo Carpio Fischer, grandson; Daniela Carpio Fischer, granddaughter; Katia Maria Carpio Leporowski, granddaughter; Ana Isabel Carpio Leporowski, granddaughter; Andrea Carpio Leporowski, granddaughter; Jorge Carpio Leporowski, grandson, Karen Fischer, daughter-in-law; and Katia Leporowski, daughter-in-law.

Next of kin of Juan Vicente Villacorta Fajardo: Silvia Arrivillaga de Villacorta, wife; Álvaro Martín Villacorta Arrivillaga, son; Silvia Piedad Villacorta Arrivillaga, daughter; Juan Carlos Villacorta Arrivillaga, son; María Isabel Villacorta Arrivillaga, daughter; and José Arturo Villacorta Arrivillaga, son.

Next of kin of Rigoberto Rivas González: Rosa Everilda Mansilla Pineda, wife; María Paula González Chamo, mother; Lisbeth Azucena Rivas Mansilla, daughter; Dalia Yaneth Rivas Mansilla, daughter; César Aníbal Rivas Mansilla, son; and Nixon Rigobeto Rivas Mansilla, son.

Next of kin of Alejandro Ávila Guzmán: Sonia Lisbeth Hernández Saraccine, wife; María Nohemi Guzmán, mother; Alejandro Ávila Hernández, son; and Sydney Roberto Ávila Hernández, son; and

b) If the Court determines that damage has been caused to these persons, the reparation should be subject to the principles of inheritance law and the amounts should be distributed as follows: 50% for the widow and 50% for the children.

Arguments of the State

95. The State requested the Court to take into consideration the second degree of relationship by marriage and the fourth degree of blood relationship of the next of kin of the victims, in accordance with national legislation, when applicable. It also stated that it would not propose that Karen Fischer or her children could not be beneficiaries.

Considerations of the Court

96. The Court will now proceed to determine who should be considered an “injured party” in the terms of Article 63(1) of the American Convention and who will be beneficiaries of the reparations that the Court establishes, in relation to pecuniary damage, when applicable, and in relation to non-pecuniary damage.

97. The Court considers that the following are “injured parties”: Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán, as victims of the respective violations indicated above (*supra* para. 82(a) to (g)); they are therefore the beneficiaries of the reparations that the Court shall establish, for both pecuniary damage, when applicable, and non-pecuniary damage.

98. Karen Fischer, former daughter-in-law of the victim, Jorge Carpio Nicolle, shall also be the beneficiary of reparation equal to that of a daughter of Mr. Carpio Nicolle, since it was proved that, emotionally, she was like daughter for the victim¹²⁴ and that she had worked at his side from when she was young (*supra* para. 76(74)). In addition, Mrs. Fischer furthered Mr. Carpio Nicolle’s judicial proceeding during several years, so that she endured threats and an attack on her life (*supra* paras. 76(75) to 76(77)). It has equally been proved that Mrs. Fischer’s children, Daniela and Rodrigo Carpio Fischer, were very affected by the death of their grandfather, Mr. Carpio Nicolle (*supra* para. 76(78)), and had close ties to him. Subsequently, Mrs. Fischer and her two children were forced to go into exile (*supra* para. 76(76)).

99. The distribution of the compensation among the next of kin of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, for loss of earning and non-pecuniary damage, shall be as follows;

- a) Fifty percent (50%) of the compensation shall be delivered to the person who was the wife of the victim at the time of his death;
- b) Fifty percent (50%) of the compensation shall be shared, in equal parts, among the children of each of the victims; and
- c) Should there be no next of kin in one or any of the categories defined in subparagraphs (a) and (b), the amount that would have corresponded to

¹²⁴ Cf. *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections, merits, and reparations.* (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 65; *Case of the Caracazo. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paras. 91.(c) and 105; and *Case of the “Panel Blanca” (Paniagua Morales et al.). Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 109.

the next of kin in this or these categories shall increase proportionally the part corresponding to the other.

100. In the case of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán, a compensation shall be delivered to each of them as victims. If one or several of the persons indicated in this paragraph have died or die before the payment of the corresponding compensation, the amount shall be distributed in accordance with the applicable national legislation.

B) PECUNIARY DAMAGE

Arguments of the Commission

101. The Commission stated that:

- a) With regard to the compensation to which the next of kin have a right for pecuniary damage, it referred to the amounts requested by the representatives in their final oral and written arguments, and
- b) Some of the next of kin of the victims had to abandon their studies, some went into exile, and others had therapy to overcome psychological traumas caused by the facts.

Arguments of the representatives

102. The representatives indicated that:

Jorge Carpio Nicolle and his next of kin

- a) Regarding Mr. Carpio Nicolle's loss of earnings, it is difficult to calculate his financial contribution to his family, because he did not have a salary, but rather an income from "*El Gráfico*"; however, this allowed them to live a comfortable life, with luxuries. The Carpio Arrivillaga family estimates that Mr. Carpio Nicolle provided about five thousand United States dollars a month;
- b) Mr. Carpio Nicolle's execution ended his "life project"; namely, the possibility of realizing his presidential hopes;
- c) Regarding indirect damage, the Carpio Arrivillaga family incurred a series of expenses following Jorge Carpio Nicolle's execution; these included:
 - i. Expenses for the funerals of Jorge Carpio Nicolle and Juan Vicente Villacorta, corresponding to their social status; both calculated at fourteen thousand United States dollars;

- ii. The costs of the funerals of Alejandro Ávila and Rigoberto Rivas, both calculated at seven thousand dollars;
 - iii. The fees and expenses of a private detective employed by the Carpio Arrivillaga family for three months to help investigate the facts; he was paid the sum of fifteen thousand United States dollars;
 - iv. A six-day visit by Martha Arrivillaga de Carpio and Karen Fischer to the United Nations Commission on Human Rights in Geneva to denounce the facts and bring international pressure to bear so that they would be investigated; the Carpio Arrivillaga family calculated that this trip cost four thousand United States dollars;
 - v. The payment of four security agents for the members of the family for seven years, owing to the harassment and acts of intimidation of which they were victims; this cost approximately fifty thousand dollars, according to the Carpio Arrivillaga family;
 - vi. The six-month exile in the United State of Karen Fischer and her children Rodrigo and Daniela, owing to the continuing death threats of which Mrs. Fischer was a victim. This exile was paid for by the Carpio Arrivillaga family and by Karen Fischer. The expenses of house rental, food, transport and others, during this lapse, are calculated at thirty thousand United States dollars;
 - vii. The expenses in which Karen Fischer has incurred during the investigation. Also, since she is one of the people who have received most threats owing to her involvement in the investigation, she has incurred expenses for her personal protection. Recently, after she had been the victim of an attack on her life, one of her bodyguards was seriously injured and she paid his hospital expenses, which amounted to eight thousand United States dollars. In this regard, the Court should establish an amount to compensate her, in fairness;
 - viii. The sale of properties belonging to Martha Arrivillaga de Carpio;
 - ix. The expenses incurred by Martha Arrivillaga de Carpio in order to attend recent hearings before the Inter-American Commission, and
 - x. The cost of sending urgent and important documents by express mail to both the Inter-American Commission and CEJIL Mesoamérica, during the nine years that litigation before the Commission has lasted; this is calculated at five hundred dollars.
- d) The Carpio Arrivillaga family has not kept receipts substantiating these expenses relating to indirect damage. The Court is therefore requested to establish an amount, in fairness;
- e) Regarding "*El Gráfico*":
- i. Jorge Carpio Nicolle founded this newspaper and was also its owner, director, manager, and ideologist. He was wholly associated

with the newspaper, so that he was the principal reference point for its sales and its projection among its readers;

ii. It was a family enterprise and the only source of income for the Carpio Arrivillaga family;

iii. The principal financial damage resulting from Mr. Carpio Nicolle's execution was the decline and subsequent closing down of the operations of "*El Gráfico*" after 35 years of active presence among the major printed media in Guatemala and Central America;

