INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF PACHECO TERUEL *ET AL*. *v.* HONDURAS

JUDGMENT OF APRIL 27, 2012
(*Merits, reparations and costs*)

In the case of *Pacheco Teruel et al.*,

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

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

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 31, 32, 63, 65 and 67 of the Rules of Procedure of the Court[1] (hereinafter "the Rules of Procedure"), delivers this Judgment, structured as follows:

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[1] The Court's Rules of Procedure approved by the Court at is eighty-fifth regular session held from November 16 to 27, 2009.

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I
INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. On March 11, 2011, pursuant to Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), submitted to the Court case 12,680 against the State of Honduras (hereinafter "the State" or "Honduras"). The initial petition was lodged before the Inter-American Commission on July 14, 2005, by the organizations *Pastoral Penitenciaria*, *CARITAS Sampedrana* and *Equipo de Reflexión, Investigación y Comunicación (ERIC)* [Reflection, Research and Communication Team] (hereinafter "the representatives"). On October 17, 2008, the Commission approved Report on Admissibility No. 78/08 and on October 22, 2010, it issued Report on Merits No. 118/10 under Article 50 of the American Convention (hereinafter "Merits Report").[2] The latter was notified to Honduras in a communication of December 14, 2010, granting it two months to report on its compliance with the recommendations. The Commission indicated that, when the period expired without the State having complied with the recommendations, it submitted the case to the Court based on the need to obtain justice and fair reparation. The Inter-American Commission appointed Felipe González, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates and Elizabeth Abi-Mershed, Deputy Executive Secretary, Lilly Ching, Isabel Madariaga and Andrés Pizarro, lawyers of the Executive Secretariat, as legal advisors.

2. According to the Commission, this case concerns the State's alleged international responsibility for "the death of […] 107 inmates deprived of liberty , on May 17, 2004, in the "*bartolina"* or cell No. 19 of the San Pedro Sula Prison [as] a direct result of a series of structural deficiencies in this prison, that the competent authorities were aware of." The Commission indicated that the deceased were "members of *maras* [gangs]'' who were kept apart from the rest of the prison population and confined to an unsafe and unhygienic cell." In addition, the Commission indicated that the facts of this case "are ultimately a consequence of the structural deficiencies of the Honduran prison system, which have been documented extensively." Also, the case "forms part of the overall context of public security policies and prison policies aimed at combating the criminal organizations known as *maras* [gangs]. As such, the situations described in the complaints […] are common in other Central American States." Moreover, "the State has not investigated the reported facts or punished those responsible diligently and in keeping with its inherent legal obligation."

3. The Commission asked that the Court declare a violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 9 (Freedom from *Ex Post Facto* Laws), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Articles 1(1) and 2 thereof. The Commission also requested that the Court order the State to adopt measures of reparation.

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[2] In merits report No. 118/10, the Commission concluded that the State of Honduras was responsible for the violation of Articles (a) 4(1), 5(1), 5(2) and 5(6) to the detriment of the 107 inmates who died in the fire; (b) 5(4), 7(3) and 9 in relation to 1(1) and 2 to the detriment of the 22 presumed victims individualized in paragraph 21 of the Commission's merits report, and (c) 5(1), 8(1) and 25(1) to the detriment of the 83 next of kin of 18 of the 107 inmates who died in the fire. The Commission recommended to the State that it: (a) conduct a diligent investigation in order to identify and punish those responsible for the fire that occurred on May 17, 2004, in the San Pedro Sula Prison; (b) make pecuniary and non-pecuniary reparation to the next of kin of the victims; (c) adopt measures to guarantee the non-repetition of the facts and the harmonization of its substantive and procedural criminal laws with the content and scope of Articles 7 and 9 of the Convention, and (e) acknowledge its international responsibility for the facts denounced in this case. Merits report No. 118/10, Case 12,680, Rafael Arturo Pacheco Teruel et al., October 22, 2010 (merits report, tome I, folios 7 to 51).

II
PROCEEDINGS BEFORE THE COURT

4. The Commission's submission of the case was notified to the State and the representatives on June 15, 2011. On August 15, 2011, the representatives filed their brief with pleadings, motions and arguments (hereinafter "the pleadings and motions brief") before the Court, pursuant to Articles 25 and 40 of the Rules of Procedure. The representatives agreed, in general, with the arguments presented by the Inter-American Commission and asked the Court to declare the international responsibility of the State for the violation of the articles argued by the Commission. Lastly, they asked the Court to order the State to adopt various measures of reparation and reimburse specific costs and expenses. Furthermore, the representatives indicated that they represented 18 alleged deceased victims and their next of kin and that they had never established contact with the next of kin of the other 89 deceased inmates. Nevertheless, they noted that, "in view of a potential favorable judgment of the Court, [they] could represent *a posteriori* and in the domestic sphere, the victims and their next of kin who, for different reasons, were not included in the attached power of attorney."[3]

5. On October 21, 2011, Honduras submitted to the Court its answer to the briefs filing the case and with pleadings and motions (hereinafter "the answering brief" or "answer"). In this brief, the State contested all the claims presented by the Commission and the representatives, denied its international responsibility for the alleged violations of the American Convention, and rejected the reparations requested. The State appointed Ethel Deras Enamorado and Ricardo Rodríguez as Agents for the case.

6. In an Order of January 27, 2012, the President of the Court required, *inter alia*, that several statements be received in this case.[4] In addition, he convened the parties to a public hearing, which was held on February 28, 2012, during the Court's ninety-fourth regular session which took place at the seat of the Court.[5]

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[3] In this regard, on May 17, 2011, prior to the presentation of the pleadings and motions brief, the representatives transmitted a communication to the Court in which it indicated that it was representing 19 deceased presumed victims and 49 of their next of kin before the Court, "because the remaining 36 next of kin of those initially listed before the Commission […] ha[d] not signed the power of attorney […]. These 36 next of kin should be added to the other 89 victims and their next of kin regarding whom we have absolutely no knowledge of where they are and with whom we have never established contact. In other words, there are a total of 125 individuals who would not be represented before the Court and who were listed before the Commission." Nevertheless, they considered that "in view of a potential favorable judgment of the Court, [they] could represent a *posteriori* and in the domestic sphere, the victims and their next of kin who, for different reasons, were not included in the attached power of attorney." In this regard, in a note of the Secretariat (REF.: 12.680/003) of June 15, 2011, notifying the case, the parties were advised that "the President of the Court ha[d] decided to continue processing the case, in the understanding that the representatives have indicated their willingness to represent all those supposedly affected by the facts of the instant case and have stated that, despite their efforts, to date they have not been able to maintain contact with more presumed victims or next of kin. Accordingly, it is to be hoped that the organizations that are the representatives take into account in their pleadings and motions the general interests of all the presumed victims identified on the said lists. Consequently, the representatives are asked to advise the Court opportunely if they come to represent other individuals during these proceedings."

[4] *Cf. Case of Pacheco Teruel et al. v. Honduras*. Order of the President of the Inter-American Court of Human Rights of January 27, 2012. Available at: http://www.corteidh.or.cr/docs/asuntos/pacheco_27_01_12.pdf.

[5] At this hearing there appeared: (a) for the Inter-American Commission: Tracy Robinson, Commissioner, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Tatiana Gos, legal adviser; (b) for the representatives: Joaquín Armando Mejía Rivera, Brenda Vianney Mejía Vásquez, Iolany Pérez, Carlos Guillermo Paz Guevara, Isis Gricelda Perdomo Zelaya and Mario Roberto Chinchilla Mejía, and (c) for the State: Ethel Deras Enamorado, Eduardo Jair López Zúniga and Sonia Gálvez.

7. During the public hearing of the case, on February 28, 2012, the State acknowledged its responsibility for the facts described in the Commission's Merits Report, and indicated that it had reached a friendly settlement with the representatives (*infra* para. 14). Consequently, the Court, in an incidental Order of February 29, 2012, revoked the time frame established for the submission of the final written arguments of the parties and the final observations of the Commission, in view of the friendly settlement agreement reached between the representatives and the State.[6]

III
JURISDICTION

8. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Honduras has been a State Party to the Convention since September 8, 1977, and accepted the binding jurisdiction of the Court on September 9, 1981.

IV
EVIDENCE

9. Based on the provisions Articles 46, 50, 57 and 58 of the Rules of Procedure, as well as on its case law on evidence and its assessment, the Court will examine and assess the documentary probative elements forwarded at different procedural opportunities, the statements of the presumed victims and the witnesses, and also the opinions of the expert witness provided by affidavit or during the public hearing before the Court. To this end, the Court will abide by the principles of sound judicial discretion, within the applicable legal framework.[7]

A) Documentary, testimonial and expert evidence

10. The Court received documents from the representatives and the State (*supra* paras. 1, 4, 5 and 7). In addition, during the public hearing in the case, the representatives and the State presented a friendly settlement agreement (*infra* para. 14). Moreover, the President incorporated the pertinent parts of the expert witness opinions provided by Carlos Tiffer Sotomayor and Reina Auxiliadora Rivera Joya in the *case of Servellón García et al. v. Honduras* into the body of evidence of this case, since they could be useful for deciding the case. Lastly, the Court received the affidavits of expert witnesses Marco A. Canteo and Roy Murillo, and of witnesses Renán David Galo Meza, Abencio Reyes, Aida Rodríguez, Doris Esperanza Paz, Manuel Armando Fuentes, Marlene Ardón Santos, Marta Elena Suazo, Olga María Santos, Isis Perdomo, Rómulo Emiliani and Violeta María Discua.[8] Regarding the evidence provided during the public hearing, the Court received the testimony of María Oneyda Estrada Aguilar and Sandra Lorena Ramos Cárcamo, presumed victims, and of expert witnesses Celso Alvarado and Mario Luis Coriolano.[9]

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[6] *Cf. Case of Pacheco Teruel et al. v. Honduras*. Order of the Inter-American Court of Human Rights of February 29, 2012. Available at: http://www.corteidh.or.cr/docs/asuntos/pacheco_29_02_12.pdf.

[7] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C. No. 234, para. 16.

[8] *Cf.* Order in the *Case of Pacheco Teruel et al., supra* note 4, twenty-sixth considering paragraph and first operative paragraph.

[9] *Cf.* Order in the *Case of Pacheco Teruel et al., supra* note 4, fifth operative paragraph.

B) Admission of the evidence

11. In this case, as in others, the Court admits those documents forwarded by the parties at the appropriate procedural opportunity, which were not contested or challenged, and the authenticity of which was not questioned.[10] The documents requested by the Court[11] that were provided by the State after the public hearing are incorporated into the body of evidence pursuant to the provisions of Article 58 of the Rules of Procedure.[12]

12. Regarding the news items, this Court has considered that they can be assessed when they refer to well-known or public facts or declarations by State officials, or when they corroborate aspects related to the case.[13] The Court decides to admit those documents that are complete or that, at least, allow the source and date of publication to be verified, and will assess them taking into account the body of evidence, the observations of the parties, and the rules of sound judicial discretion.

13. Furthermore, regarding the statements of the presumed victims, the testimony of the witnesses and the expert opinions provided during the public hearing and by affidavit, the Court deems them relevant only insofar as they are in keeping with the purpose defined by the President of the Court in the Order requiring them (*supra* paras. 6). They will be assessed together with the other elements in the body of evidence. In addition, in accordance with the Court's case law, the statements made by the presumed victims cannot be assessed separately, but rather together with all the evidence in the proceedings, because they are useful in that they provide additional information on the presumed violations and their consequences.[14]

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[10] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Barbani Duarte et al.*, *supra* note 7, para. 21.

[11] In a communication of March 9, 2012, on the instructions of President of the Court, the State was requested to forward to the Court, by March 21, 2012, at the latest, the following documents related to the friendly settlement agreement: (a) the bill on the national prison system submitted to Congress on April 27, 2005; (b) the Special Regulations for the Operation of the National Prison System; (c) the timetable for implementation of the friendly settlement agreement, including dates, those responsible, and execution mechanisms, and (d) other document that authenticate the implementation of the friendly settlement agreement.

[12] On March 27, 2012, the State forwarded a copy of the following documents: the bill on the national prison system; the Special Regulations for the Operation of the National Prison System; the timetable for implementation of the friendly settlement agreement; Note No. 363-D-PGR-2012, of March 12, 2012, addressed to the Secretary of State for Finance; Note No. 362-D-PGR-2012, of March 12, 2012, addressed to the Secretary of State for Public Health; Note No. 361-D-PGR-2012, of March 12, 2012, addressed to the Rector of the Universidad Nacional Autónoma de Honduras; Note No. 360-D-PGR-2012, of March 12, 2012, addressed to the Secretary of State for Justice and Human Rights; Note No. 359-D-PGR-2012, of March 12, 2012, addressed to the Secretary of State for Security; Note No. 358-D-PGR-2012, of March 12, 2012, addressed to the President of the National Congress of the Republic; Note No. 357-D-PGR-2012, of March 12, 2012, addressed to the Prosecutor General of the Republic; Note No. 356-D-PGR-2012, of March 12, 2012, addressed to the Head of the State Secretariat for the Presidency; the friendly settlement agreement signed by both parties, and note sent to the National Congress by the President of the Human Rights Commission.

[13] *Cf. Case of Velásquez Rodríguez. Merits, supra* note 10, para. 146, and *Case of González Medina and family v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 67.

[14] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of González Medina and family, supra* note 13, para. 80.

V
ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY BY THE STTATE AND ENDORSEMENT OF THE FRIENDLY SETTLEMENT AGREEMENT

A. The friendly settlement agreement

14. On February 28, 2012, during the public hearing of the case, the parties submitted to the Court a friendly settlement agreement[15] between the State of Honduras and the representatives of the presumed victims, and the Inter-American Commission endorsed this agreement during the public hearing. In the agreement, the State acknowledged its international responsibility with regard to the context, the facts, and the violations described in the Commission's Report on Merits, and the corresponding measures of reparation were established.