iv. At the time its director was executed, "*El Gráfico*" generated annual sales of five million dollars. 1992 and 1993 were the years when "*El Gráfico*" was most profitable. At June 30, 1993, the year of Mr. Carpio Nicolle's execution, the company had managed to accumulate its highest registered capital (\$557,453 equivalent to 32% of its total net worth). However, after 1994, the company's annual profits decreased considerably, because they declined by about 50% in relation to the previous period and continued in this way until in 1999 the company had a deficit that obliged it to close down;

v. One of the main causes of the newspaper's decline was the withdrawal of advertising by companies who, in the absence of Mr. Carpio Nicolle, lost confidence in newspaper's stability;

vi. With Mr. Carpio Nicolle's death and the closing down of "*El Gráfico*," 450 employees lost their jobs in a seven-year process of cutting back on personnel;

vii. Without Mr. Carpio Nicolle, the family enterprise could not sustain itself, despite the family's efforts. When operations ceased, the family's financial situation changed drastically, because neither Martha Arrivillaga de Carpio nor her sons and their respective families ever received salaries and profits again;

viii. The debts contracted with the banks have subsisted, even though the company no longer exists, and this obliges the family to sell family patrimonial assets to pay them. Currently, these debts are paid by Jorge Carpio Arrivillaga, and

ix. The family is not requesting total reimbursement of the patrimony expended owing to the closing down of the family enterprise, but a compensation, in fairness, since Mr. Carpio Nicolle's death was caused directly by actions of the State and since his death was a fundamental factor in the disappearance of "*El Gráfico*" which represented the family's patrimony.

Juan Vicente Villacorta Fajardo and his next of kin

f) It is difficult to calculate the loss of earnings of Juan Vicente Villacorta. However, the Villacorta Arrivillaga family estimates that he provided a monthly income of approximately three thousand dollars.

g) Regarding the Monte Rosa farm:

i. In addition to Mr. Villacorta's loss of earnings, the State should compensate the loss of the Monte Rosa farm, which was sold in 1994, as an immediate result of his execution;

ii. The farm's profitability allowed Mr. Villacorta to maintain his family comfortably. After its sale, the Villacorta Arrivillaga family had no other source of income; consequently, they had to find work to contribute to the family expenses;

iii. The farm's coffee harvest was lost immediately after its owner's execution, because his widow and her children paid no attention to it and, then, they could not meet the debts that began to accumulate. The product of the farm was used to pay the bank loans taken out by Mr. Villacorta Fajardo to maintain and manage the coffee farm, and

iv. The accumulation of debts and the consequent sale of the farm were caused directly by Mr. Villacorta Fajardo's execution; therefore, the State should repair this damage using criteria of fairness. This is a determining factor for establishing a symbolic sum that, to some extent, repairs the financial impact suffered by the Villacorta Arrivillaga family.

Rigoberto Rivas González and his next of kin

h) The loss of earnings of Rigoberto Rivas González may be determined based on his salary, plus the corresponding annual bonuses under Guatemalan labor legislation, and his life expectancy. 25% of this amount should then be subtracted for personal expenses. Based on the salary that appears on the "*El Gráfico*" payroll, the amount for Rigoberto Rivas is seventy-four thousand four hundred and seventy-seven United States dollars and two cents. This amount should be updated to its value on the date of the judgment delivered by the Court;

i) Regarding the Rivas Mansilla family, it is difficult to determine the indirect damage it suffered, since it had no specific expenses following the execution, because the funeral expenses were paid by the Carpio Arrivillaga family. However, Mr. Rivas González's widow had to seek financial support from her siblings and then learn a trade in order to maintain her children and her mother-in-law. These expenses should be considered using the principle of fairness;

Alejandro Ávila Guzmán and his next of kin

j) The loss of earnings of Mr. Ávila Guzmán, Mr. Carpio Nicolle's driver, are estimated to be one hundred and sixty-one thousand eight hundred and fifty-six United States dollars and thirty-eight cents. This amount should be updated to its value on the date of the judgment delivered by the Court;

k) Regarding Mr. Ávila Guzmán's family, no specific expenses have been reported for indirect damage. However, following his execution, his widow and

children were totally abandoned, without any type of income. Sonia Hernández, his widow, received help from her mother-in-law so that she could study and then find work;

Mario Arturo López Arrivillaga

l) Mr. López Arrivillaga's political career, which was rising, was cut short with Mr. Carpio Nicolle's execution; this damaged Mr. López Arrivillaga's life project. Therefore, the Court is requested to establish fair compensation;

m) Mr. López Arrivillaga invested in traveling and moving expenses. Also, after his decline as a public person and his financial instability, he left a house he was building unfinished. Expenses for psychiatric treatment must also be added. Since it is difficult to quantify the pecuniary damage, the Court is requested to establish an amount, in fairness;

Sydney Shaw Arrivillaga and Sydney Shaw Díaz

n) Sydney Shaw Arrivillaga had no employment during the months following the attack, because he was in charge of Mr. Carpio Nicolle's presidential campaign and received a salary from the UCN. Owing to the political connotation of the events, he was unable to find other sources of income;

o) Mr. Shaw Arrivillaga had political expectations that never materialized because of his leader's execution. He hoped to become Mr. Carpio Nicolle's Secretary of State, in his eventual government; therefore, Mr. Carpio Nicolle's execution cut short his life project;

p) Indirect damage should include the expenses for the hospitalization of Sydney Shaw Díaz, which were approximately eight thousand United States dollars. Also, Sydney Shaw Arrivillaga had to pay the expenses of six months rehabilitation for his son, and

q) The pecuniary damage and the damage to the life project suffered by Sydney Shaw Arrivillaga should be established using the principle of fairness.

Ricardo San Pedro Suárez

r) Ricardo San Pedro Suárez also survived the attack in which Mr. Carpio Nicolle died. Even though he did not appoint a legal representative before the Court, it was requested that he should be included in the terms of the reparation.

103. The representatives also requested that, in accordance with the principle of fairness, financial reparation should be established to compensate the patrimonial damage to the Carpio Arrivillaga and Villacorta Arrivillaga families.

Arguments of the State

104. The State:

- a) Affirmed that the acknowledgement of international responsibility should attenuate the State's liability and influence the judgment on reparations in relation to non-pecuniary damage, and be taken into account with regard to pecuniary reparations. These reparations should be estimated according to the country's financial possibilities;
- b) Requested the Court to consider the matter of financial reparations in great detail to ensure that the State could comply with them within a reasonable time and, accordingly, to take into account the Government's current policy of resolving the cases before the Inter-American Commission on Human Rights in a conciliatory manner;
- c) Requested that the financial reparation process should be carried out as of 2006, owing to the State's financial commitments arising from the judgments on reparations in the Maritza Urrutia, Myrna Mack Chang and Molina Theissen cases, and those that will derive from the Plan de Sánchez Massacre case;
- d) Regarding "*El Gráfico*" the State alleged that:
- i. There is no objective estimate of the damage caused by the State as regards the financial collapse of "*El Gráfico*";
 - ii. The company is not bankrupt, but inactive. Therefore, the State should not compensate, even symbolically, a damage that has not been produced, since, legally, the company has not been declared bankrupt or been liquidated. Moreover, in a limited company the shareholders benefit from the profits and are liable for the losses, and the death of one of them does not create legal grounds for the liquidation of a company, because companies could not exist under the auspices of just one of their shareholders;
 - iii. The commercial boycott experienced by "*El Gráfico*" occurred in 1999, during the presidency of Álvaro Arzú Irigoyen, a fact that does not correspond directly to the extrajudicial execution of Jorge Carpio Nicolle. This boycott was designed by the President himself, who was a bitter enemy of Mr. Carpio Nicolle in the 1990 elections, and was due, above all, to the insistence of the Carpio family, using "*El Gráfico*," to delve deeply into the investigations relating to Mr. Carpio Nicolle's murder;
 - iv. From 1993 to 1999, when "*El Gráfico*" was still operating, the Guatemalan currency suffered a major devaluation, which evidently had a negative effect on the financial and productive activities of companies operating in the country;
 - v. According to the principles of impartiality, freedom and objectivity, a newspaper should generally keep a prudent distance from links with any specific party. Combining activities in journalism, business and politics – the latter aimed at obtaining political power – subjected the company to the vicissitudes and artifices of the sphere of politics;