15. During the hearing of the case, the State read the agreement and made a "public acknowledgment of international responsibility," as follows:[16]

> […]
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> The State of Honduras acknowledges that life is a supreme, irreplaceable and irreparable right. It also acknowledges that the human being is the supreme purpose of society and that it corresponds [to the State] to protect his or her intrinsic rights. In short, […] it corresponds to the State to ensure that its citizens may enjoy justice. The State of Honduras is a signatory of the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, and the American Convention on Human Rights, instruments of the inter-American system for the protection of human rights, which recognize to the individual all the fundamental guarantees such as […] the right to life, to safety, and to personal integrity. Based on their violation, [the State] acknowledges […] its responsibility for the death of 107 persons who were detained in the San Pedro Sula Prison, Department of Cortés, Honduras, as a result of the fire that occurred owing to the conditions at this prison that resulted in the human rights violations.
>
> The State of Honduras […] acknowledges that no price can be placed on a human life and that the amount that it has undertaken to pay on this occasion will not compensate those that lost their life or bring them back. Nevertheless, it may help their next of kin to mitigate some of their needs, but not the anguish of losing their family members. Based on the foregoing, [the State] reiterates to the next of kin, friends, and general public, its apologies for the events that took place, and expresses its deepest condolences for the death of these individuals, represented before this Court on this occasion by the *Pastoral Penitenciaria Sanpedrana CARITAS* and the *Equipo de Reflexión, Investigación y Comunicación (ERIC).* The State of Honduras acknowledges and appreciates the Court's intervention to assist the parties in dispute to reach an agreement […].

16. In view of the State's acknowledgement of rights in relation to the violations declared in the Merits Report, the State accepted its international responsibility for the violation of the rights embodied in Articles 4, 5, 7, 9, 8 and 25, in relation to Article 1(1) and 2, all of the American Convention.

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[15] *Cf.* Friendly settlement agreement. Case 12,680. *Pacheco Teruel et al. v. Honduras* (merits report, folios 574 to 582).

[16] Acknowledgement of responsibility made on February 28, 2012, by Ethel Suyapa Deras Enamorado, Attorney General of the Republic, during the public hearing of the case (transcript of the hearing). Available at: http://vimeo.com/37633316.

17. In addition, the agreement established the scope of these rights, "specifically, [with regard to the] death of 107 inmates deprived of liberty in Cell No. 19 of the San Pedro Sula Prison on May 17, 2004. Furthermore, regarding the nature and mechanisms of the agreement, "in accordance with Article 63 of the Court's Rules of Procedure, [its intention] is to settle in a friendly manner the violation of rights protected by the American Convention, based on which the State […] is obliged to provide reparation for non-compliance with their protection. Regarding "the determination of the beneficiary," it established that "[b]y agreement between the parties, it includes the victims and their next of kin described in the Inter-American Commission's Report on Merits." Moreover, "[t]aking into account the precarious situation of public finances, it was agreed to establish a fixed amount as compensation that includes pecuniary damage, non-pecuniary damage, expenses and costs," which it asked should be kept confidential for security reasons." In addition, "the parties jointly […] requested the Court to endorse the […] agreement when delivering its judgment that ends this litigation." The State undertook, under the agreement, to prepare "a timetable for the implementation and discharge of the agreed elements, which includes the timing, those responsible and the implementation mechanisms, which will form part of the [agreement]."[17] Lastly, "[t]he judgment delivered by the Court […] must be socialized to the public officials in charge of State entities of the national prison system to that they are aware of it and implement it." The substantive elements of the agreements, as well as the measures of reparation ordered by the Court based on the violations declared will be dealt with in Chapters VII and VIII of this judgment.

B. Considerations of the Court

18. Pursuant to Articles 62 and 63 of the Court's Rules of Procedure, the Court must determine the admissibility and the legal effects of the acknowledgement of international responsibility and the friendly settlement agreement.

19. In this regard, the Court considers that the State's acknowledgment of responsibility makes a positive contribution to the advancement of these proceedings and the exercise of the principles underlying the American Convention.[18] The Court also considers, as in other cases,[19] that this acknowledgment has full legal effects in this case. Also, it assesses positively that the parties have reached a friendly settlement, which reflects the willingness of Honduras to make integral reparation for the harm caused to the victims as a result of the violations in this case, and represents a significant opportunity for the State to ensure that similar events are not repeated. The Court also finds that, when the parties reach agreement, this contributes to the objectives of the inter-American system for the protection of human rights, especially to the purpose of finding just solutions to the specific and structural problems of a case.

20. Based on the above, according to the terms in which the State acknowledged its responsibility in the case and the purpose of the friendly settlement agreement, the Court finds that the dispute has ceased with regard to the facts and the violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 9 (Freedom

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[17] On April 17, 2012, the State sent the Court the timetable for execution and fulfillment (hereinafter "implementation timetable").

[18] *Cf. Case of Trujillo Oroza v. Bolivia. Merits.* Judgment of January 26, 2000. Series C No. 64, para. 42, *supra,* and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 26.

[19] *Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 37.

from *Ex Post Facto* Laws), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Articles 1(1) and 2 thereof. However, the Court considers it appropriate to include some considerations with regard to these rights in Chapters VII and VIII of the judgment.

21. Regarding the measures of reparation outlined by the State and the representatives of the victims in the friendly settlement agreement, the Court endorses them, as indicated in this judgment, because they contribute to the achievement of the object and purpose of the American Convention. Nevertheless, the Court will analyze these measures in Chapter VIII, in order to determine their scope and means of implementation. Since the friendly settlement agreement seeks to provide reparation to additional victims to those identified in the Inter-American Commission's Report on Merits, the Court will rule in this regard in section A) of Chapter VIII of this judgment.

22. Taking into consideration the seriousness of the facts and the violations acknowledged by the State, the Court will proceed to make a detailed determination of the facts that occurred and will include some consideration on the obligation of prevention in relation to prison conditions and on the standards applicable to the measures of reparation agreed by the parties, because the delivery of the judgment contributes to the reparation of the next of kin of the deceased victims in the case, to the prevention of a recurrence of similar events, and to fulfilling the objectives of the inter-American human rights jurisdiction.[20]

VI
CONTEXT AND FACTS OF THE CASE

23. In light of the State's acknowledgment of international responsibility and based on the evidence in the case file, the Court will refer to the context and facts that resulted in the violations in this case.

A. The prison system in Honduras

24. It is public knowledge and the Court notes that, before and after the events that gave rise to this case, there had been other serious incidents in Honduran prisons, including the fires that occurred on April 5, 2003, at the El Porvenir Prison Farm, La Ceiba, in which 69 individuals died; on February 14, 2012, at the Comayagua Prison Farm, where 367 individuals died, and on March 29, 2012, at the same prison in San Pedro Sula, where another 13 individuals died.[21]

25. According to various national and international reports, at the time of the events the prison system in Honduras suffered from structural weaknesses. In this regard, throughout the country the prisons "were overpopulated, causing overcrowding, unsanitary conditions,

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[20] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of Contreras, supra* note 18, para. 28.

[21] *Cf.* News items: "*13 muertos en un motín en la cárcel de San Pedro Sula en Honduras,"* CNN en Español. Available at: http://cnnespanol.cnn.com/2012/03/29/incendio-en-la-carcel-principal-de-san-pedro-sula-en-honduras (last accessed March 30, 2012), and "*Más de 350 personas muertas en el incendio de una cárcel en Honduras,*" El Mundo newspaper. Available at: http://elmundo.es/america/2012/02/15/noticias/1329298250.html (last accessed March 30, 2012).

lack of hygiene, discontent, resentment [and] conflicts."[22] In addition, the electrical, drinking water, sanitation, and other facilities had collapsed. According to the information provided by the State, the Honduran prison system is experiencing a "prison emergency."[23]

26. These problems had become worse owing to the implementation of the penal reforms adopted by the State under the "zero tolerance" policy that sought to eradicate the *maras*[24] and gangs in order to control the violence. These measures included the reform, by Decree No. 117-2003 adopted in August 2003, of the definition of the offense of unlawful association established in article 332 of the Criminal Code, increasing the punishments for this offense and including in the text an explicit mention of the *maras* as a form of unlawful association.[25]

27. Following this reform, detentions based on suspicion, together with mass arrests based on the appearance of the individual and without a warrant from a competent authority became a common practice of the police.[26]

28. The foregoing resulted in an increase in the levels of overpopulation in the prisons and accentuated the structural problems that existed throughout the prison system, but particularly in those centers for individuals accused of belonging to the "*maras*." At the time of the facts, the country's 24 prisons had a total capacity of 8,280 places. However, in 2004, the prison population was 10,931 and, in 2008, this increased to 11,723.[27]

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[22] *Cf. Informe sobre la situación del sistema penitenciario en Honduras* [Report on the situation of the prison system in Honduras] issued by the Inter-institutional Prison Reform Commission (file of attachments to the merits report, attachment 57, folio 759). See also: National Human Rights Commission of Honduras, Annual Report 2003, Chapter II: Security and Justice (file of attachments to the merits report, attachment 66, folio 946); United Nations Human Rights Committee, Concluding observations with regard to Honduras, December 13, 2006, CCPR/C/HND/CO/1; United Nations Working Group on Arbitrary Detentions, Report on the visit to Honduras, December 1, 2006, A/HRC/4/440/Add.4.

[23] *Cf.* Friendly settlement agreement, *supra* note 15.

[24] According the OAS Public Security Department, the *maras* are transnational gangs that began to take shape in the Central American region at the beginning of the 1990s influenced by the deportation of young people from the United States. ("Definition and Categorization of Gangs," Appendix IV, Report: El Salvador. Department of Public Security, OAS, Washington, D.C., 2007). In addition, according to the United Nations definition "the *maras* are organizations composed of adolescents and young adults of both sexes who develop ties of solidarity and identification among themselves and fight for the territorial control." (U.N., Economic Commission for Latin American and the Caribbean (ECLAC), *Seguridad ciudadana y violencia en América Latina: diagnóstico y políticas en los años noventa,* 1999).

[25] The relevant part of this norm establishes: "The National Congress […] Decrees: Article 1. To amend article 332 of the Penal Code, contained in Decree No. 144-83 of August 23, 1983, which should read as follows: Article 332. Unlawful Association: The heads or ringleaders of *maras*, gangs, and other groups that associate with the permanent purpose of executing any act that constitutes an offense shall be sanctioned with the punishment of nine to twelve years' imprisonment and a fine of 10,000.00 to 200,000.00 Lempiras. The other members of the said unlawful associations shall be sanctioned with the same punishment of imprisonment established in the preceding paragraph, reduced by one-third. The heads or ringleaders are those who are prominent or identify themselves as such, and whose decisions influence the intentions and actions of the group" (merits report, folio 43).

[26] *Cf.* U.N., Human Rights Committee, Concluding observations, *supra* note 22, and *Mano Suave and Mano Dura en Honduras:* presentation by Tomás Andino Mencia during the First Central American Congress on Youth, Security and Justice. Antigua, Guatemala, March 15 and 16, 2008 (file of attachments to the merits report, attachment 58, folios 802 and 803).

[27] *Cf.* U.N., Committee against Torture. Initial periodic report of Honduras, September 9, 2008. UN Doc. CAT/C/HND/1., para. 223.

B. General conditions in the San Pedro Sula Prison

29. The San Pedro Sula Prison is located in one of the most populous areas of the city with the most traffic. At the time of the facts, it had 21 cells with the capacity to accommodate approximately 1,500 individuals. However, on the day of the fire there were 2,081 inmates.

30. Conflicts between gangs were frequent in the prison. On April 20, 2004, a group of inmates caused an uprising in the prison dining room, preventing the prison police from accessing the complex. This group of inmates detonated Molotov cocktails in the cell of the inmates who belonged to a specific "*mara*." As a result of that incident, the prison director sought judicial authorization to transfer the inmates who had been affected to another prison so as to protect them. In this regard, in a resolution of April 21, 2004, the Enforcement Court of the Judicial Section of San Pedro Sula authorized the transfer of inmates and concluded that the prison had problems such as overcrowded cells, proliferation of offenses, lack of appropriate personnel proportionate to the existing population, failure to classify inmates, and corruption among the prison staff.[28]

31. In addition, "the […] inmates exercised a form of control in the prison, which to a certain point had been permitted by the prison authorities, who had not monitored the introduction of weapons and bombs, placing the prison population and the visitors at risk."[29]

32. The conditions of the prison's electrical system were "deplorable" and represented a latent risk of fire. The person responsible for the maintenance of the electrical installations was one of the inmates. This situation was public knowledge and the prison authorities were also aware of it.[30] In this regard, two months before the fire, the prison director had written to the Manager for the North-Northwest Division of the National Electricity Company requesting "his […] collaboration to try to improve or correct the electrical system within the prison, as it ha[d] collapsed and there [was] a risk of a fire, particularly during the hot summer days."[31]

33. The entry of electric appliances was authorized by the director. An inventory of these appliances existed; however, it was imprecise and unreliable because it was the inmates themselves who provided the information on the number of devices in their possession, and this was not corroborated subsequently by any authority.[32]

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[28] *Cf.* Decision of the Enforcement Court of the Judicial District of San Pedro Sula of April 21, 2004 (file of attachments to the merits report, attachment 50, folios 658 and 659).

[29] *Cf.* Decision of the Enforcement Court of April 21, 2004, *supra* note 28, folio 658.

[30] *Cf.* Proceedings of the initial hearing issued by the First Instance Court of San Pedro Sula on August 1, 2004 (file of attachments to the merits report, attachment 31, folios 377 to 402); testimony rendered by Mauricio Abelardo Guardado Rivera on August 1, 2004, during the criminal proceedings (file of attachments to the merits report, attachment 3, folios 388 and 389); letter addressed by the former Director of the Prison to the Manager of the North-Northwest Division of the National Electricity Company on November 14, 2003 (file of attachments to the merits report, attachment 35, folio 554); newspaper article published in "*La Prensa*," on May 19, 2004 (file of attachments to the merits report, attachment 36, folio 556), and newspaper article published in "*La Prensa*" on May 22, 2004 (file of attachments to the merits report, attachment 37, folio 558).

[31] *Cf.* Letter addressed by the Director of the Prison to the Manager of the North-Northwest Division of the National Electricity Company on March 19, 2004 (file of attachments to the merits report, attachment 39, folio 591).

[32] *Cf.* Testimony of Mauricio Abelardo Guardado Rivera, *supra* note 30, folios 387 to 390.

34. In addition, the potable water system of the prison was obsolete and inadequate to meet the existing demand and did not have fire hydrants to connect hoses.[33] According to the statements of the director and the administrator of the prison, at the time of the incident, the prison lacked adequate mechanisms to prevent and deal with fires. In addition, the only directive concerning emergency situations issued by the prison authorities was to fire at the floor as a warning signal and, in case of fire, to call the fire department.

35. The State did not provide educational or recreational activities for the rehabilitation of those deprived of liberty, and the services provided to the inmates by the Catholic Church were almost inaccessible to the inmates who belonged to *maras* or gangs.

C. Specific conditions of cell No. 19

36. Cell No. 19 was a construction of approximately 200 square meters built of cement blocks with plastered and painted bricks that formed part of the overall structure of the prison, but was isolated from the other cells. It had a single entrance with a metal gate in front of which was the entrance to the complex and this was the only entrance to the inmates' sleeping quarters. At the time of the fire, cell No. 19 contained 183 inmates, presumed members of a "*mara,*" ranging between 18 and 40 years of age. According to the State, this classification obeyed the need to avoid confrontations between rival gangs and sought to safeguard the security of the inmates. At least 45 of the individuals deprived of liberty in this cell were subject to pre-trial detention. Of that group, 22 were there exclusively for the offense of unlawful association (Annex B).

37. In addition, the physical space for each inmate was approximately one square meter, a space which also contained the refrigeration appliances, beds and other objects. The cell had no ventilation or natural light; thus, the lighting was artificial. Furthermore, it had only one evacuation route in case of an emergency and no fire extinguishers or water system for fighting fires.[34]

38. The overpopulation that existed in the prison resulted in overcrowding and a lack of privacy to receive visitors, which was accentuated among the inmates who supposedly belonged to gangs, because the facilities used for their detention were improvised complexes for their security.

39. The lack of ventilation and the high temperatures made it necessary to use electric fans. According to one of the expert opinions required by the Public Prosecution Service, cell No. 19 contained, *inter alia,* three air conditioners, 62 ventilators, two refrigerators, ten televisions, three electric irons, one stereo system, a VCR/VHS, a microwave oven, a blender motor, an air curtain, a water cooler, and an electric heater.[35] In addition, according

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[33] *Cf.* Note addressed by Carlos G. Ramírez Paz to the prosecutor on May 20, 2004 (file of attachments to the merits report, attachment 49, folio 655), and testimony of Virginia Alfaro Calvo (file of attachments to the merits report, attachment 53, folio 714).

[34] *Cf. National Human Rights Commission of Honduras, Informe especial con recomendaciones sobre el incendio ocurrido en el Centro Penal de San Pedro Sula Prison el 17 de mayo de 2004* [Special report with recommendations concerning the fire in the San Pedro Sula Prison on May 17, 2004] (file of attachments to the merits report, attachment 38, folio 566*),* and testimony of Mauricio Abelardo Guardado Rivera, *supra* note 30, folio 389.

[35] *Cf.* Technical report on the fire that occurred in cell No. 19 of the San Pedro Sula Prison, by Luis Alberto González Aldan, engineer (file of attachments to the merits report, attachment 42, folio 624).

to a report issued by the fire department, around each bed there were two to three electric fans and four mini splits running permanently.[36]

40. In addition, the available "tap water" was inadequate. Consequently, the latrines had to be filled with buckets; there were no washbasins or showers and no articles of personal hygiene were provided. This gave rise to an unhealthy and unhygienic environment and infestations of insects.

41. Furthermore, the inmates of cell No. 19 did not receive proper medical care because the health services were organized to serve the general prison population and their isolation made access to these services difficult. In addition, the food they received was inadequate.

42. The prison guards maintained a climate of hostility and intimidation toward the inmates and, during their inspections of the cells, they stole or destroyed the inmates' personal possessions. According to the testimony of some next of kin, sometimes the inmates were subjected to collective punishments, such as exposure to the sun or the rain.

D. The fire in cell No. 19

43. The fire in cell No. 19 of the San Pedro Sula Prison took place on May 17, 2004, between 1.30 and 2 a.m., and it began inside the cell, on the top part of the entrance door.

44. At 1.45 a.m., the prison police who were on duty at post number 6 in front of cell No. 19 fired several warning shots. The testimony given by the survivors of the fire in the judicial case file is consistent in indicating that when the prison guards became aware of the fire and reached the main gate of the cellblock, they did not open it straight away, but rather, in response to the cries for help of the inmates, they merely fired shots and insulted them.[37]

45. At 1.55 a.m., the director of the prison called the Fire Department and the National Police Headquarters asking for help, while the guards on duty located the 'prison warden' charged with the custody of the keys to the cell.[38]

46. At approximately 2.30 a.m.,[39] the inmates managed to open the inner gate[40] of cell No. 19 by means of a cement weight used for exercise,[41] and they exited towards the outer part of the cellblock.

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[36] *Cf.* Report on the investigation of the fire by the Honduran Fire Department (file of attachments to the merits report, attachment 40, folio 593).

[37] *Cf.* Testimony rendered during the investigations conducted by the Public Prosecution Service by Arnal Leiva Paz, Carlos Hernán Mejia Aguilar, Celio Alberto Valdez, Dennis Antonio Santin, Alexander Ramírez, Franklin Geovanny Chávez Jiménez, Gilberto Núñez Cruz, Gustavo Olivera, Javier Alejandro Pineda Orellana, Javier Antonio Hernández, Jorge Ulises Amaya, Jose Anselmo Hernández, Jose Luis Chacón Estradas, Jose Luis Valdez and Josué Ricardo Cruz (files of attachments to the merits report, tomes I and II, attachments 6, 8, 10, 11, 12, 20, 21, 22, 23, 24, 26, 27, 29, 30 and 31, and folios 425 to 426, 435 to 438, 443 to 444, 447 to 450, 452 to 454, 482 to 485, 487 to 490, 492 to 502, 504 to 507, 509 to 513, 518 to 519, 521 to 523, 530 to 533, 535 to 536, and 538 to 539, respectively).

[38] *Cf.* Indictment request of the Public Prosecution Service against Elías Aceituno Canaca (file of attachments to the merits report, attachment 4, folio 407) and record of the initial hearing issued by the First Instance Court of San Pedro Sula, *supra* note 30, folio 379.

[39] *Cf.* Testimony rendered during the investigations conducted by the Public Prosecution Service by Carlos Eduardo Cerna, Carlos Hernán Mejia Aguilar, Carlos Roberto Archaga, Celio Alberto Valdez, Dennis Antonio Santos, Alexander Ramírez, Samuel Amaya Rodriguez, Elías Leonard Sevilla Zelaya, Elvin Alfredo Soto, Elvis Joel Lanza Hernández, Javier Alejandro Pineda Orellana, Javier Antonio Hernández, Jorge Ulises Amaya, Jose Anselmo Hernández, Jose Antonio Rodríguez, Jose Luis Chacón Estradas, Jose Luis Valdez, Jose Ricardo Cruz, Juan Antonio

47. Subsequently, the prison director arrived at the entrance to cell No. 19 and ordered that the second gate be opened. Immediately afterwards the firefighters arrived.[42]

48. One hundred and seven inmates were killed in the incident and, of these, at least 101 died due to massive inhalation of carbon dioxide (asphyxia by suffocation), and five died in the hospital with severe burns. There is no evidence that any inmates were injured or killed by firearms.

E. Causes of the fire

49. According to the expert opinions presented during the investigations conducted under case file No. 1009/04, the fire originated from an overload owing to the excessive number of appliances connected that generated a short circuit in the electrical system.

50. According to the statements of several survivors[43] and of two firefighters who were on the scene,[44] on the day of the fire, there was no running water, merely the water for the latrines.[45]

Sabala and Juan Luis Iria Barahona (files of attachments to the merits report, tomes I and II, attachments 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 23, 24, 26, 27, 28, 29, 30, 31, 32 and 33, and folios 428 to 433, 435 to 438, 440 to 441, 443 to 444, 447 to 450, 452 to 454, 460 to 461, 466 to 468, 470 to 474, 504 to 507, 509 to 513, 518 to 519, 521 to 523, 525 to 528, 530 to 533, 535 to 536, 538 to 539, 541 to 542, and 544 to 546, respectively).

[40] a) The case file contains at least 25 statements by survivors who indicated that it was the inmates who opened the first gate;

b) Nine of these 25 statements indicate that the first gate was opened at 2.30 a.m., by the inmates themselves;

c) The facts set out in the indictment request of the Public Prosecution Service against Elías Aceituno Canaca contain a contradiction as regards the opening of the first gate. They indicate that both gates were opened by the warden and that, subsequently, when the director arrived at the main entrance to the cell, he ordered that only the first gate be opened (file of attachments to the merits report, tome II, folio 408), and

d) In his testimony, the prison director indicated that he ordered the second gate to be opened and did not know who opened the first one of (file of attachments to the merits report, tome II, folio 640).

[41] *Cf.* Testimony rendered during the investigations conducted by the Public Prosecution Service by Carlos Eduardo Cerna, Carlos Hernán Mejia Aguilar, Carlos Roberto Archaga, Celio Alberto Valdez, Dennis Antonio Santos, Alexander Ramírez, Samuel Amaya Rodriguez, Elías Leonard Sevilla Zelaya, Elvin Alfredo Soto, Elvis Joel Lanza Hernández, Javier Alejandro Pineda Orellana, Javier Antonio Hernández, Jorge Ulises Amaya, Jose Anselmo Hernández, Jose Antonio Rodríguez, Jose Luis Chacón Estradas, Jose Luis Valdez, Jose Ricardo Cruz, Juan Antonio Sabala and Juan Luis Iria Barahona (files of attachments to the merits report, tomes I and II, attachments 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 23, 24, 26, 27, 28, 29, 30, 31, 32 and 33, and folios 428 to 433, 435 to 438, 440 to 441, 443 to 444, 447 to 450, 452 to 454, 460 to 461, 466 to 468, 470 to 474, 504 to 507, 509 to 513, 518 to 519, 521 to 523, 525 to 528, 530 to 533, 535 to 536, 538 to 539, 541 to 542, and 544 to 546, respectively).

[42] *Cf.* Record of initial hearing issued by the First Instance Court of San Pedro Sula, *supra* note 30, folio 380, and indictment request of the Public Prosecution Service, *supra* note 38, folio 408.

[43] *Cf.* Testimony rendered during the investigations conducted by Public Prosecution Service by Allan Javier Bonilla Cruz, Carlos Hernán Mejía Aguilar, Dennis Antonio Santin, Alexander Ramírez, Samuel Amaya Rodriguez, Elvin Alfredo Soto, Erick Noel Navarro, Franklin Geovanny Chávez Jiménez, Gilberto Núñez Cruz, Gustavo Olivera, Javier Alejandro Pineda Orellana, Javier Antonio Hernández and Jose Anselmo Hernández (files of attachments to the merits report, tomes I and II, attachments 5, 8 11, 12, 13, 16, 18, 20, 21, 22, 23, 24 and 27, and folios 421 to 423, 435 to 438, 447 to 450, 452 to 454, 456 to 458, 466 to 468, 476 to 477, 482 to 485, 487 to 490, 492 to 502, 504 to 507, 509 to 513, and 521 to 523, respectively).

[44] *Cf.* Testimony of Carlos Alberto Cordero Suárez and José Alfonso Medina on August 1, 2004 (file of attachments to the merits report, attachment 3, folio 391).

[45] *Cf.* Affidavits made by Abencio Reyes, Doris Esperanza Paz, Aida Rodriguez Soriano, Olga Marina Santos, Marlen Ardon Santos, Marta Elena Suazo and Manuel Armando Fuentes (merits report, tome I, folios 522 to 527, 534 to 540, 528 to 533, 563 to 571, 553 to 555, 556 to 559, and 548 to 552, respectively). See also: testimony rendered during the investigations conducted by the Public Prosecution Service by Allan Javier Bonilla Cruz, Carlos

F. Situation of the victims' next of kin

51. The day of the fire, at 9.30 a.m., about 200 next of kin were outside the prison waiting for information about the inmates. At 1 p.m., the Auxiliary Bishop of San Pedro Sula, Monsignor Romulo Emiliani, read the list of the injured inmates who were hospitalized and, one hour later, he returned to read the list of those who had died.

52. The identification of the corpses lasted several days. On the third day, the next of kin, in their desperation, "attempted to break through the fence to enter the morgue." The identification of the bodies was carried out hastily and without DNA testing, "comparing photographs of the dead with their identity cards and other documents." Consequently, mistakes were made in the delivery of corpses, which increased the suffering of the next of kin.

53. The State decided to give the next of kin of the deceased the sum of 10,000 Lempiras, "to transport the corpse and funerals." This money was given to some families at the courts and in the hospital.[46]

G. Judicial proceedings before the domestic courts

54. The investigations began on May 17, 2004. On August 11, 2004, when the Prosecutor General issued a formal request for the indictment of Elias Aceituno Canaca, Director of the San Pedro Sula Prison at the time of the fire, on charges of culpable homicide, culpable injuries, and breach of functional obligations.[47] On August 12, 2004, Mr. Aceituno Canaca was granted a precautionary measure in lieu of judicial detention consisting of appearing before the corresponding court every two weeks, and the prohibition from leaving the country.