vi. Mr. Carpio Nicolle took the inevitable risk of sometimes obtaining the private sector's support and, at other times, not obtaining it, and suffering a financial boycott from this sector, which withdrew its advertisements as a way of harming "*El Gráfico*" and other newspapers, and

vii. The State considers that the independent auditors' report on "*El Gráfico*" of June 7, 2004, is not an audit, and the Court should therefore reject it;

e) Regarding the political party, the National Union of the Center:

i. There is no objective estimate of the damage caused by the State as regards the collapse of the UCN political party, because, according to democratic principles and domestic legislation, political parties have a collective structure where power cannot be concentrated in the hands of a single person, but belongs to all the members;

ii. The party's funds are derived from contributions by members, businessmen and industrialists, and also State contributions to the party during elections;

iii. After the facts of the instant case, one of the events that affected the UCN party was the fragmentation of its leaders and members. This political circumstance relates to the internal order of the party, and cannot objectively be attributed to the State;

iv. The UCN political party took part in two general elections after Jorge Carpio Nicolle's death, in 1995 and 1999. After each electoral event, the State grants a subsidy to political parties, and those who benefit most are the ones who have attained most votes. Since the UCN was a party that took part in the final round of two presidential elections, the State's contribution was significant, and

v. The UCN political party was legally dissolved in 1999, in accordance with article 93(b) of the Electoral and Political Parties Constitutional Law, because it had not obtained a sufficient number of votes to subsist legally;

f) Regarding the Monte Rosa farm:

i. The only income of Juan Vicente Villacorta's family came from the coffee production of the Monte Rosa farm;

ii. Juan Villacorta coordinated agricultural tasks with a reliable farm manager, who had worked for him for more than 30 years. Consequently, at the time of Mr. Villacorta's death, there was a reliable person who had a thorough knowledge of the task of administering the farm; therefore, the family's losses in the coffee business were not fully justified, and

iii. Instability in the production and marketing of this product increased the cost of credit in many cases, and this prejudiced the economy of Guatemala and other countries of the hemisphere. As of the 1990s, coffee production in Guatemala has been experiencing great difficulties.

Considerations of the Court

a) *Loss of earnings*

105. The Commission and the representatives requested compensation for the loss of the earnings of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González.

i. *Jorge Carpio Nicolle*

106. The representatives indicated that Mr. Carpio Nicolle, who was almost 61 years old at the time of his death, did not have a salary, but an income from "*El Gráfico*," the company of which he was Director General for many years (*supra* para. 76(72)). The Court observes that it is difficult to calculate his monthly income, because no appropriate vouchers were provided to determine his exact income at the time of the facts. In this regard, taking into consideration his activities, the life expectancy in Guatemala in 1993, and the circumstances of the case,¹²⁵ the Court establishes, in fairness, the amount of US\$60,000.00 (sixty thousand United States dollars) for loss of earnings.

ii. *Juan Vicente Villacorta Fajardo*

107. The Court considers that it has been proved that the principal income of Mr. Villacorta Fajardo, who was 57 years old at the time of his death, came from the Monte Rosa farm, which he had owned for more than 30 years (*supra* paras. 76(79) and 76(80)). However, once again, the Court indicates that it is difficult to calculate his monthly income, since the vouchers required to determine the exact income he received at the time of the facts were not provided. Therefore, taking into consideration his activities, the life expectancy in Guatemala in 1993, and the circumstances of the case,¹²⁶ the Court establishes, in fairness, the amount of US\$60,000.00 (sixty thousand United States dollars) for loss of earnings.

iii. *Rigoberto Rivas González*

108. Mr. Rivas González, who was almost 45 years old at the time of his death, and who was responsible for Mr. Carpio Nicolle's personal security, received a monthly salary from "*El Gráfico*" of 2,200.00 quetzals, plus a bonus of 73.00 quetzals, at the time of the facts (*supra* para. 76(87)). Taking into consideration Mr. Rivas González's activities, the life expectancy in Guatemala in 1993, the salary he

¹²⁵ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 289; *Case of the 19 Tradersmen*. Judgment of July 5, 2004. Series C No. 109, para. 240; and *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections merits and reparations*, *supra* note 124, para. 56.

¹²⁶ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 289; *Case of the 19 Tradersmen*, *supra* note 125, para. 240; and *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections merits and reparations*, *supra* note 124, para. 56.

received, and the circumstances of the case,¹²⁷ the Court establishes the amount of US\$50,000.00 (fifty thousand United States dollars), for loss of earnings.

iv. Alejandro Ávila Guzmán

109. Mr. Ávila Guzmán, was almost 31 years old at the time of his death and he was Mr. Carpio Nicolle's personal driver; he received a monthly salary from "*El Gráfico*" of 3,000.00 quetzals, plus a bonus of 150.00 quetzals at the time of the facts (*supra* para. 76(85)). Taking into account Mr. Ávila Guzmán's activity, the life expectancy in Guatemala in 1993, the salary he received, and the circumstances of the case,¹²⁸ the Court establishes the amount of US\$110,000.00 (one hundred and ten thousand United States dollars) for loss of earnings.

b) Indirect damage

i. Members of Jorge Carpio Nicolle's family

110. Martha Arrivillaga de Carpio and Rodrigo and Jorge Carpio Arrivillaga incurred a series of expenses after the arbitrary execution of Mr. Carpio Nicolle; they included, *inter alia*, the funeral expenses of the four victims, different expenses to further the investigation into the facts, and security agents (*supra* para. 76(71)). Therefore, the Court considers it pertinent to establish for Martha Arrivillaga de Carpio, in fairness, the amount of US\$25,000.00 (twenty-five thousand United States dollars), as compensation for this concept; and US\$12,500.00 (twelve thousand five hundred United States dollars) each for Rodrigo and Jorge Carpio Arrivillaga.

111. In the case of Karen Fischer, Mr. Carpio Nicolle's former daughter-in-law, it has been shown that, as a result of the death of her father-in-law at the time, she has sought justice for more than 11 years, together with Mrs. Arrivillaga de Carpio, by taking part in the criminal proceedings in the case (*supra* para. 76(75)). In her constant struggle against impunity, she has endured threats, harassment, attacks on her life, and telephone intervention, so that, in 1994, she was forced to go into exile in the United States with her two children who were minors (*supra* para. 76(75) and 76(76)). Consequently, she incurred a series of expenses to advance the domestic proceedings, to live in exile, to cover psychological treatment for her children, and to pay expenses related to her personal security (*supra* para. 76(75) to 76(78)). Considering the particular circumstances of the case *sub judice*, the Court establishes, in fairness, as compensation for Mrs. Fischer, the amount of US\$25,000.00 (twenty-five thousand United States dollars).

ii. Mario Arturo López Arrivillaga

112. Since Mario Arturo López Arrivillaga incurred expenses for psychiatric treatment and personal security (*supra* para. 76(90)), the Court considers it pertinent to establish, in fairness, as compensation for Mr. López Arrivillaga, the amount of US\$10,000.00 (ten thousand United States dollars).

¹²⁷ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 289; *Case of the 19 Tradersmen*, *supra* note 125, para. 240; and *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections merits and reparations*, *supra* note 124, para. 56.

¹²⁸ Cf. *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 289; *Case of the 19 Tradersmen*, *supra* note 125, para. 240; and *Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections merits and reparations*, *supra* note 124, para. 56.

iii. Sydney Shaw Arrivillaga

113. Since Sydney Shaw Arrivillaga had to pay for the expenses of the hospitalization and rehabilitation of his son, Sydney Shaw Díaz, who was injured during the attack that occurred on July 3, 1993 (*supra* para. 76(83)), this Court considers it pertinent to establish, in fairness, as compensation for Mr. Shaw Arrivillaga, the amount of US\$8,000.00 (eight thousand United States dollars).

C) NON-PECUNIARY DAMAGE

Arguments of the Commission

114. The Commission stated that:

- a) With regard to the compensation to which the next of kin of the victims have a right for non-pecuniary damage, it referred to the amounts requested by the representatives in their final oral and written arguments;
- b) The acknowledgement of international responsibility and the acceptance of the facts constitute in themselves crucial measures of satisfaction to restore the honor of the victims and their next of kin;
- c) To a certain extent, the significance of Mr. Carpio Nicolle's murder overshadowed the tragedy of the Villacorta, Rivas González and Ávila Guzmán families and the physical and psychological consequences that Sydney Shaw Díaz had to face. In this regard, following the murders, all the families affected had to make radical changes in the way they lived, endure the lack of justice and, above all, accustom themselves to the absence of their loved ones, and
- d) The mourning of the families of victims of murder, cannot achieve closure until they receive fair and comprehensive reparation.

Arguments of the representatives

115. The representatives stated that:

Jorge Carpio Nicolle

- a) The compensation for the non-pecuniary damage caused to Jorge Carpio Nicolle should take into account not only the circumstances of his death, but also the political motivation behind his execution, and also the significance of the political role he played for the UCN and for Guatemalan society as a whole. The non-pecuniary damage caused to Jorge Carpio Nicolle amounts to US\$150,000.00 (one hundred and fifty thousand United States dollars);
- b) Regarding the next of kin of Jorge Carpio Nicolle:
 - i. The Carpio Arrivillaga family was very united, and Jorge Carpio was its patriarch;
 - ii. Martha Arrivillaga de Carpio, who was married to Jorge Carpio Nicolle for more than 35 years, saw how her husband was shot and

caught him when he fell. She is practically a recluse and suffers from insomnia. She has witnessed the decline of the family's prosperity that began after her husband's execution, because with the death of Mr. Carpio Nicolle, his two major creations, "*El Gráfico*" and the UCN party, died too. Mrs. Arrivillaga de Carpio also lost her brother-in-law; in other words, two sisters were widowed during the same act, which increased the family tragedy. The non-pecuniary damage for Martha Arrivillaga de Carpio amounts to US\$100,000.00 (one hundred thousand United States dollars);

iii. Rodrigo Carpio Arrivillaga had a very close relationship with his father owing to his direct connection to the UCN. For ten years, he accompanied his father in the different electoral campaigns and created a life project determined by his father's political project, so that, after the latter's death, he has found it difficult to take up the reins of his life again;

iv. Rodrigo and Jorge Carpio Arrivillaga feel their father's absence and miss his guidance. They tried to follow in his footsteps and retain the leadership of "*El Gráfico*" and the UCN party, but were unable to do so; therefore, they feel that they have failed. The non-pecuniary damage amounts to US\$75,000.00 (seventy-five thousand United States dollars) each;

v. The grandchildren of Jorge Carpio Nicolle (Rodrigo and Daniela Carpio Fischer, and also Katia María, Ana Isabel, Andrea and Jorge Carpio Leporowski) were affected by his death. The non-pecuniary damage amounts to US\$10,000.00 (ten thousand United States dollars) each;

vi. Rodrigo and Daniela Carpio Fischer were directly affected owing to their mother's involvement in the investigation into the case, and also by the need to go into exile. Consequently, they merit special recognition and a non-pecuniary reparation;

vii. Karen Fischer, in addition to being Mr. Carpio Nicolle's daughter-in-law, was a person he trusted, because she was his personal secretary while he was the presidential candidate for the UCN, and then when she became the secretary of his party. She has suffered threats, intimidation and exile. The non-pecuniary damage for Mrs. Fischer amounts to US\$15,000.00 (fifteen thousand United States dollars);

viii. The non-pecuniary damage for Katia Leporowski, Jorge Carpio Nicolle's daughter-in-law, amounts to US\$10,000.00 (ten thousand United States dollars), and

c) The lack of an investigation affected all members of the Carpio Arrivillaga family, particularly Karen Fischer. Therefore, in fairness, the Court should establish just compensation for them;

Juan Vicente Villacorta Fajardo and his next of kin

d) Juan Vicente Villacorta Fajardo suffered non-pecuniary damage that must be repaired. The non-pecuniary damage for Mr. Villacorta Fajardo amounts to US\$100,000.00 (one hundred thousand United States dollars);

e) The next of kin of Juan Vicente Villacorta suffered non-pecuniary damage as a result of his death, and this deserves reparation. The non-pecuniary damage amounts to US\$80,000.00 (eighty thousand United States dollars) for Silvia Arrivillaga de Villacorta, and US\$50,000.00 (fifty thousand United States dollars) each for Mr. Villacorta's five children;

f) Owing to the lack of a real and effective investigation to identify those responsible for Mr. Villacorta's arbitrary execution, the Court should establish just compensation for his next of kin, in fairness;

Rigoberto Rivas González and his next of kin

g) The non-pecuniary damage for Mr. Rivas González should include the suffering before his execution. Non-pecuniary damage amounts to US\$80,000.00 (eighty thousand United States dollars);

h) The death of Mr. Rivas González caused non-pecuniary damage to his wife, children and mother. When establishing compensation for non-pecuniary damage to Mr. Rivas González's family, it should be considered that, following her husband's execution, Rosa Mansilla was left alone to maintain and take care of her four children, all minors. The non-pecuniary damage amounts to US\$50,000.00 (fifty thousand United States dollars) for his widow; US\$50,000.00 (fifty thousand United States dollars) for his mother, María Paula González Chamo, who died recently; and US\$20,000.00 (twenty thousand United States dollars) each for his four children;

i) Owing to the lack of a real and effective investigation to identify those responsible for Mr. Rivas González's arbitrary execution, the Court should establish just compensation for his next of kin, in fairness.

Alejandro Ávila Guzmán and his next of kin

j) The non-pecuniary damage for Mr. Ávila Guzmán should include the suffering before his execution. The non-pecuniary damage amounts to the sum of US\$80,000.00 (eighty thousand United States dollars);

k) The death of Mr. Ávila Guzmán caused non-pecuniary damage to his wife, sons and mother. The non-pecuniary damage amounts to US\$20,000.00 (twenty thousand United States dollars) each for his two sons, Alejandro and Sydney Roberto Ávila Hernández. When establishing compensation for Mr. Ávila Guzmán's family, the Court should consider that:

i. His wife, Hernández Saraccine, had to assume responsibility for her sons without any financial basis. The non-pecuniary damage for her amounts to US\$50,000.00 (fifty thousand United States dollars), and

ii. His mother assumed responsibility for the family for a time, and still shares expenses with her daughter-in-law and helps support her

grandsons. Mrs. Guzmán is more than 75 years old and; even though her son died over ten years ago, she still cannot refer to it, and her health has declined considerably since the murder. The non-pecuniary damage amounts to US\$50,000.00 (fifty thousand United States dollars);

l) Owing to the lack of a real and effective investigation to identify those responsible for Mr. Ávila Guzmán's arbitrary execution, the Court should establish just compensation for his next of kin, in fairness;

Mario Arturo López Arrivillaga

m) Mr. López Arrivillaga, survivor of the attack, is the victim of a grave violation of his mental and moral integrity. As a result of stress owing to the threats and harassment he has suffered, he has started therapy with a psychiatrist. Also, the mental and emotional instability resulting from the attack and subsequent events led to his divorce;

n) After Mr. Carpio Nicolle's execution, Mr. López Arrivillaga's life was destroyed, both personally and in relation to his participation in politics; in addition, the act that changed his life continues unpunished, since none of those who perpetrated and masterminded it have been identified, which would in some way repair the damage caused;

o) Since it is difficult to quantify the non-pecuniary damage, the Court is requested to establish this, in fairness;