55. On September 1, 2004, the judge of the Judicial District of San Pedro Sula ordered the dismissal of the proceedings against Mr. Aceituno Canaca, declaring the prosecution's claims unfounded, considering that the evidence presented by the prosecution was not sufficient to establish his responsibility for the deterioration of the electrical installations, because like all materials, they were, subject to the passage of time. He also indicated that it was not possible to "saddle" the responsibility on someone who did what was in his power to prevent the disaster.[48] On September 6, 2004, the Public Prosecution Service filed an

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Hernán Mejia Aguilar, Dennis Antonio Santin, Alexander Ramírez, Samuel Amaya Rodriguez, Elvin Alfredo Soto, Erick Noel Navarro, Franklin Geovanny Chávez Jiménez, Gilberto Núñez Cruz, Gustavo Olivera, Javier Alejandro Pineda Orellana, Javier Antonio Hernández and Jose Anselmo Hernández (files of attachments to the merits report, tomes I and II, attachments 5, 8, 11, 12, 13, 16, 18, 20, 21, 22, 23, 24 and 27, and folios 421 to 423, 435 to 438, 447 to 450, 452 to 454, 456 to 458, 466 to 468, 476 to 477, 482 to 485, 487 to 490, 492 to 502, 504 to 507, 509 to 513, and 521 to 523, respectively).

[46] *Cf.* Testimony of Rómulo Emiliani (file of attachments to the merits report, attachment 34, folios 548 to 552). Also, Isis Gricelda Perdomo Zelaya testified before notary public that, in order to claim this amount, it was necessary to fill in a form with the deceased's data, indicating whether the family required a coffin, and then wait for information about the autopsy from the Forensic Medicine Unit. This process had "not been very acceptable" to the next of kin of the deceased, owing to the climate of anguish and impatience in light of the delay in delivering the corpses; and some people did not claim the "voucher" considering it an insult (file of attachments to the merits report, folios 545 to 546).

[4747] *Cf.* Indictment request by the Public Prosecution Service, *supra* note 38, folio 403.

[48] This decision established that "none of the evidence provided by the prosecutor is determinant to conclude […] that Elías Aceituno Canaca is responsible for […] the deterioration of the electrical installations, [because] they are […] subject to the passage […] of time[. W]e cannot assign responsibility for this deterioration to an individual who, at the time, was in charge of the administration of the prison; […] the evidence provided by the defense to disprove the Public Prosecution Service's accusation is overwhelming and extremely sound […]. It should be recognized that, with regard to [the crime of omission,] there is an obligation to avoid a result. Based on, and in

appeal against the dismissal of the proceedings[49] and, on November 22, 2004, the District Court of Appeal of San Pedro Sula declared that the appeal filed by the Public Prosecution Service was unfounded, and confirmed the dismissal of the proceedings.[50] Overall, this decision concurred with the considerations of the first instance court.[51]

56. On December 17, 2004,[52] the Public Prosecution Service filed an application for *amparo* against this decision of the Court of Appeal before the Constitutional Chamber of the Supreme Court of Justice, stating that "the decision rendered by the *ad quem* violates the first paragraph of article 90 of the Constitution of the Republic, which establishes the guarantee of due process."[53] For its part, the Constitutional Chamber of the Supreme Court of Justice rejected the application for *amparo* in its judgment of September 27, 2005.[54]

57. There is no evidence in the case file that the State has taken measures other than the said judicial proceedings, or that it has followed other lines of investigation or considered the possible criminal, administrative or disciplinary responsibility of authorities or officials other than the director of the prison at the time of the fire.

VII
CONSIDERATIONS OF THE COURT REGARDING ARTICLES 4, 5, 7, 9, 8 AND 25, IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION

58. Despite the State's full acknowledgment of responsibility in relation to the violations of the rights that were described in the Commission's Report on Merits, the Court, based on its jurisdiction and having assessed the significance and enormity of the facts, deems it necessary to include the following considerations with regard to the State's obligation of prevention with regard to prison conditions, and with regard to the next of kin of the deceased.

A. The rights violated

59. In view of the acknowledgement of facts and rights made by the State, regarding which the dispute has ceased, Honduras is responsible for violating the following rights.

60. In relation to the obligation to guarantee the right to life, the State acknowledged that it is responsible for violating Article 4(1) of the American Convention owing to the

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accordance with everything noted in this hearing, it can be inferred that the accused always played his role of guarantor […], because he proved convincingly his intention that corrective measures be taken to repair the prison's electrical system […]. Thus, it is incongruent to [hold responsible] for these facts a simple citizen who […] did everything within his power and that he was obliged to do to avoid such a regrettable result."

[49] *Cf.* Appeal filed by the Public Prosecution Service (file of attachments to the merits report, attachment 61, folio 832).

[50] *Cf.* Certification; reconsideration of the decision on appeal (file of attachments to the merits report, attachment 63, folio 841).

[51] In its decision that court considered that "one of the functions of the accused […] was to protect the safety of the prisoners […]; however, […] his exercise of [this function] was restricted by his subordination to his superiors who decided on the budgetary allocation required to control a latent source of danger."

[52] *Cf.* File of the application for *amparo* (file of attachments to the merits report, attachment 64, folio 893.

[53] *Cf.* Decision on the application for amparo delivered by the Supreme Court of Justice (file of attachments to the merits report, attachment 64, folio 899).

[54] *Cf.* Certification of the judgment on a*mparo* delivered by the Constitutional Chamber of the Supreme Court of Justice (file of attachments to the merits report, attachment 64, folio 904).

death of the 107 victims, as a result of a series of omissions by the authorities (*supra* paras. 29 to 50), including the specific conditions of Cell No. 19 and the negligence of the authorities to prevent the fire. Moreover, regarding the right to humane treatment, the State is responsible for the violation of Article 5(1) and 5(2) of the American Convection, because the said inmates suffered many of the detention conditions characterized as cruel, inhuman and degrading treatment, and also because of the way in which these inmates died, which constituted a violation of the right to humane treatment, incompatible with respect for human dignity. The State also violated Article 5(6) of the Convention, by not allowing the inmates to carry out productive activities, considering them to be members of the *Salvatrucha Mara*. Lastly, the State violated Article 5(4) of the Convention, to the detriment of the 22 inmates subject to pre-trial detention for the offense of unlawful association, who shared the same cell as inmates who had been sentenced and convicted. In addition, the State violated Article 5(1) of the Convention to the detriment of the group of 83 individualized next of kin, owing to the suffering inherent in the ill-treatment of those who died during the fire, the delay in the procedures to identify and claim the bodies in the morgue, and the authorities' lack of action to clarify and establish responsibilities for the facts.[55]

61. Regarding Articles 7, 9 and 2 of the American Convention, the State acknowledged that Legislative Decree 117-2003, which reformed article 332 of the Honduran Criminal Code, concerning the so-called "Anti-*Maras* Law," failed to specify the elements of the activity that would be considered punishable, which resulted in these elements being determined in an arbitrary and discretionary manner by the authorities responsible for enforcing the law. This norm opened up a broad margin of discretionality that permitted the arbitrary detention of individuals based on perceptions of their membership in a *mara*. In this regard, the lack of legal mechanisms or criteria for verifying the actual existence of an unlawful conduct implied that the said Decree did not fulfill the requirement of maximizing safeguards to ensure that the State's punitive power was administered with respect for the fundamental rights. Therefore, this reform violated the principle of legality established in Article 9 of the Convention. Moreover, the detentions carried out on the basis of the said legal reform following the patterns described above were arbitrary under the provisions of Article 7(3) of the American Convention, all of the above in relation to Articles 1(1) and 2 of this instrument. [56]

62. Regarding the rights to judicial guarantees and protection established in Articles 8 and 25 of the Convention, the State acknowledged that the facts of this case remain in impunity and that this violates the right of the next of kin of the victims and fosters the chronic repetition of human rights violations. In addition, all the procedural actions taken by the Honduran judicial authorities were aimed at establishing the criminal responsibility of the director of the San Pedro Sula Prison at the time of the fire. In this regard, the court's

[55] For their part, in their pleadings and motions brief, the representatives agreed with the Commission's arguments and added that the State allowed the prison to become a dangerous place for the life and security of the inmates. In addition, the State failed to comply with its obligation of prevention by designing strategies for emergency situations, even though it was aware of the conditions of the prison infrastructure.

[56] In this regard, in their pleadings and motions brief, the representatives indicated that the amendment of article 332 of the Penal Code was discriminatory and contradicted the principle of equality. Owing to a deficient juridical and legislative procedure, the amendment took advantage of ambiguous categories that led to arbitrary and discretional interpretation criteria, so that it also violated the principle of legality. In addition, they asserted that the said amendment aimed at a criminal law based on authorship by defining and punishing matters relating to personality, appearance, conduct, image and group affiliation, rather than to specific acts or damage "against others," and that it was based on a rationale of suspicion as a presumption for the enforcement of the law. Since unlawful association is a continuing offense, it implied "permanent flagrancy"; thus, the said individuals who were charged with this offense could be detained or their homes could be searched at any hour of the day, without any legal guarantee or support in their favor.

decision to dismiss the proceedings meant that the responsibility for the facts fell on other authorities. However, no other authority was investigated with due diligence. Furthermore, more than seven years have passed without any responsibilities having been determined for an incident for which the causes were established from the very outset; hence this period exceeds a reasonable time for this type of investigation. Based on the foregoing, the State failed to provide the victims' next of kin with an effective remedy to ascertain what happened and to establish the corresponding responsibilities, thereby violating the rights established in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument.[57]

B. Obligation of prevention with regard to prison conditions

63. This Court has held that, in accordance with Articles 5(1) and 5(2) of the Convention, every person deprived of liberty has the right to live in detention conditions that are compatible with his or her personal dignity. In addition, the State must guarantee the right to life and to humane treatment of those deprived of liberty because the prison authorities exercise total control over them.[58]

64. Given this special interaction and relationship between the inmate and the State, the latter must assume a specific series of responsibilities and take special actions to guarantee that inmates have the necessary conditions to lead a decent life, and to contribute to the exercise of those rights that, under no circumstances, can be restricted or whose restriction does not necessarily arise from the deprivation of liberty.[59]

65. In the present case it has been established that the detention conditions in cell No. 19 were contrary to human dignity. Among other factors, there were serious conditions of overpopulation and overcrowding and the cell had no ventilation or natural light. In addition, the water service was inadequate and, at the time of the facts, there was no running water. The inmates of the cell did not receive proper medical care, the food was poor, there was no area for visits, and the inmates did not have access to recreation and rehabilitation programs (supra paras. 37 to 41).

66. Furthermore, it was proved that the electrical system was deplorable and the overload of appliances resulted in a short circuit that caused the fire (*supra* paras. 32, 39 and 49). At the time of the incident, the prison lacked adequate mechanisms to prevent and fight fires. The only instructions that the staff had in such cases were to call the fire department and to shoot at the ground (*supra* para. 34). The facts reveal that, during the fire, the inmates could not leave the cell for about an hour, and this led to many deaths due to asphyxia by suffocation and severe burns (*supra* para. 48).

67. This Court has incorporated into its case law the main standards on prison conditions and the obligation of prevention that the State must guarantee to persons deprived of liberty.[60] In particular, as this Court has established:

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[57] In this regard, the representatives agreed with the contents of the Commission's merits report.

[58] *Cf. Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 42.

[59] *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 153.

[60] *Cf.* United Nations, *Standard Minimum Rules for the Treatment of Prisoners.* Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of the Offender, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663C (XXIV) of 31 July 1957, and 2076 (LXII) of 13 May 1977; U.N., *Body of Principles for the Protection of All Persons under any Form of Detention or Prison*

a) Overcrowding is, in itself, a violation of personal integrity;[61] in addition, it hinders the normal execution of essential functions in prisons;[62]

b) Those who are being processed must be separated from those who have been convicted; and children must be held separately from adults, so that those deprived of liberty receive treatment appropriate to their situation;[63]

c) All those deprived of liberty must have access to potable water for personal consumption and to water for personal hygiene; lack of drinking water constitutes grave negligence by the State with regard to its obligation of guarantee to those in its custody;[64]

d) The food provided in prisons must be of good quality and sufficient nutritional value;[65]

e) Regular medical attention must be provided, with the necessary and appropriate treatment,[66] and by qualified medical personnel when required;

f) Education, work and recreation are essential functions of a prison,[67] and must be provided to all those deprived of liberty in order to promote the rehabilitation and social adjustment of inmates;

g) Visits must be guaranteed in prisons. Detention under a restricted visiting regime may be contrary to humane treatment in certain circumstances;[68]

Adopted by the United Nations General Assembly by its Resolution 43/173, of 9 December 1988; U.N., *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Adopted by the United Nations General Assembly by its Resolution 45/113 of 14 December 1990. See also: U.N., General Comment No. 21 of the Human Rights Committee. 10 April 1992. A/47/40/(SUPP), *substituting General Comment No. 9, Humane treatment of Persons Deprived of Liberty (Art. 10)*: forty-fourth session 1992, and IACHR, *Principles and good practice on the protection of persons deprived of liberty in the Americas,* adopted at the 131st regular session held from March 3 to 14, 2008.

61 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 150, and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 85.

62 *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 20, and *Case of Vélez Loor v. Panama. Preliminary objection, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 204.

63 *Cf.* Article 5(4) of the Inter-American Convention on Human Rights; *Case of Tibi, supra* note 61, para. 263, and *Case of Servellón García et al. v. Honduras. Merits, reparations and costs.* Judgment of September 21, 2006. Series C No. 152, para. 200.

64 *Cf. Case of Vélez Loor, supra* note 62, para. 216.

65 *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs.* Judgment of February 1, 2006. Series C No. 141, para. 209.

66 *Cf. Case of Tibi, supra* note 61, para. 156, and *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, *supra* para. 301.

67 *Cf. Case of Montero Aranguren et al. (Retén de Catia), supra* note 62, para. 146, and *Case of Vélez Loor, supra* note 62, para. 204.