Sydney Shaw Arrivillaga

p) The non-pecuniary damage for Mr. Shaw Arrivillaga should take into account that, not only was he a victim of the attack, but also that he witnessed the execution of Mr. Rivas González and Mr. Ávila Guzmán, and saw how his son was shot, believing him to be dead;

q) Sydney Shaw Arrivillaga asks himself if he could have saved Mr. Carpio Nicolle if he had continued tending him and, at the same time, he is filled with anguish when he recalls that he left his injured son alone on the highway;

r) Non-pecuniary damage should be established, using criteria of fairness;

Sydney Shaw Díaz

s) Sydney Shaw Díaz was shot several times and, to save his life, he pretended to be dead. He was abandoned on the highway without any type of assistance and, furthermore, did not know whether his father was alive or dead, and

t) Sydney Shaw Díaz, who was 15 years old at the time, was affected not only physically, but also mentally and emotionally, and has never spoken about the matter. The non-pecuniary damage that was inflicted is evident, and also the anguish, uncertainty, pain and fear he felt.

Arguments of the State

116. The State indicated that:

- a) The Court should consider that the fact that the victims' next of kin were able to give testimony freely, in order to be heard and achieve the access to justice that had been denied to them for several years is a form of non-pecuniary reparation;
- b) It recognizes the complexity of repairing the damage materially and restoring the violated rights; consequently, it adopts a positive attitude towards the means of non-pecuniary reparation and of restoring the honor of the victims proposed by the Commission and the representatives, and
- c) It recognizes and appreciates the efforts made by the next of kin of Jorge Carpio Nicolle and the other victims in the case to establish the truth of the facts and seek justice.

Considerations of the Court

117. International case law has established repeatedly that the judgment constitutes, *per se*, a form of reparation.¹²⁹ However, owing to the circumstances of the case *sub judice*, the sufferings that the facts caused to the persons who have been declared victims in this case, the changes in their living conditions, and the other consequences of a non-pecuniary nature they have suffered, the Court considers that it is pertinent to pay a compensation, in fairness, for non-pecuniary damage.¹³⁰

118. Bearing in mind the different aspects of the damage adduced by the Commission and the representatives, and applying the preceding assumptions, the Court establishes, in fairness, the value of the compensation for non-pecuniary damage, in the terms indicated in the table that appears below (*infra* para. 120), using the following parameters:

- a) To establish the compensation for non-pecuniary damage suffered by Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, the Court recalls that they were executed extra-legally in circumstances of extreme cruelty (*supra* para. 76(21) and 76(22)), so that it is evident that they endured pain and suffering before they died;
- b) When determining the compensation corresponding to Sydney Shaw Díaz, it must be recalled that he suffered cruel treatment and that, at the time of the facts, he was a minor, so that he was especially vulnerable when, in a state of complete defenselessness, he was shot several times and then left abandoned on the highway (*supra* para. 76(22) and 76(83)). These circumstances evidently caused him terror and anguish;

¹²⁹ Cf. *Case of Tibi*, *supra* note 11, para. 243; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 299; and *Case of Ricardo Canese*, *supra* note 11, para. 205.

¹³⁰ Cf. *Case of Tibi*, *supra* note 11, para. 243; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 299; and *Case of Ricardo Canese*, *supra* note 11, para. 205.

c) Regarding the other survivors of the attack; namely, Mrs. Arrivillaga de Carpio and Messrs. Shaw Arrivillaga, San Pedro Suárez and López Arrivillaga, the Court recalls that they were subjected to cruel treatment by witnessing the tragic events of the attack (*supra* para. 76(22)), so that they also suffered fear and anguish. Mrs. Arrivillaga de Carpio and Mr. Shaw Arrivillaga suffered particularly, to see their husband and son, respectively, shot by those who ambushed them. Even though Sydney Shaw Díaz survived the attack, Mr. Shaw Arrivillaga believed for a time that his son had died immediately (*supra* para. 76(83));

d) The suffering of the next of kin of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González (who were part of the delegation accompanying Mr. Carpio Nicolle), as a direct consequence of the cruel death of these victims, must be taken into account. The Court also takes into consideration that the said next of kin and also Mrs. Arrivillaga de Carpio and Messrs. Shaw Arrivillaga, Shaw Díaz, San Pedro Suárez and López Arrivillaga, were victims of the violation of Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) thereof. The impunity that reigns in this case has been and continues to be a source of suffering for these persons and makes them feel vulnerable and in a state of permanent defenselessness before the State, which causes them anguish, and

e) All the above situations resulted in great grief, insecurity, sadness and frustration for the survivors of the attack and the next of kin of the victims who were executed. This has adversely affected their living conditions and their family and social relationships (*supra* para. 76(71), 76(75), 76(76), 76(81), 76(83), 76(84), 76(86), 76(88), 76(90) and 76(92), and had an extremely negative effect on their lives.

119. The provisions contained in paragraphs 97 to 100 of this judgment will be applied as regards the payment of compensation.

120. Considering the different aspects of the non-pecuniary damage caused, the Court establishes, in fairness, the amount of the compensation for this concept as follows:

COMPENSATION FOR NON-PECUNIARY DAMAGE	
Victims	Amount
Jorge Carpio Nicolle	US \$55,000.00
Martha Arrivillaga de Carpio	US \$100,000.00
Jorge Carpio Arrivillaga	US \$40,000.00
Rodrigo Carpio Arrivillaga	US \$40,000.00
Daniela Carpio Fischer	US \$8,000.00
Rodrigo Carpio Fischer	US \$8,000.00
Karen Fischer	US \$40,000.00
Juan Vicente Villacorta Fajardo	US \$55,000.00
Silvia Arrivillaga de Villacorta	US \$80,000.00
Álvaro Martín Villacorta Arrivillaga	US \$40,000.00
Silvia Piedad Villacorta Arrivillaga	US \$40,000.00
Juan Carlos Villacorta Arrivillaga	US \$40,000.00
María Isabel Villacorta Arrivillaga	US \$40,000.00
José Arturo Villacorta Arrivillaga	US \$40,000.00
Rigoberto Rivas González	US \$55,000.00
Rosa Everlida Mansilla Pineda	US \$80,000.00

María Paula González Chamo	US \$55,000.00
Lisbeth Azucena Rivas Mansilla	US \$40,000.00
Dalia Yaneth Rivas Mansilla	US \$40,000.00
César Rivas Mansilla	US \$40,000.00
Nixon Rigoberto Rivas Mansilla	US \$40,000.00
Alejandro Ávila Guzmán	US \$55,000.00
Sonia Lisbeth Hernández Saraccine	US \$80,000.00
María Nohemi Guzmán	US \$55,000.00
Alejandro Ávila Hernández	US \$40,000.00
Sydney Roberto Ávila Hernández	US \$40,000.00
Mario Arturo López Arrivillaga	US \$20,000.00
Sydney Shaw Arrivillaga	US \$25,000.00
Sydney Shaw Díaz	US \$50,000.00
Ricardo San Pedro Suárez	US \$20,000.00
TOTAL	US \$1,361,000.00

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

Arguments of the Commission

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

- a) To investigate and publicize the facts that can be reliably established. In this regard, the State should take specific measures to strengthen its investigatory capacity and remedy the structural impunity affecting the Guatemalan justice system, such as:
 - i. Allocating sufficient human, scientific and logistic resources to the office of the Human Rights Prosecutor, to which the investigation of the murder of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Ávila Guzmán and Rigoberto Rivas González, and the attempted murder of Sydney Shaw Díaz, should be transferred;
 - ii. Establishing inter-institutional communication, coordination and collaboration mechanisms among the different bodies responsible for the administration of justice;
 - iii. Setting up a institute for forensic criminal investigations;
 - iv. Allocating the material resources needed to enable the members of the Criminal Investigation Service of the National Civil Police to perform their investigatory tasks;
 - v. Allowing the agents of the justice system to have access to the information in the power of the State that they need to process the cases under their jurisdiction;
 - vi. Strengthening the witness protection program;
 - vii. Elaborating a report on the series of procedural irregularities and obstructions of justice that led to impunity in this case.

- b) To prosecute and punish those responsible;
- c) To repair integrally the pecuniary and non-pecuniary damage caused;
- d) To encourage the wide-ranging, critical and transparent debate that Jorge Carpio Nicolle promoted. In this regard, it should:
 - i. Establish and finance two study grants with the name of Jorge Carpio Nicolle in the Universidad de San Carlos de Guatemala: one for journalism and the other for political science;
 - ii. Promote and finance an essay contest on the political thought of Jorge Carpio Nicolle and his contribution to the 1985 Constitution;
 - iii. Establish protection and security mechanisms for journalists, and
 - iv. Train young leaders in accordance with article 22 of the Electoral and Political Party Law, which decrees that the civic and democratic education of members of political parties should be promoted; and
- e) To adopt the following measures leading to restoring the honor of the names of the victims:
 - i. Publication, in the principal media in Guatemala, of the State's international acknowledgement of the facts and the violations committed by its agents, and the apology made by the State during the public hearing;
 - ii. Publication of the judgment in a newspaper with national circulation;
 - iii. Designation of streets in Antigua and in Guatemala City with the names of the victims, and
 - iv. Financing of a documentary on Jorge Carpio Nicolle, his profile as a journalist, businessman and politician that can be broadcast by the national and international media.

122. The Commission also stated that:

- a) The Court has a historic opportunity to send a clear and decisive message to the whole region on the importance of strengthening democracy and freedom of expression as central elements for the promotion and protection of human rights, and
- b) Reparations for violations should be seen not only as a mechanism to make reparation to an individual, but also as an important means of promoting compliance with human rights norms, making reparation to society as a whole.

Arguments of the representatives

123. The representatives requested the Court to order the State:
- a) To conduct an effective investigation into the facts so as to identify those responsible, both the perpetrators and the masterminds, and also possible accessories and those responsible for obstructing justice, in order to punish them administratively or criminally, as applicable. This should be done immediately to avoid legal prescriptions;
 - b) To appoint another prosecutor to take charge of the investigation, since the thirteenth prosecutor left the investigation paralyzed;
 - c) To clarify certain areas of domestic legislation so as to enable the State to better comply with its international obligations, because the doctrine used in this case to disqualify many of the testimonies was absurd;
 - d) To guarantee to the victims' next of kin full access and capacity to act at all stages and in all instances of the investigations;
 - e) To publicize the results of the investigations so that, not only the next of kin, but all of Guatemalan society, know the truth;
 - f) To acknowledge, in a public act, the human rights violations committed in this case, to pay tribute to the memory of Jorge Carpio Nicolle and the members of his delegation, and to apologize to their next of kin for their execution and also for the intentional obstruction of justice;
 - g) To publish the judgment three times in the official gazette and in three newspapers with the highest circulation, with one month between each publication. Also, the proven facts and the operative paragraphs of the judgment should be published in the bulletin with the highest circulation within the Guatemalan armed forces;
 - h) To establish an effective mechanism to maintain the chain of custody of the evidence gathered in all cases under investigation in Guatemala;
 - i) To designate a street, park or school with the name of "Jorge Carpio Nicolle," in the city where his widow lives;
 - j) To establish two study grants with the name of "Jorge Carpio Nicolle" in the Universidad de San Carlos de Guatemala: one for journalism and the other for political science.
 - k) To name "Juan Vicente Villacorta Fajardo" the street on which he lived;
 - l) To systematize and publish Mr. Carpio Nicolle's contributions to politics and journalism in Guatemala;
 - m) To begin taking the necessary steps to disband clandestine and illegal security groups in Guatemala;

- n) To guarantee dismantling the Army's cooperation with and/or control of the former members of the Civilian Self-Defense Patrols (PAC) or former military agents;
- o) To declassify information on the Utatlán Plan, which related to the execution. To this end, it was proposed that a law should be adopted on access to information, in order to guarantee access to any document classified as a military or security secret;
- p) That the President of the Republic should expressly call upon his subordinates to cooperate with the investigation into the facts, and guarantee justice in this case;
- q) To re-open the criminal investigation by the judiciary, even though *res judicata* exists concerning the only person accused who was convicted and then acquitted;
- r) To strengthen support and protection mechanisms for witnesses, defenders and justice agents, and
- s) To improve the administration of justice. To this end, it suggested:
 - i. The creation of a national institute of forensic science, capable of carrying out scientific tests on criminal evidence and preparing forensic reports in order to clarify criminal acts;
 - ii. The allocation of sufficient financial resources to ensure that this institute has national coverage, with delegations at the departmental level, endowed with all the services necessary to carry out scientific investigations and high-quality autopsies;
 - iii. The creation of a scientific investigation police unit capable of adequately protecting and managing the scene of the crime, collecting and bagging the evidence, and keeping a precise record of the evidence gathered and the conditions in which it is gathered in order to ensure the chain of custody;
 - iv. The creation of a warehouse for monitoring evidence, with adequate registers and controls in order to preserve its integrity and identity, and ensure the chain of custody, and
 - v. The transfer of all the functions relating to the registration and control of weapons to the National Civil Police, which should establish a special unit for this.

Arguments of the State

124. The State indicated that:

- a) Its responsibility was focused on the absence of justice, on the fact that the Attorney General's office did not conduct a genuine investigation;

that the ballistics tests were mislaid from the file before the judicial authority; that the only person detained was subsequently released owing to lack of evidence; that there was a campaign to cover-up the violent acts that had occurred, all of which had increased impunity;

b) It undertook to apply the necessary measures of satisfaction and guarantees of non-repetition, and would make the greatest effort in these areas, and

c) The State's attitude is not to the liking of the parallel groups embedded in Guatemalan society. They have exercised political pressure in the Congress of the Republic, by summoning and interpellating public officials who have honorably given a humanist meaning to the State's action and who do not want to hide the historical truth from a people who were repressed throughout the war years.

Considerations of the Court

a) *Obligation to investigate the facts that gave rise to the violations and identify, prosecute and punish those responsible*

125. It has been proved that the systematic obstruction of the administration of justice and due process has prevented the identification, prosecution and punishment of those who perpetrated and masterminded the execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, and also the grave injuries to Sydney Shaw Díaz, and led to feelings of insecurity, impotence and anguish among the various victims in the case (*supra* paras. 76(23) to 76(65), 118(d) and (e)).

126. Thus, after more than 11 years, the impunity of those responsible for perpetrating and masterminding the acts still reigns; this harms the victims and encourages the chronic repetition of the respective human rights violations.¹³¹

127. The Court has referred repeatedly to the right of the next of kin of victims to know what happened and the identity of the State agents responsible for the respective facts.¹³² As the Court has stated, bearing in mind the aggravating circumstances of this case, "[w]henver there has been a human rights violation, the State has a duty to investigation the facts and to punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality."¹³³

128. The Court has reiterated that every person, including the next of kin of victims of grave human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society as a whole must be informed of everything that happened concerning such violations. This right to the truth has been developed by international human rights law;¹³⁴ its recognition and exercise in

¹³¹ Cf. *Case of Tibi*, *supra* note 11, para. 255; *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 228; and *Case of the 19 Tradesmen*, *supra* note 125, para. 175.

¹³² Cf. *Case of Tibi*, *supra* note 11, para. 256; *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 229; and *Case of the 19 Tradesmen*, *supra* note 125, para. 258.

¹³³ *Case of Tibi*, *supra* note 11, para. 256; *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 229; and *Case of the 19 Tradesmen*, *supra* note 125, para. 258.