68 *Cf. Case of Loayza Tamayo, supra* note 14, para. 58, and *Case of the Miguel Castro Castro Prison, supra* note 66, para. 315.

h) All cells must have sufficient natural or artificial light, ventilation and adequate conditions of hygiene;[69]

i) Latrines must be hygienic and offer privacy;[70]

j) States cannot claim financial difficulties to justify detention conditions that do not comply with the relevant minimum international standards and that fail to respect the inherent dignity of the human being,[71] and

k) Disciplinary measures that constitute cruel, inhuman or degrading treatment, including corporal punishment,[72] prolonged solitary confinement, and any other measure that may severely jeopardize the physical or mental health of the inmate is strictly prohibited.[73]

68. The Court has also established that, in its role of guarantor, the State must draw up and implement a prison policy for the prevention of emergency situations that may endanger the fundamental rights of the inmates in custody."[74] In this regard, the State must incorporate into the design, structure, construction, improvement, maintenance and operation of detention centers, all the physical mechanisms that minimize the risk of emergency situations or fire and, should these situations occur, ensure that it can react with due diligence, guaranteeing the protection of the inmates or a safe evacuation of the premises.[75] These mechanisms include effective systems of fire detection and extinction, alarms,[76] and emergency protocols that ensure the safety of those deprived of liberty.[77]

69. Based on the foregoing, in this case, the State failed to comply with the obligation to guarantee those deprived of liberty in cell No. 19 detention conditions compatible with their personal dignity, in keeping with the relevant international standards. In addition, although aware of a situation of acute risk, the State did not guarantee the rights of the inmates by taking preventive actions, and acting with due diligence when the fire occurred, and this caused traumatic and painful deaths. Hence, the Court has accepted the acknowledgment of responsibility made by Honduras and, consequently, concludes that the

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[69] *Cf. Case of Montero Aranguren et al. (Retén de Catia), supra* note 62, para. 146, and *Case of the Miguel Castro Castro Prison, supra* note 66, para. 315.

[70] *Cf. Case of López Álvarez, supra* note 65, and *Case of the Miguel Castro Castro Prison, supra* note 66, para. 319.

[71] *Cf. Case of Montero Aranguren et al. (Retén de Catia), supra* note 62, para. 85, and *Case of Vélez Loor, supra* note 62, para. 198.

[72] *Cf. Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of March 11, 2005. Series C No. 123, para. 70, and Order of the Inter-American Court of Human Rights of January 27, 2009, concerning the request for an advisory opinion submitted by the Inter-American Commission on Human Rights: Corporal Punishment for Children, considering paragraph 14.

[73] *Cf. Case of the Children and Adolescents Deprived of Liberty in the FEBEM "Tatuapé Complex." Provisional Measures with regard to Brazil.* Order of the Inter-American Court of Human Rights of November 30, 2005, considering paragraph 13, and *Matter of the Socio-educational Internment Unit. Provisional Measures with regard to Brazil.* Order of the Inter-American Court of Human Rights of September 1, 2011, considering paragraph 21.

[74] *Cf. Case of the "Children's Rehabilitation Institute", supra* note 59, para. 178.

[75] *Cf.* Life Safety Code, NFPA-101, adopted by the National Fire Protection Association, Inc., Nueva Orleans, EEUU. Revised by the Standards Council on January 14, 2000, in force as of February 11, 2000, 2012 Edition, points 22.1.1.2.1 and 23.1.1.2.1.

[76] *Cf.* Life Safety Code NFPA, *supra* note 75, items 23.3.4.4.2, 9.6.3.2 and 23.3.5.4.

[77] *Cf. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, supra* note 60, Rule No. 32.

State violated the obligation to ensure the rights established in Articles 4(1), 5(1), 5(2) and 5(6) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 107 persons deprived of liberty who lost their life (Annex A). In addition, the State violated Article 5(4), in relation to Article 1(1), both of the American Convention, to the detriment of the 22 individualized inmates who died and who were in pre-trial detention in cell No. 19 together with those who had been sentenced and convicted.

C. The next of kin of the deceased

70. The facts of the case reveal different effects suffered by the next of kin of the deceased victims. In this regard, it was proved that the identification of the corpses took several days and that various errors were made in the delivery of the bodies, which exacerbated the suffering of the next of kin (*supra* paras. 51 and 52).

71. In this regard, during the public hearing, María Oneyda Estrada Aguilar stated that:

> "[Her son] had been taken to the morgue, where [they] looked at the decomposing bodies, because a refrigerated truck had broken down and when they pulled the bodies out they had begun to decompose. [They] stayed there in the sun, without eating, without drinking water, without sleeping, […] what [they] wanted was to find [their] son's body. But it was difficult because it was not there, someone else had taken it. A week later […] they delivered it, because [previously] they had given it to another person by mistake, [and they tried] to deliver the [corpse of another person] to [her, but she] told them that it was not [her] son; [however,] the forensic doctor [told her] take it, you will be doing it a favor; [she refused and indicated that she would] prefer to close [her] son's grave imagining he was inside rather than place someone there who was not part of [her] family. [Subsequently, her son] appeared; the family that had taken him [returned him]; and they gave him to [her]. The impact was [stronger] when [they] buried him. No one gave them any kind of support; [she] thought [she] would go mad, and even take [her] own life."

72. For her part, Sandra Lorena Ramos Cárcamo indicated that:

> [When her husband was] imprisoned owing to the anti-*maras* law, [she and her three daughters] always supported him. [The] week [of the fire], [her husband had told [her …] that they had turned off the water. [The day before the fire, she] was in the line [to visit her spouse] when a prison police officer told [her that the inmates of Cell No. 19 were [not people; [she] respond[ed] that everyone was a person and that just as the agents had a heart so did the inmates. Then [the police agent] told [her that she] was punished [and she] went home. [The day of the fire] when they presented the list of the deceased, he did not appear [on it, so she] thought he was alive; had the hope he would be alive and that he would be all right and that [she] would go home with this news [However, he had died;] the pain was so great that [she even] attempted to take [her] life, […] but [her] daughters gave [her] strength.

73. In this regard, the Court has established that the right of the next of kin of the victims to know where the remains of their loved ones are, in addition to a requirement of the right to know the truth, is a measure of reparation; therefore it gives rise to the corresponding obligation of the State to satisfy this reasonable expectation. It was extremely important for the next of kin to receive the bodies of those who died in the fire, and to be able to bury them according to their beliefs, and obtain closure for the mourning process they experienced as a result of the events.[78] Specifically, international standards

[78] *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211 para. 245, and *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No. 221, para. 258.

require that the remains must be returned once the victim has been clearly identified; in other words, when a positive identification has been made. In this regard, the Minnesota Protocol stipulates that "the body must be identified by reliable witnesses and other objective methods."[79]

74. Furthermore, the Court has considered that the suffering and death of an individual, due to a fire, causes the closest next of kin a non-pecuniary damage inherent in human nature, which does not need to be proved.[80]

75. Therefore, the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victims who died in the fire, because of the suffering they experienced owing to the acts and omissions in the delivery of the remains of their deceased family members (Annex C).

VIII
REPARATIONS
(*Application of Article 63(1) of the American Convention under the friendly settlement agreement*)

76. Based on the provisions of Article 63(1) of the American Convention,[81] the Court has indicated that any violation of an international obligation that has caused damage entails the obligation to provide adequate reparation[82] and that this provision reflects a customary law that is one of the fundamental principles of contemporary international law on State responsibility.[83]

77. This Court has established that the reparations must have a causal connection with the facts of the case, the alleged violations, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe this concurrence in order to rule appropriately and according to law.[84] The Court will determine measures to guarantee the rights violated, repair the consequences of the violations, and establish compensation to redress the damage caused.

78. Taking into consideration the friendly settlement agreement reached by the parties in order to provide reparation to the victims in this case, which has been endorsed by this Court (*supra* para. 21), and the significance and enormity of the violations that have been

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[79] *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205 para. 318. See also: United Nation Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol). UN DOC E/ST/CSDHA/.12 (1991).

[80] *Cf. Case of the "White Van" (Paniagua Morales et al.), supra* note 7, para. 108, and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212.

[81] Article 63(1) of the Convention stipulates that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[82] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of González Medina and family, supra* note 13, para. 276.

[83] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 62, and *Case of González Medina and family, supra* note 13, para. 276.

[84] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, *and Case of González Medina and family, supra* note 13, para. 278.

declared, the Court will analyze the measures agreed upon in order to determine their scope and means of implementation,[85] in light of the criteria established in its case law and in relation to the nature, object and purpose of the obligation to make integral reparation for the damage caused to the victims.[86]

79. Based on the foregoing and that the friendly settlement agreement seeks to provide reparation to more victims than those identified in the Merits Report of the Commission, the Court will determine: (a) the injured party in this Judgment, and (b) the other beneficiaries of the friendly settlement agreement.

A. Injured Party

80. The Commission's Merits Report identified as alleged victims 107 inmates who died owing to the fire in the San Pedro Sula Prison, 22 of whom were being held in pre-trial detention based merely on the offense of unlawful association. It also identified 83 next of kin of 18 of the deceased inmates as victims in their own right. In addition, in the brief submitting the case, the Commission indicated that, following the approval of the Merits Report, the petitioners had forwarded the Commission an extended list of next of kin that includes the identification of the next of kin of Oscar Israel Duarte Valle, and of additional next of kin of William Antonio Reyes Flores and Manuel Armando Cortes.[87]

81. This Court recalls that, in its recent consistent case law, it has established that the presumed victims must be indicated in the report that the Commission issues under Article 50 of the Convention. In addition, pursuant to Article 35(1)(b) of the Rules of Procedure, it corresponds to the Commission and not to this Court to identify precisely and at the appropriate procedural opportunity the presumed victims in a case before the Court.[88]

82. Moreover, the Court notes that Eddy Adalberto Amaya Zepeda was mentioned by the Commission in its Merits Report as one of the 22 inmates who was being held in pre-trial detention at the time of the fire and, consequently, he was a victim of the violation of Articles 5(4), 7 and 9 of the Convention. However, Mr. Amaya Zepeda is not on the list of the 107 deceased inmates indicated by the Commission or the representatives; furthermore, the Court has no information to authenticate the existence of this individual. Nevertheless, based on the particularities of the case, Mr. Amaya Zepeda will be considered an injured party in the case, on condition that the representatives or next of kin of this individual prove that he was detained in cell No. 19 of the San Pedro Sula Prison at the time of the facts and, if appropriate, provide information of his death, in the terms of paragraph 87 of this Judgment.

83. Consequently, the Court finds it appropriate to clarify that only those persons indicated as alleged victims by the Inter-American Commission in the Merits Report under Article 50 of the American Convention will be considered as such in this case. Also, the Court reiterates that it considers as an injured party, in the terms of Article 63(1) of the Convention, anyone who has been declared a victim of a violation of a right recognized therein.[89]

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[85] Which accompany the implementation timetable, *supra* note 17.

[86] *Cf. Case of Velásquez Rodríguez. Reparations and costs*, *supra* note 82, paras. 25 to 27, and *Case of González Medina and family, supra* note 13, para. 279.

[87] The Commission did not indicate the names of these family members.

[88] *Cf. Case of the Ituango Massacres v. Colombia*. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Fleury et al.*, *supra* note 61 para. 21.

[89] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 233 and *Case of González Medina and family, supra* note 13, para. 281.

84. Therefore, the Court considers as "injured party" in this case: (i) the 107 prisoners who died as a result of the fire in cell No. 19 in the San Pedro Sula Prison, 21 of whom were being held in this cell in pre-trial detention, and also the case of Eddy Adalberto Amaya Zepeda (*supra* para. 82) and (ii) the 83 next of kin of 18 deceased prisoners as victims in their own right, identified in Annex C of this Judgment. Reparation will be made to these persons with the measures ordered by the Court in this chapter.

B. Beneficiaries of the friendly settlement agreement

85. Despite the foregoing, subsection "d" of the section of the friendly settlement agreement entitled "Background" indicates that: the "beneficiaries: by express agreement between the parties, include the victims and their next of kin described in the Commission's Report on Merits." However, in the chapter on "[f]inancial compensation, costs and expenses," it indicates that the amount for pecuniary damage "will constitute the compensation and opportunities fund for the next of kin of the [107] individuals deprived of liberty who lost their life in the San Pedro Sula Prison." The same criteria is applied in the chapter on psychological and/or psychiatric treatment, which includes "the next of kin of the [107] victims of the fire."

86. Based on the State's extensive acknowledgement and the spirit and scope of the friendly settlement agreement in favor of all the next of kin of the deceased victims, the Court endorses this aspect of the agreement and finds it appropriate that the direct next of kin (fathers, mothers, sons, daughters and spouses or permanent companions) of the 89 deceased inmates who were not indicated by the Commission in its Report on the Merits (Annex D), and who may be identified following the delivery of this judgment, be provided with reparation as beneficiaries of the measures set out in the friendly settlement agreement.

87. To this end, within one year of notification of this Judgment, the State must establish an appropriate mechanism for the said direct next of kin to authenticate their relationship with the deceased victims before the Honduran Ombudsman in accordance with domestic law. After they have done so, these persons must be considered beneficiaries of the reparations in the terms of this Judgment (*infra* paras 118, 136 and 137).

88. To comply with this measure, the State, in coordination with the representatives, must publish announcements on at least one radio station and one television channel, and in one newspaper, all with national coverage, indicating that it is trying to locate the members of the immediate family (fathers, mothers, sons and daughters, spouses or permanent companions) of the 89 deceased victims who were not identified by the Commission, inviting them to go to the Ombudsman's Office with reliable evidence that enables the State to identify them and, as appropriate, consider them beneficiaries of the measures of reparation set out in the friendly settlement agreement. The three publications must be made on different days, and within 60 days of notification of this Judgment.

89. The foregoing does not prevent or preclude the possibility that, once the one-year time frame has expired, these next of kin can be considered beneficiaries of reparation by the State, if the State so decides. Also, this does not preclude the right of those next of kin who were not individualized by the Commission and who do not accept the terms of the reparations established in the friendly settlement agreement to waive them and claim the corresponding measures of reparation in their favor under domestic law.

90. Furthermore, the Court finds that, since the next of kin of the 89 deceased victims lack active representation (*supra* para. 4), the State must safeguard the rights to reparation of these beneficiaries in good faith. In this regard, the Court will assess the State's compliance while exercising its authority to monitor this Judgment.

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

91. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, integral restitution (*restitutio in integrum),* which consists in restoring the situation that existed before the violation occurred. When this is not possible, as in most cases, the Court will establish measures to guarantee the violated rights or to repair the consequences of the violations. Therefore, the Court has considered the need to adopt different measures of reparation in order to redress the damage integrally; hence, in addition to the pecuniary compensation, the guarantees of non-repetition, and measures of rehabilitation and satisfaction are especially relevant for the damage caused.[90]

1. Guarantees of non-repetition

92. In cases such as this one, in which there has been a recurring pattern of disasters in the Honduran prison system (*supra* para. 24), guarantees of non-repetition are of greater relevance as a measure of reparation, so that similar incidents do not recur and to help prevent them.[91] In this regard, the Court recalls that the State must prevent the recurrence of human rights violations such as those described in this case and, to that end, adopt all the legal, administrative and other measures required to ensure that the inmates can exercise their rights,[92] in keeping with the obligations of respect and guarantee established in Articles 1(1) and 2 of the Convention.

93. This Court recalls that in the Judgment of February 1, 2006, in the case of *López Álvarez v. Honduras,*[93] the Court had already ordered Honduras that, as a measure of reparation:

> The State must adopt measures designed to create conditions that ensure the inmates of Honduran prisons an adequate diet, medical attention, and physical and sanitary conditions consistent with the relevant international standards, and implement a training program on human rights for prison officials, in the terms of paragraphs 209 and 210 of [the said] Judgment.

94. However, under the proceeding of monitoring compliance, the Court observes that more than six years have passed since this measure was ordered and it has not yet been implemented.[94] In addition, the Court underscores that serious situations continue to occur

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[90] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, *and Case of González Medina and family, supra* note 13, para. 277.

[91] *Cf.* "Guarantees of non-repetition […] will contribute to prevention." Principle 23 of the *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.* UN Doc. A/Res/60/147. Resolution approved by the United Nations General Assembly on 16 December 2005, Principle 23.

[92] *Cf. Case of Velásquez Rodríguez. Merits, supra* note 10, para. 166, and *Case of the Dos Erres Massacre, supra* note 78, para. 240.

[93] *Cf. Case of López Álvarez, supra* note 65, ninth operative paragraph.

[94] *Cf. Case of López Álvarez v. Honduras. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of February 6, 2008, considering paragraph 20.

within the Honduran prison system, such as the enormous fires that have occurred recently (*supra* para. 24) among other critical situations that are public knowledge, during which hundreds of individuals have died. Based on the foregoing, the Court finds it of paramount importance that the State implement immediately effective measures to avoid the repetition of such incidents. Consequently, it endorses the measures agreed upon as follows.

a) Construction and improvement of the physical conditions of the prisons

95. Under the friendly settlement agreement, the State undertook to build a prison to replace the existing San Pedro Sula Prison that would respond to the need to improve the living conditions of those deprived of liberty according to the corresponding international standards. In addition, it undertook to improve the physical conditions of the nine prisons declared to be in a state of emergency, namely: San Pedro Sula, Santa Bárbara, Puerto Cortés, La Esperanza, El Progreso, Trujillo, Yoro, La Ceiba and Puerto Lempira, taking into account the relevant international standards. The timetable for implementation and compliance with the agreement (hereinafter "implementation timetable") provides for the commencement of the construction of the new San Pedro Sula Prison immediately following the award of the project by public tender in 2013, and will continue in 2014 following the approval of funds in the general budget of the Republic for the said fiscal years. Moreover, the assessment and identification of the physical needs of the nine prisons declared to be in a state of emergency will be carried out between April and December 2012, and the improvements will commence in 2014 and 2015.[95]

96. This Court assesses positively the State's undertaking to build a new prison in San Pedro Sula and to improve another eight prisons (*supra* para. 95). In this regard, the State must adopt, within the agreed time frames, the legislative, administrative or other measures required to improve substantially the conditions at these centers, adapting them to the international standards established in paragraphs 67 and 68 of this Judgment, mainly in order to prevent fires and other hazardous situations as well as to prevent overpopulation and overcrowding, which hinder the normal execution of essential tasks in prisons, such as those relating to health, rest, hygiene, nutrition, safety, education, work, recreation, rehabilitation and the visiting regime of the inmates, cause the general deterioration of the physical facilities, lead to serious problems of coexistence, and encourage violence within the prison.[96]

97. However, since the commitments made in the agreement will be executed over the medium term, the Court establishes that the State must implement immediate measures aimed at guaranteeing the fundamental rights of prisoners, as well as measures to prevent fires in the different centers indicated in the agreement.[97] To this end, within six months the State must forward the Court a report on the urgent measures taken in this regard. In particular, it must provide information on the following measures: (i) the separation of those being processed from those who have been convicted; (ii) an assessment of prison overcrowding; (iii) an evaluation of critical situations such as fires, and (iv) mechanisms and equipment to respond to fires.

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[95] The implementation timetable indicates that, to improve the new centers, the following actions will be taken: (a) an assessment will made of the structural needs from April to December 2012; (b) the remodeling decree will be approved in January 2014, and (c) the physical conditions will be improved from February 2014 to 2015.

[96] *Cf. Case of Montero Aranguren et al. (Retén de Catia,) supra* note 62 para. 90, and *Matter of certain Venezuelan Prisons.* Order of the Inter-American Court of Human Rights of July 6, 2011, considering paragraphs 7, 8 and 9.

[97] *Cf. Case of the Children's Rehabilitation Institute, supra* note 59 para. 159, and *Case of López Álvarez, supra* note 65, para. 209.

b) Adoption of legislative measures

98. Under the friendly settlement agreement the State agreed to take the following legislative measures within one year:

a) Review, modify or repeal article 332 of the Penal Code and other similar legislative provisions or regulations "in order to adapt the Code to the standards established in Articles 7, 9 and 24 of the American Convention," and as recommended by the Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child, and the Working Group on Arbitrary Detention;[98]

b) Approve the Law on the National Penitentiary System submitted to Congress on April 27, 2005, creating the penitentiary institute and career; the possibility of separating the Prison Police from the National Police must also be considered;

c) Review and modify the section of the Special Regulations for the Operation of the National Penitentiary System relating to prison staff and the Administrative Segregation Center, among other matters, in order to adapt it to the required international standards. In addition, the State undertook to incorporate the police and the administrative personnel of the prison system into the process to purge the National Police and, to this end, would carry out a general prison audit, among other actions,[99] and

d) Draft and approve, within one year, the Prison Administration Manual, in line with international standards for the humane treatment of persons deprived of liberty contained in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and in inter-American case law. This manual must also contain, *inter alia*, action protocols for the prison authorities with regard to persons deprived of liberty who have been recently admitted, those who are in rehabilitation, and those who are being reintegrated into society, and prompt and effective procedures to investigate possible torture, cruel, inhuman or degrading treatment. Lastly, the agreement emphasized that a multi-sectoral commission will be created to prepare the manual.[100]

99. In this regard, the Court finds it necessary to make the following observations.

i. Regarding article 332 of the Penal Code

100. The Court notes that, based on the State's acknowledgment of international responsibility, the dispute ceased as regards the facts that: (a) article 332 of the Penal Code did not specify the elements of the offense that would be considered liable to punishment, which led to their arbitrary and discretionary determination by law enforcement authorities; (b) this article opened up a wide margin of discretion that permitted arbitrary and, in some cases, massive arrests of young men based on suspicions or perceptions about their membership in a "*mara*," owing to the use of tattoos, the place where they lived, or other

[98] The implementation timetable indicates that the bill will be sent to Congress on September 1, 2012.

[99] The implementation timetable indicates that the approval and publication of the executive agreement on the regulatory reform will take place in November 2012.

[100] The implementation timetable indicates the following time frames: establishing the commission to prepare the proposal: March to June 2012; executive agreement on the installation of the commission, July 2012; drafting of the proposal, October and November, 2012; approval and entry into force of the manual, socialization of the proposal, February to May, 2013.

factors; (c) the absence of legal mechanisms or criteria to verify the existence of illegal conduct meant that article 332 did not meet the requirement of taking the maximum care to ensure that the State's punitive powers are administered respecting the fundamental rights, and (d) 22 of the inmates of cell No. 19 "were in [preventive] detention exclusively for the crime of unlawful association" (supra para. 36).

101. Furthermore, the Court notes the concerns expressed by several bodies of the United Nations and by domestic authorities with regard to the definition and/or application of the offense of unlawful association regulated by article 332 of the Penal Code. In this regard, the Honduran National Human Rights Commissioner indicated that, since mere membership in a "*mara*" or gang is an offense, by considering that an individual may belong to this type of organization, the police act as if it was a situation of *flagrante delicto,* which "is not limited to a specific act, but becomes a status."[101] For its part, the United Nations Human Rights Committee[102] has expressed its concern about the common practice of arrests based on suspicion, including mass roundups of people based on appearance alone and without a prior warrant from a competent authority. The United Nations Committee against Torture[103] has also expressed its concern owing to the fact that a presumed participant in unlawful association can be deprived of liberty without a warrant and that pretrial detention is mandatory. The United Nations Committee on the Rights of the Child[104] has expressed its concern about systematic preventive detention based on article 332 of the Penal Code, while the Working Group on Arbitrary Detention[105] has stated that the application of article 332 poses serious problems, among others, because the crime of unlawful association is defined as a continuous offense, which keeps the young suspects in a situation of "permanent flagrancy" and the Inter-American Commission[106] has indicated that, by granting such a broad margin of discretion, article 332 makes it possible to detain arbitrarily a large number of boys, girls and adolescents based on the mere perception that they belong to the *mara*.

102. The Court also recalls that, in this case, it found proven that the reform of the definition of the offense of unlawful association established in article 332 of the Penal Code, increased the penalties for this offense, while the text included explicit mention of the *maras* as a form of unlawful association, and this initiated the common police practice of arrests based on suspicion and mass arrests based on external appearance and without a warrant from a competent authority (*supra* paras. 26 and 27). This was reiterated by the different expert witnesses in the case, who also warned about the problems of the said definition in light of the principles of legality and culpability.[107]

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[101] 2003 Report of the National Human Rights Commission (CONADEH), Chapter II: Security and Justice (file of attachments to the merits report of the Commission, tome II, folio 981).

[102] *Cf.* U.N., Human Rights Committee, Concluding observations, Honduras, UN DOC CCPR/C/HND/CO/1, 13 December 2006, para. 13.

[103] *Cf.* U.N., Committee against Torture, Concluding observations, Honduras, UN DOC CAT/C/HND/CO/1, 23 June 2009, para. 19.

[104] *Cf.* U.N., Committee on the Rights of the Child, Concluding observations, Honduras, UN DOC CRC/C/HND/CO/3, 2 May 2007, para. 80.

[105] *Cf.* U.N., Working Group on Arbitrary Detention, Report on Mission to Honduras, UN DOC A/HRC/4/40/Add.4, 1 December 2006, paras. 86 to 92.

[106] *Cf.* Inter-American Commission on Human Rights, Juvenile Justice and Human Rights in the Americas, Document OEA/Ser.L/V/II. Doc. 78, of July 13, 2011, para. 131.

[107] In this regard, Marco Antonio Canteo stated that "because the definition of the crime of unlawful association does not establish the scope and characteristics that define membership in a *mara* or gang, it is extremely difficult for the Public Prosecution Service to develop the factual basis and bring to trial those accused of this offense. […] This opens up a latent possibility that it is the agents of justice […] who complete the parameters of the definition owing to the said imprecision, thus violating the principle of legality, as it relates to the absolute

103. Based on the foregoing, the Court appreciates the State's willingness to make the pertinent legislative reforms in order to adapt, *inter alia*, article 332 of the Penal Code to the Convention, and grants it one year to inform the Court of the adoption of the said amendments. In addition, when revising, amending or reforming the definition of the offense of unlawful association in Honduras, the State must take into account the relevant standards developed by the Court in its case law.

104. In this regard, it should be mentioned that the general obligation of the State to adapt its domestic law to the provisions of the American Convention in order to guarantee the rights established therein, pursuant to Article 2, entails the adoption of two types of measures, namely: (a) the elimination of norms and practices of any kind that involve violation of the guarantees established in the Convention or that disregard the rights recognized therein or prevent their exercise, and (b) the enactment of laws and the implementation of practices leading to real respect for these guarantees. The first measure is complied with by the reform, repeal or annulment of the laws or practices that have these implications, as applicable. The second obliges the State to prevent the recurrence of human rights violations; hence, the State must take all necessary legal, administrative and other measures to prevent similar facts from occurring in the future.[108]

105. In this regard, the Court recalls that the principle of criminal legality requires that the definition of an offense must use clear, precise terms that plainly describe the conducts liable to punishment, establish their elements, and allow them to be distinguished from conducts that are not punishable or unlawful conduct penalized by non-criminal measures.[109] Any ambiguity in the definition of offenses leads to doubts and allows the authority to use its discretion, which is particularly undesirable when establishing the criminal responsibility of the individual and penalizing this with punishments that severely affect fundamental rights such as life or liberty. This has particular significance for the role of the judge who, when applying criminal law, must adhere strictly to its provisions and observe the utmost rigor in matching the conduct of the accused to the definition of the

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preserve the law, because only the legislature is empowered to regulate the scope of the law," and that "[t]he definition contained in article 332 of the Honduran Penal Code, by incorporating the concepts "the heads or ringleaders of a *mara* or gang shall be punished […]," unquestionably contradicts the principle of guilt as it relates to responsibility for the act, and opens up a grave possibility of persecution based merely on suspicion, appearance and prejudice." Expert opinion provided by Marco Antonio Canteo during the public hearing of the case on February 28, 2012 (merits report, tome I, folios. 621 to 645), and see: *Cf.* Expert opinion provided by Carlos Tiffer-Sotomayor during the public hearing of the *Case of Servellón García et al. v. Honduras* on December 19, 2005, incorporated into the body of evidence under the thirteenth operative paragraph of the Order of the President of the Court of January 27, 2012, *supra* note 4 (merits report, tome II, folios 834 to 854).