¹³⁴ Cf. *Case of Tibi*, *supra* note 11, para. 257; *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 230; and *Case of the 19 Tradesmen*, *supra* note 125, para. 261.

any specific situation, is an important measure of reparation. Therefore, in the instant case, the right to the truth gives rise to an expectation that the State must satisfy to the next of kin of the victims.¹³⁵

129. In light of the above, in order to repair this aspect of the violations committed, the State must conduct an effective investigation into the facts of the instant case in order to identify, prosecute and punish those who perpetrated and masterminded the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, and also the serious injuries to Sydney Shaw Díaz. The result of this process must be published, so that Guatemalan society knows the truth.

130. With regard to the State's obligation to investigate and punish, the Court has established that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.¹³⁶

131. The development of international legislation and case law¹³⁷ has led to the examination of the so-called "fraudulent *res judicata*" resulting from a trial in which the rules of due process have not been respected, or when judges have not acted with independence and impartiality.

132. It has been fully demonstrated (*supra* para. 76(23) to 76(61)) that the trial before the domestic courts in this case was contaminated by such defects. Therefore, the State cannot invoke the judgment delivered in proceedings that did not comply with the standards of the American Convention, in order to exempt it from its obligation to investigate and punish. The basic rule on interpretation contained in Article 29 of this Convention dispels any doubts in this regard.

133. Likewise, the general situation reigning within the justice system, which reveals its inability to maintain its independence and impartiality in the face of pressure exercised on its members in cases with similar characteristics to those of the case of Mr. Carpio Nicolle and the other victims, helps sustain this affirmation.¹³⁸

¹³⁵ Cf. *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 230; *Case of the 19 Tradersmen*, *supra* note 125, para. 261; and *Case of Molina Theissen. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 81.

¹³⁶ *Case of the Gómez Paquiyauri Brothers*, *supra* note 116, para. 150 and 235; *Case of the 19 Tradersmen*, *supra* note 125, para. 262; and *Case of Molina Theissen*, *supra* note 132, para. 84.

¹³⁷ Cf., *inter alia*, Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998), Art. 20; Statute of the International Tribunal for Rwanda, UN Doc. S/Res/955 (1994), Art. 9; and Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/Res/827 (1993), Art. 10.

¹³⁸ Cf., *inter alia*, Ninth Report to the Secretary General of August 30, 2004, United Nations Verification Mission in Guatemala, U.N. Doc. A/59/307; Fourteenth report on human rights of November 10, 2003, United Nations Verification Mission in Guatemala, U.N. Doc. A/58/566; and fifth report of the situation of human rights in Guatemala of April 6, 2001, of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.111 Doc. 21 rev.

134. In order to comply with the obligation to investigate and punish in the instant case, the State must remove all the obstacles and mechanisms *de facto* and *de jure* that maintain impunity, grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.

135. Also, in light of this case, the State must adopt concrete measures designed to strengthen its investigatory capacity. In this regard, it should provide the entities responsible for preventing and investigating extrajudicial executions with sufficient human, financial, logistic and scientific resources to process all evidence of a scientific or other type adequately, in order to clarify criminal acts. This should take into account the relevant international norms, such as those established in the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.¹³⁹

b) Public act acknowledging international responsibility and making reparation

136. In order for Guatemala's acknowledgement of responsibility and the decisions of this Court to have the full effect of reparation for Mr. Carpio Nicolle and the members of his delegation who were executed, and also to serve as a guarantee of non-repetition, the Court considers that the State should organize a public act acknowledging its responsibility in relation to the attack of July 3, 1993, and the subsequent obstruction of justice in this case, and also honoring the memory of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, in the presence of the State's highest authorities.

137. Furthermore, considering the special characteristics of the case, during this act, the State should publicly render homage to the dedication and courage of two individuals involved in the facts of the case: Police Commissioner César Augusto Medina Mateo, who was murdered (*supra* para. 76(64)), and Abraham Méndez García, one of the prosecutors, who had to go into exile as a result of his investigations (*supra* para. 76(63)).

c) Publication of the pertinent parts of this judgment

138. As it has on other occasions,¹⁴⁰ the Court considers that, as a measure of satisfaction, the State must publish, within six months from notification of this judgment, at least once in the official gazette, in another newspaper with national circulation, and in the bulletin with the highest circulation within the Guatemalan armed forces, the section of this judgment entitled Proven Facts (without the corresponding footnotes), paragraphs 77 and 78 of this section entitled Merits, and also the operative paragraphs of this judgment.

X COSTS AND EXPENSES

Arguments of the Commission

¹³⁹ Istanbul Protocol, United Nations Publication, Sales No. E.01.XIV.1.

¹⁴⁰ Cf. *Case of Tibi*, *supra* note 11, para. 260; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 315; and *Case of Ricardo Canese*, *supra* note 11, para. 209.

139. The Commission considered that the State should pay the costs and expenses arising from processing the case in both the domestic and the international jurisdictions.

Arguments of the representatives

140. The representatives stated that costs should cover:

a) The fees of the national lawyers who advised and represented the Carpio Arrivillaga family in the legal proceedings for seven years, and which amount to one hundred and fifty thousand United States dollars. Also, Martha Arrivillaga de Carpio made three trips to attend the three hearings of the case before the Commission, with a total cost of four thousand dollars, and

b) The expenses of CEJIL for litigating the case for almost ten years before the Inter-American Commission, and then before the Inter-American Court, which amount to fourteen thousand eight hundred and eighty-seven United States dollars.

141. The representatives stated that, in order to differentiate between the costs that the Court recognizes to the family or families, and those that it grants to their legal representatives, it should expressly distinguish between them.

Arguments of the State

142. The State did not refer to costs and expenses.

Considerations of the Court

143. As the Court has indicated on previous occasions,¹⁴¹ costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the measures taken by the victims or their representatives in order to obtain justice at the domestic and the international level, imply expenditure that must be compensated when the State's international responsibility has been declared in a judgment against it. Regarding reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those incurred during the proceedings before the inter-American system, taking into account the validation of the expenses incurred, the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of fairness and by taking into account the expenses indicated and substantiated by the parties, providing the amount is reasonable

144. With regard to recognition of costs and expenses, legal assistance to the victim does not start merely at the reparations stage, but it begins before the domestic judicial organs and continues in the successive instances of the inter-American system for the protection of human rights; namely, in the proceedings before the Commission and before the Court. Consequently, for these purposes, the concept of costs includes those that correspond to access to justice at the national

¹⁴¹ Cf. *Case of Tibi*, *supra* note 11, para. 268; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 328; and *Case of Ricardo Canese*, *supra* note 11, para. 212.

level, and those that refer to justice at the international level before the two instances: the Commission and the Court.¹⁴²

145. Consequently, the Court considers it fair to order the State to reimburse Martha Arrivillaga de Carpio, Rodrigo Carpio Arrivillaga and Jorge Carpio Arrivillaga the total amount of US\$62,000.00 (sixty-two thousand United States dollars) for the costs and expenses they incurred. Of this total, the amount of US\$25,000.00 (twenty-five thousand United States dollars) shall correspond to the costs and expenses incurred by Martha Arrivillaga de Carpio and the amount of US\$12,500.00 (twelve thousand five hundred United States dollars) each, to the costs and expenses incurred by Rodrigo and Jorge Carpio Arrivillaga. The amount of US\$12,000.00 (twelve thousand United States dollars) shall correspond to the costs and expenses that Martha Arrivillaga de Carpio, Rodrigo Carpio Arrivillaga and Jorge Carpio Arrivillaga must reimburse CEJIL for the expenses it assumed in the international proceedings before the inter-American system for the protection of human rights.

XI MEANS OF COMPLIANCE

146. To comply with this judgment, Guatemala shall pay the compensation (*supra* paras. 106 to 113 and 120) and reimburse the costs and expenses (*supra* para. 145) within one year from notification of this judgment. Regarding the publication of the pertinent part of the judgment (*supra* para. 138) and the public act acknowledging international responsibility and in reparation (*supra* paras. 136 and 137), the State shall comply with these measures within six months of notification of the judgment.