[108] In this regard, Marco Antonio Canteo stated that "because the definition of the crime of unlawful association does not establish the scope and characteristics that define membership in a *mara* or gang, it is extremely difficult for the Public Prosecution Service to develop the factual basis and bring to trial those accused of this offense. […] This opens up a latent possibility that it is the agents of justice […] who complete the parameters of the definition owing to the said imprecision, thus violating the principle of legality, as it relates to the absolute preserve the law, because only the legislature is empowered to regulate the scope of the law," and that "[t]he definition contained in article 332 of the Honduran Penal Code, by incorporating the concepts "the heads or ringleaders of a *mara* or gang shall be punished […]," unquestionably contradicts the principle of guilt as it relates to responsibility for the act, and opens up a grave possibility of persecution based merely on suspicion, appearance and prejudice." Expert opinion provided by Marco Antonio Canteo during the public hearing of the case on February 28, 2012 (merits report, tome I, folios. 621 to 645), and see: *Cf.* Expert opinion provided by Carlos Tiffer-Sotomayor during the public hearing of the *Case of Servellón García et al. v. Honduras* on December 19, 2005, incorporated into the body of evidence under the thirteenth operative paragraph of the Order of the President of the Court of January 27, 2012, *supra* note 4 (merits report, tome II, folios 834 to 854).

[109] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 121, and *Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2009. Series C No. 207, para. 55.

offense, in order not to punish acts that are not punishable by law.[110]

106. In this regard, the Convention prohibits arrest or imprisonment by methods that may be legal but, in practice, are unreasonable or disproportionate.[111] The Court has established that to comply with the basic requirements to restrict the right to personal liberty, the State must justify and prove, in the specific case, the existence of sufficient indications that would allow for reasonable suspicion of the criminal conduct of the individual and that the detention is strictly necessary;[112] consequently, this cannot be based on mere suspicion or personal perceptions that the accused belongs to an illegal group or gang.

107. Furthermore, the Court understands that collective arrest may represent a mechanism to guarantee public security when the State has elements to prove that the actions of each individual arrested conforms to any of the grounds for arrest provided for in its domestic norms in keeping with the Convention. In other words, that there are elements to individualize and separate the conducts of each detainee and, at the same time, there is control by the judicial authority.[113]

108. Thus the State must ensure that any legal or administrative amendment or reform complies with the State's obligation to guarantee that arrests do not take place without legal grounds during which the State arrests groups of individuals that the authority supposes may represent a risk or danger to the safety of others, without substantiated evidence that an offense has been committed.[114] Consistent with the foregoing, in the cases of *Bulacio* and *Servellón García,* the Court established that the so-called *razzias* are incompatible with respect for the fundamental rights, including the presumption of innocence, and the existence of an arrest warrant – unless *flagrante delicto* is presumed.[115] Consequently, the said norms should not justify mass and arbitrary arrests of groups living on the margins of society.

ii. Other legal provisions

109. With regard to the Law on the National Penitentiary System, the Special Regulations for the Operation of the system, and the Prison Administration Manual (*supra* para. 98), the Court endorses the one-year period stipulated in the agreement for the State to report to the Court on the adoption of the said norms, which commences on notification of this Judgment.

110. The Court notes that, when drafting these norms, the State must take into account the standards on prison conditions established in paragraph 67 of this Judgment and other case law of the Court. The State must also implement effective prevention mechanisms in accordance with paragraph 68 of this Judgment in order to avoid and, if necessary, deal with crisis situations such as fires and other emergencies.

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110 *Cf. Case of De La Cruz Flores v. Peru. Merits, reparations and costs.* Judgment of November 18, 2004. Series C No. 115, paras. 79 to 82, and *Case of Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 125.

111 *Cf. Case of García Asto and Ramírez Rojas.* Judgment of November 28, 2005. Series C No. 137, para. 105, and *Case of Servellón García et al., supra* note 63, para. 90.

112 *Cf. Case of López Álvarez, supra* note 65 para. 69, and *Case of Servellón García et al.*, *supra* note 63, para. 90.

113 *Cf. Case of Servellón García et al., supra* note 63, para. 92.

114 *Cf. Case of Servellón García et al., supra* note 63, para. 93.

115 *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, para. 137, and *Case of Servellón García et al., supra* note 63, para. 93.

111. In this regard, the Court takes note of other international instruments to which Honduras is a party[116] that incorporate pertinent prevention mechanisms by which independent external organizations or entities can monitor that the rights of those deprived of liberty are respected by regular visits to detention centers. In this regard, when designing these mechanisms, the State should take into consideration the opinion of expert witness Mario Luis Coriolano, to the effect that:[117]

> Regular permanent monitoring by both the person in charge and by independent external entities is crucial. The Optional Protocol to the Convention against Torture allows for action to be taken on site, legitimated by international law, [using] the national preventive mechanisms that some […] countries haves already implemented; although many others have still not complied with this international norm. [These] monitoring visits can detect [the different shortcomings regarding the following] three dimensions: [i] the material and technological tools […]; [ii] the procedural aspects; namely, the operating regulations under normal circumstances […], and [iii] the important role played by the personnel to ensure that emergency teams are available at all times, every day of the year.

112. In addition, in the Special Regulations for the Operation of the National Penitentiary Service and the Prison Administration Manual (*supra* para. 98(c) and (d)), the State must establish mechanisms to define the chain of responsibility in the prisons in order to respond to the main needs of the prison, and to deal with any negligence that impairs the rights of the inmates. In this regard, expert witness Coriolano stated that:

> Two very different levels of responsibility [can be analyzed,[118] one] relating to public policies, that is decisions on legislation, regulations or general regulatory bodies, [and then] a level of responsibility [relating to] hierarchic structures of management responsibility […] that concerns senior management, as noted by many standards, [which] has to ensure [supervision] of [these] dimensions at all times. [This] leads to a hierarchic structure of responsibility with pre-defined roles that allows measures to be taken by different agents and at fundamentally different times, according to each level of responsibility**,** [deploying] short, medium, and long-term emergency measures.

c) Training for prison officials and emergency plans

113. The friendly settlement agreement indicates that the Prison Administration Manual (supra para. 98(d)) must contain: (a) training programs for prison police and civilian personnel that include human rights education, and (b) emergency and evacuation plans in case of fire or other types of disaster.

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[116] On December 8, 2004, Honduras acceded to the Optional Protocol to the Convention against Torture and ratified it on May 23, 2006. In this regard, the State of Honduras, in its domestic law, approved the Law on the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (hereinafter "the NMP" of December 5, 2008, the purpose of which is the integration and technical, institutional and budgetary establishment of the NMP exercised by the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment. In this regard, in its report on its visit to Honduras dated February 10, 2010, the Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment expressed its satisfaction with the said law and its content; however, in its third Annual Report dated March 25, 2010, the Subcommittee underscored that, at the time of its visit, the State had still not elected the members of the NMP; in its fourth Annual Report dated February 3, 2011, it made no mention in this regard. The Subcommittee will be making a follow-up visit to Honduras from April 30 to May 4, 2012.

[117] Expert opinion provided by Mario Luis Coriolano during the public hearing of the case on February 28, 2012.

[118] In this regard, the expert witness added that the two levels of responsibility, "are, in turn, related to two conceptual clusters, [one] related to the prison in its broad meaning as places of imprisonment, [associated] with the protection of life, physical integrity and decent treatment; [and the other] related to security, strictly speaking, [associated] with the protection of those deprived of liberty to avoid escapes, uprisings and fire. In our region, this has reached a point that […] has resulted in a decrease in the rate of imprisonment; this decrease may be obtained by establishing alternative punishments to deprivation of liberty and promoting reinsertion and rehabilitation programs in prisons." Expert opinion provided by Mario Luis Coriolano, *supra* note 117.

114. The Court endorses this training action and considers it appropriate to underscore that such programs must include, among other topics, those related to the international standards with regard to prisons and the relevant inter-American case law. These programs or courses must be permanent and addressed at officials of all ranks of the Honduran prison system. Furthermore, these programs must be coordinated with those previously ordered by the Court in the case of *López Álvarez v. Honduras* (*supra* para. 93).

2. Rehabilitation

a) Medical and psychological care for the victims

115. Under the friendly settlement agreement, the State undertook to appoint a professional team of psychologists and/or psychiatrists with experience in this area to provide the psychological and/or psychiatric treatment required by the next of kin of 107 victims free of charge and immediately, for a minimum of 18 months, including the prescription and supply of any medicines they needed, taking into account any mental problems detected by the diagnosis and clinical evolution of the patients. In addition, the implementation timetable indicates that the treatment of the next of kin by the team of psychologists and/or psychiatrists will commence in July 2012.

116. The Court endorses this measure of reparation, which must be complied with in keeping with the following criteria. The State's obligation is to provide, free of charge and through its specialized health institutions, immediate, appropriate and effective medical, psychological or psychiatric treatment to the next of kin declared victims in this case, following their informed consent, including the provision, free of charge, of any medicines that may be required taking into consideration the problems of each victim. If the State does not have such institutions, it must resort to private or specialized civil society institutions. Furthermore, the respective treatments must be provided, insofar as possible, in the centers closest to their places of residence[119] in the Republic of Honduras for as long as necessary. When providing the psychological or psychiatric treatment, the specific circumstances and needs of each victim must be considered, so that they are provided with family and individual care, as agreed upon by each of them and following individual assessment.[120]

117. The individualized victims who require this measure of reparation, or their legal representatives, have six months from notification of this Judgment to advise the State of their intention to receive medical, psychological or psychiatric care.[121]

118. Regarding the next of kin of the 89 victims who have not yet been identified, the Court assesses positively the State's willingness to provide them with medical care, and therefore considers it pertinent that these people receive this benefit under the conditions described above (supra para. 115). To this end, Honduras must provide information on this assistance in the respective announcements (supra para. 88), and also when the beneficiaries are identified, so that, if applicable, they may indicate their intention of receiving treatment within one year of notification of this Judgment.

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[119] *Cf. Case of the Dos Erres Massacre, supra* note 78, para. 270, and *Case of González Medina and family, supra* note 13 para. 293.

[120] *Cf. Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of González Medina and family, supra* note 13, para. 293.

[121] *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 252, and *Case of González Medina and family, supra* note 13, para. 293.

3. Satisfaction

a) Publication and dissemination of this Judgment

119. The friendly settlement agreement does not establish this measure of satisfaction. However, in their pleadings and motions brief, the representatives asked that the Court order the publication of the Judgment, in both the Official Gazette and in two of the main newspapers.

120. In view of the significance and enormity of the violations declared, the Court orders that the State publish, once, within six months of notification of this judgment: (a) the official summary of the Judgment prepared by the Court in the Official Gazette; (b) the same official summary in a national newspaper with widespread circulation, and (c) this Judgment, in its entirety, available for at least one year on an appropriate official website, taking into account the characteristics of the publications ordered.

b) Public act of acknowledgment of international responsibility

121. Under the friendly settlement agreement, the State made an acknowledgment of international responsibility during the public hearing on February 28, 2012 (*supra* paras. 14 and 15). In addition, in the agreement, the State undertook to organize an official public acknowledgment of international responsibility on May 17, 2013, for the victims and their next of kin in relation to the factual and legal issues established in the Commission's Merits Report. Moreover, this public acknowledgment will be made by the President of the Republic and an invitation will be sent to the entire Cabinet, the heads of the Attorney General's Office, the Prosecutor General's Office and the Supreme Court of Justice. In addition, the event must be organized in coordination with the representatives.

122. The Court assesses positively the State's willingness to organize a public act to acknowledge its international responsibility for the facts of this case and therefore endorses the measure. The State, with the collaboration of the representatives, must try, insofar as possible, to ensure that most of the victims' next of kin attend this ceremony. To this end, the State must facilitate, *inter alia*, the necessary transport and logistics for participants.

4. Other measures requested

123. In their pleadings and motions brief, the representatives asked the Court to order the State to provide other measures of reparation,[122] which were not included in the friendly settlement agreement. In this regard, the Court finds that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and appropriate to redress the violations suffered by the victims, and does not consider it necessary to order other

[122] The representatives requested the following measures of reparation: (a) publication, at the State's expense, of a document that systematizes and recovers the historical memory of the events, prepared by the representatives of the victims and their next of kin; (b) establishment of a foundation by the State, with its own legal personality, independent of the State, but attached to the Catholic Church, with the purpose of researching and studying the causes and consequences of violence in the country, as well as to support its victims; (c) agreement on and approval of a proposal and its corresponding socialization methods, presented by human rights and similar organizations, that defines new public safety policies; (d) a public act rejecting and abandoning the current public safety policies, especially those relating to the fight against organized crime, and (e) the formal installation of a commission, sworn in by the National Congress and composed of a multidisciplinary and inter-institutional team of human rights organizations and State agents to follow up on the judgment delivered in these proceedings, under the supervision of this Court.

measures.[123]

D. Obligation to investigate the facts that gave rise to the violations, and to identify, prosecute and, as appropriate, punish those responsible

124. The State acknowledged its responsibility for the violations of the rights to judicial guarantees and judicial protection because it failed to investigate the facts of the case within a reasonable time and with due diligence, and did not take the necessary measures to establish the respective criminal, administrative or disciplinary responsibilities after the dismissal declared by the domestic courts, which is why the facts have remained in impunity for almost eight years.

125. In the friendly settlement agreement, the State undertook to conduct an investigation, within a reasonable time not to exceed one year, by creating an independent commission in order investigate those responsible, by act or omission, for the events that led to the death of the 107 individuals deprived of liberty (hereinafter "Investigation Commission"). This Investigation Commission will consist of seven people, experts in criminal investigations, coordinated by an *ad hoc* prosecutor from the Public Prosecution Service, and it will make recommendations to the competent institutions or entities responsible for taking the corresponding action. In addition, the next of kin will have the right to be informed during all stages of the investigation process. Under the timetable for the implementation of the agreement, the *ad hoc* prosecutor who will coordinate the Investigation Commission would be appointed on April 10, 2012, and the Commission would commence its work in June 2012**.**

126. The Court assesses positively the State's willingness to clarify the facts of the case by creating the Investigation Commission. In this regard, the Court considers that the commission must be independent and have the necessary human and material resources to perform it duties properly.

127. However, in a case involving denial of justice such as this one, the State's obligation to ensure access to justice should not be understood fulfilled by the eventual creation and results of an investigation commission. Thus, the Court finds it pertinent to reiterate, as it has in other cases, that the "historical truth" documented in the reports of special commissions does not complete or replace the State's obligation to establish the legal truth through judicial proceedings.[124] Therefore, even though the commission may contribute to establishing the facts, the State must comply with the obligation to investigate the facts that constituted the human rights violations declared in this judgment and, as appropriate, punish them, using the pertinent legal mechanisms.

128. Based on the above, this Court orders that the State must conduct a serious, impartial and effective investigation[125] of the facts of this case in order to elucidate them, establish the truth and the corresponding criminal, administrative and/or disciplinary

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[123] *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, paras. 127 and 132, and *Case of González Medina and family, supra* note 13, para. 204.

[124] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154 para. 150, and *Case of Contreras et al., supra* note 18, para. 135.

[125] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Interpretation of the judgment of merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 159 para. and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010 Series C No. 217, para. 65.

responsibilities, and impose the punishments and consequences provided by law.[126] This obligation must be fulfilled diligently and within a reasonable time. Moreover, the State must ensure that the investigation includes the identification of the officials alleged to be responsible for the facts relating to the fire at the San Pedro Sula prison.

129. The Court recalls that the obligation to investigate is an obligation of means and not results that must be assumed by the State as its inherent legal duty and not as a mere formality preordained to be ineffective, or as a measure taken by private interests that depends on the procedural initiative of the victims or their next of kin, or upon their offer of proof.[127]

130. In this regard, the State must guarantee full access and legal standing to the next of kin of the victims at all stages of the proceedings. The purpose of this participation is access to justice and knowledge of the truth of what happened.[128]

E. Compensation and opportunities fund

1. Pecuniary and non-pecuniary damage

131. In section 6(d) "Mechanisms and Procedures" of the friendly settlement agreement, the parties asked the Court to preserve the confidentiality of the amounts of the compensation, expenses and costs established in the fifth operative paragraph of the agreement, for security reasons (*supra* para. 77). Based on this request, and taking into account the reason for it, the Court will not record these amounts in this Judgment.

132. In the friendly settlement agreement the State and the representatives agreed upon a global amount for compensation, broken down into an amount for pecuniary damage, expenses and costs, and another amount for "non-pecuniary damage," to be paid over two fiscal exercises. In addition, the amount corresponding to the "pecuniary damage […] will constitute the compensation and opportunity fund for the next of kin of the [107] individuals deprived of liberty who lost their life in the San Pedro Sula Prison […]; it will be regulated by setting up a trust fund, the regulations of which will be drawn up by the San Pedro Sula Diocese of the Catholic Church. The categories of the trust fund will be calculated on a percentage basis for the education, health, and funeral expenses of the families of the victims."

133. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it should be compensated. This Court has established that pecuniary damage supposes "the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal relationship to the facts of the case."[129]

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[126] *Cf. Case of Velásquez Rodríguez*, *Merits, supra* note 10, para. 174, and *Case of Contreras et al., supra* note 18, para. 185.

[127] *Cf. Case of Velásquez Rodríguez*. *Merits*, *supra* note 10, para. 177, and *Case of González Medina and family, supra* note 13, para. 203.

[128] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Contreras et al., supra* note 18, para. 187.

[129] *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of González Medina and family, supra* note 13, para. 276.

134. Furthermore, regarding non-pecuniary damage, the Court has established that "it can include the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are highly significant to individuals, as well as the changes, of a non-pecuniary nature, in the living conditions of the victims or their next of kin."[130]

135. In addition, the Court reiterates that, according to its case law,[131] costs and expenses are included in the concept of reparation, since the measures taken by the victims to obtain justice, at both national and the international level, involve expenditure that must be compensated when the international responsibility of the State is declared in a judgment. As regards their reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction as well as those arising during the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.

136. The Court finds that the undertaking to compensate the victims, which includes the monetary reparation agreed by the parties in the friendly settlement agreement for pecuniary and non-pecuniary damage, represents a positive step by Honduras to comply with its international convention-based obligations. However, the Court observes that, under the agreement, global amounts were decided, without establishing specific amounts for each victim or the way in which they would be distributed. Consequently, taking into consideration the willingness of the parties to reach the said agreement and the mechanism for implementing it, the Court finds that the amounts agreed for both pecuniary and non-pecuniary damage and for costs and expenses should be duly determined by the compensation and opportunities trust fund and distributed to the victims, injured parties in this case, (*supra* para. 132), as well as the direct next of kin of the 89 deceased inmates who authenticate their capacity as beneficiaries of this case.

137. The State must comply with the obligation defined in paragraphs 86 to 90 of this Judgment to identify the beneficiaries of the reparation and must inform the Court, within one year of notification of this Judgment on the steps taken to fulfill this obligation. In addition, the benefits of the compensation and opportunities fund must be delivered to the injured parties and beneficiaries of the agreement within three years of notification of this Judgment.

F. Means of compliance with the payments ordered

138. The State must pay the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment directly to the persons and organization indicated in this Judgment, within the time frames established in the friendly settlement agreement and decided herein, in the terms of the following paragraphs, and without any reduction for possible taxes and charges.

139. If any of the next of kin of the victims indicated in Annexes C and D should die before they have received the respective compensation, this must be delivered directly to their heirs, in accordance with the applicable domestic laws.

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[130] *Case of the "Street Children" (Villagrán Morales et al.) supra* note 83, para. 84, and *Case of González Medina and family, supra* note 13, para. 315

[131] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of A 1998. Series C No. 39, para. 79 and *Case of González Medida and family, supra* note 13, para. 325.

140. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent in Honduran Lempiras, using the exchange rate in force on the New York currency market the day before payment to make the respective calculation.

141. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established for non-pecuniary damage within the time indicated, the State must deposit the amounts in an account or a deposit certificate in their favor in a solvent Honduran financial institute or the trust fund set up under the agreement, in Honduran Lempiras, and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

142. If the State should fall into arrears, it must pay interest on the amount owed, corresponding to the banking interest on arrears in the Republic of Honduras.

IX
OPERATIVE PARAGRAPHS

143. Therefore,

THE COURT

DECIDES,

unanimously,

1. To endorse the friendly settlement agreement signed by the State of Honduras and the representatives of the victims and presented to the Court at the public hearing held on February 28, 2012, in the terms of paragraphs 14 to 22 of this Judgment.

2. To accept the acknowledgment of international responsibility made by the State, in the terms of paragraphs 18 to 22 of this Judgment.

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the obligation to guarantee the rights to life and to humane treatment established in Articles 4(1), 5(1), 5(2) and 5(6) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 107 persons deprived of liberty who lost their lives, identified in Annex A of the Judgment, in the terms of paragraphs 16, 20 and 60 to 69 hereof.

2. The State is responsible for the violation of the rights to humane treatment, personal liberty, and freedom from *ex post facto* laws established in Articles 5(4), 7 and 9 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the 22 individualized deceased inmates who were in preventive detention in cell No. 19 together with individuals who had been sentenced and convicted, and who are identified in Annex B of the Judgment, in the terms of paragraphs 16, 20, 61 and 84 of the Judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, as well as for the violation of the right to humane treatment established in Article 5(1) of the Convention, all in relation to Article 1(1) thereof, to the detriment of the 83 next of kin of the deceased inmates identified in Annex C of the Judgment, in the terms of paragraphs 16, 20, 62 and 70 to 75 of the Judgment.

AND DECIDES

unanimously, that:

1. This Judgment constitutes *per se* a form of reparation.

2. The State must, within 60 days of notification of the Judgment, in coordination with the representatives, make the announcements described in paragraph 88 in order to establish the beneficiaries of the measures of reparation decided in the friendly settlement agreement, in the terms of paragraphs 85 to 90 and 118 of this Judgment.

3. The State must adopt, within the established time frames, the legislative, administrative and other measures required to make substantial improvements in the prison conditions as described in paragraph 95 of the Judgment, adapting them to international standards; above all, to prevent fires and other critical situations and also to avoid overpopulation and overcrowding, in the terms of paragraphs 95 and 96 of this Judgment.

4. The State must implement immediate measures to guarantee the fundamental rights of prisoners, as well as disaster-prevention measures in the different detention centers indicated in the agreement. Within six months of notification of this Judgment, it must submit a report on the urgent measures adopted to guarantee the fundamental rights of prisoners, as well as disaster-prevention measures in the different centers indicated in the friendly settlement agreement, in the terms of paragraph 97 of the Judgment.

5. The State, within one year, must adopt the legislative measures decided in the friendly settlement agreement and endorsed by the Court in the Judgment, in the terms of paragraphs 100 to 112 hereof.

6. The State must implement training programs for civilian and police prison personnel, and also emergency and evacuation plans in case of fire or other disasters, in the terms of paragraphs 113 to 114 of this Judgment.

7. The State must provide medical and psychological treatment to the victims' next of kin who request this, in the terms of paragraphs 115 to 118 of the Judgment.

8. The State must make the publications indicated in paragraph 120 of this Judgment, within six months of its notification.

9. The State must carry out a public act of acknowledgment of international responsibility, as established in paragraphs 121 and 122 of this Judgment.

10. The State must investigate the facts of this case in order to clarify them, determine the truth and the corresponding criminal, administrative and/or disciplinary responsibilities, and impose the punishments and consequences provided by law, in the terms of paragraphs 124 to 130 of this judgment.

11. The State must pay the amounts established in the agreement as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, as appropriate, in the terms of paragraphs 131 to 142 of the Judgment, within three years of its notification.

12. The State must provide the Court with a report on the measures adopted to comply with each paragraph of this Judgment within 13 months of its notification. In addition, it must provide information on the measures taken to establish the trust fund and make the payment of compensation for pecuniary and non-pecuniary damage described in the agreement, in the terms of paragraph 137 of this Judgment.

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

Judge Eduardo Vio Grossi informed the Court of his Separate Opinion, which accompanies this Judgment.

Done, at Guayaquil, Ecuador, on April 27, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE EDUARDO VIO GROSSI
CASE OF PACHECO TERUEL *ET AL. v.* HONDURAS
JUDGMENT OF APRIL 27, 2012
(*Merits, reparations and costs*)
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Introduction

I issue this separate opinion[1] in relation to the Judgment delivered by the Inter-American Court of Human Rights (hereinafter, the former "the Judgment" and the latter "the Court") in order to record expressly that, even though I support it and, in particular, the endorsement or approval it indicates of the friendly settlement agreement reached by the parties, dated February 28, 2012 (hereinafter "the Agreement") (paras. 19 and 21), I do not agree with what it indicates regarding "*[i]n section 6(d) "Mechanisms and Procedures" of the […] agreement, the parties asked the Court to preserve the confidentiality of the amounts of the compensation, expenses and costs established in the fifth operative paragraph of the agreement, for security reasons […]"* and that *"[b]ased on this request, and taking into account the reason for it, the Court will not record these amounts in this Judgment*" (para. 131).

The reasons for my disagreement in this regard consist in, on the one hand, that even though the parties presented the Agreement during the hearing of February 28, 2012 (para. 14), the Judgment does not include it as an annex and only describes it, omitting the said amounts (para. 17) and, on the other hand, that it indicates, however, that *"the Court observes that, under the agreement, global amounts were decided, without establishing specific amounts for each victim or the way in which they would be distributed," and that [c]onsequently, taking into consideration the willingness of the parties to reach the said agreement and the mechanism for implementing it, the Court finds that the amounts agreed for both pecuniary and non-pecuniary damage and for costs and expenses should be duly determined by the compensation and opportunities trust fund and distributed to the victims, injured parties in this case, (supra para. 132), as well as to the direct families of the 89 deceased inmates who authenticate their capacity as beneficiaries of this case";* concluding in its eleventh operative paragraph that *"[t]he State (of Honduras, hereinafter "the State") must pay the amounts established in the agreement as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, as appropriate, in the terms of paragraphs 131 to 142 of the Judgment."*

Based on the foregoing, my discrepancy with the Judgment concerns the meaning and scope of the norms relating to friendly settlement agreements and the Court's judgments, to the inclusion in the latter of the pertinent reparations and compensation and their execution, to the principle of transparency that must inspire them, to the rights of the injured party and of third parties recognized by them and, lastly, to the security reasons

[1] Art. 66(2) of the American Convention: *"If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.*

cited in this case in order to request and decide the confidentiality of the amounts of the compensation, expenses and costs.

I. The friendly settlement agreement and the Court's judgments

A. The friendly settlement agreement

Article 63 of the Rules of Procedure of the Court[2] (hereinafter "the Rules of Procedure"), refers to the friendly settlement agreement as follows:

> *"When the Commission, the victims or alleged victims, or their representatives, the respondent State or, if applicable, the petitioning State in a case before the Court inform it of the existence of a friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time."*

This provision reveals that the friendly settlement agreement does not end the proceedings, but may merely make a contribution towards its settlement. Furthermore, it is not binding on the Court, because it is the Court that must decide on its validity and its legal effects. In other words, the Court can endorse it, reject it, amend it or complement it. In addition, the Court may do this when it considers opportune and, in any case, before delivering judgment or in the judgment.

In this regard, it should be recalled, first, that Article 64 of the Rules of Procedure add that:

> *"Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles."*

Second, it should be considered that both these regulatory provisions are in keeping with those relating to the judgments of the Court (Chapter VII: Judgments, Arts. 65 to 69 of the Rules of Procedure), and it has not been established that the friendly settlement agreement substitutes a judgment.

And, it is precisely on this basis that the agreement in this case indicates that the Court will be asked to endorse it "*when delivering its judgment that ends this litigation"* (para. 17) and that this is what the Court has done, complementing it in accordance with the corresponding justification (paras. 22 and 78).

B. The Judgment of the Court

For its part, Article 63(1) of the American Convention on Human Rights[3] (hereinafter "the Convention") refers to the Court's judgments as follows:

> *"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."*

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[2] Approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

[3] Approved on November 22, 1969, at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entering into force on July 18, 1978, and currently