147. The payment of the compensation established shall be made as provided for in paragraphs 97 to 100 of this judgment.

148. The payments for reimbursement of costs and expenses shall be made as provided for in paragraph 145 of this judgment.

149. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in local currency, using the exchange rate between the two currencies in force on the New York, United States of America, market, the day before the payment.

150. If, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the said period of one year from notification of this judgment, the State shall deposit the amounts in favor of the beneficiaries in an account or a deposit certificate in a reputable Guatemalan banking institution, in United States dollars or national currency, in the most favorable financial conditions allowed by law and banking practice. If after ten years, the compensation has not been claimed, the amount shall be returned to the State with the interest earned.

151. The State shall deposit the compensation ordered in favor of the beneficiaries who are minors in a bank investment in their name in a reputable Guatemalan banking institution, in United States dollars or national currency, at the choice of their legal representatives. The investment shall be made within one year, in the

¹⁴² Cf. *Case of Tibi*, *supra* note 11, para. 269; *Case of the "Juvenile Reeducation Institute"*, *supra* note 11, para. 329; and *Case of Ricardo Canese*, *supra* note 11, para. 213.

most favorable financial conditions allowed by law and banking practice, while they remain minors. It may be withdrawn by the beneficiaries when they attain their majority or when so decided, in the best interests of the child as determined by a competent judicial authority. If, ten years after the majority has been attained, this compensation has not been claimed, the amount shall be returned to the State with the interest earned.

152. The amounts allocated in this judgment for pecuniary and non-pecuniary damage, and for costs and expenses may not be affected, reduced or conditioned by current or future taxes or charges. Consequently, they shall be delivered to the beneficiaries integrally, as established in this judgment.

153. If the State should delay payment, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Guatemala.

154. In accordance with its constant practice, the Court reserves the authority, inherent in its attributes of monitoring full compliance with this judgment and shall file this case when the State has complied fully with its provisions. Within one year from notification of this judgment, the State shall provide the Court with a report on the measures it has taken to comply with this judgment.

XII OPERATIVE PARAGRAPHS

155. Therefore,

THE COURT,

DECIDES:

Unanimously,

1. To reaffirms its order of July 5, 2004, in which it accepted the acknowledgement of international responsibility made by the State.

DECLARES:

Unanimously that:

1. The State violated the rights embodied in the following articles of the American Convention on Human Rights, in relation to Article 1(1) (Obligation to Respect Rights) thereof:

a) 4(1) (Right to Life), to the detriment of Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán and Rigoberto Rivas González;

b) 5(1) (Right to Humane Treatment), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda

Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán;

c) 5(2) (Right to Humane Treatment), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Sydney Shaw Arrivillaga, Mario Arturo López Arrivillaga and Ricardo San Pedro Suárez;

d) 19 (Rights of the Child), to the detriment of Sydney Shaw Díaz, who was a minor at the time;

e) 13(1), 13(2)(a) and 13(3) (Freedom of Thought and Expression), to the detriment of Mr. Carpio Nicolle;

f) 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection), to the detriment of Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Roberto Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán, and

g) 23(1)(a), (b) and (c) (Right to Participate in Government), to the detriment of Mr. Carpio Nicolle.

2. This judgment constitutes *per se* a form of reparation, in the terms of paragraph 117 of this judgment.

AND ORDERS:

Unanimously that:

1. The State shall investigate effectively the facts of the instant case in order to identify, prosecute and punish those who perpetrated and masterminded the extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán and Rivas González, and the serious injuries to Sydney Shaw Díaz. The result of this proceeding shall be publicized, in the terms of paragraph 129 of this judgment.

2. The State shall remove all the obstacles and mechanisms *de facto* and *de jure* that maintain impunity in this case, grant the witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, sufficient guarantees of security, and use all possible measures to advance the proceeding, in the terms of paragraphs 130 to 134 of this judgment.

3. The State shall adopt specific measures to improve its investigatory capacity, in the terms of paragraph 135 of this judgment.

4. The State shall carry out a public act acknowledging its responsibility in relation to the instant case and in reparation, in the terms of paragraphs 136 and 137 of this judgment.
5. The State shall publish, within six months from notification of this judgment, at least once in the official gazette, in another national newspaper, and in the bulletin with the highest circulation within the Guatemalan Armed Forces, the section of this judgment entitled Proven Facts (without the corresponding footnotes), and also paragraphs 77 and 78 of the section entitled Merits and the operative paragraphs of this judgment, in the terms of paragraph 138 of this judgment.
6. The State shall pay, for pecuniary damage, the amounts established in paragraphs 106 to 113 of this judgment to Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Mario Arturo López Arrivillaga and Sydney Shaw Arrivillaga, in the terms of these paragraphs and of paragraphs 97 to 100.
7. The State shall pay, for non-pecuniary damage, the amounts established in paragraph 120 of this judgment to Jorge Carpio Nicolle, Juan Vicente Villacorta Fajardo, Alejandro Ávila Guzmán, Rigoberto Rivas González, Sydney Shaw Díaz, Martha Arrivillaga de Carpio, Mario Arturo López Arrivillaga, Sydney Shaw Arrivillaga, Ricardo San Pedro Suárez, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, Karen Fischer, Rodrigo Carpio Fischer, Daniela Carpio Fischer, Silvia Arrivillaga de Villacorta, Álvaro Martín Villacorta Arrivillaga, Silvia Piedad Villacorta Arrivillaga, Juan Carlos Villacorta Arrivillaga, María Isabel Villacorta Arrivillaga, José Arturo Villacorta Arrivillaga, Rosa Everilda Mansilla Pineda, Lisbeth Azucena Rivas Mansilla, Dalia Yaneth Rivas Mansilla, César Aníbal Rivas Mansilla, Nixon Rigoberto Rivas Mansilla, Sonia Lisbeth Hernández Saraccine, Alejandro Ávila Hernández, Sydney Ávila Hernández, María Paula González Chamo and María Nohemi Guzmán, in the terms of this paragraph and of paragraphs 97 to 100.
8. The State shall pay the amount established in paragraph 145 of this judgment to Martha Arrivillaga de Carpio and to Rodrigo and Jorge Carpio Arrivillaga for costs and expenses, in the terms of the said paragraph.
9. The State shall make the payment for compensation and reimbursement of costs and expenses within one year of notification of this judgment, in accordance with paragraph 146 of this judgment. Regarding the publication of the pertinent parts of the judgment and the public act in acknowledgement of international responsibility and in reparation, the State shall comply with these measures within six months of notification of this judgment, in the terms of paragraph 146 hereof.
10. The State shall deposit the compensation ordered in favor of the beneficiaries who are minors in a bank investment in their name in a reputable Guatemalan banking institution, in United States dollars or national currency, at the choice of their legal representatives, within one year, and in the most favorable financial conditions allowed by law and banking practice, while they remain minors, in the terms of paragraph 151 of this judgment.
11. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in local currency, using the exchange rate between the two currencies in force on the New York, United States of America,

market, the day before the payment, in the terms of paragraph 149 of this judgment.

12. The payments for pecuniary and non-pecuniary damage, and for costs and expenses established in this judgment may not be affected, reduced or conditioned by current or future taxes or charges, in the terms of paragraph 152 of this judgment.

13. If the State should delay payment, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Guatemala.

14. If, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive this within the said period of one year from notification of this judgment, the State shall deposit the said amounts in their favor in an account or a deposit certificate in a reputable Guatemalan banking institution, in the terms of paragraph 150 of this judgment.

15. The Court shall monitor the execution of this judgment and shall file this case when the State has complied fully with its provisions. Within one year from notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 154 hereof.

Done, at San José, Costa Rica on November 22, 2004, in Spanish and English, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Oscar Luján-Fappiano
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary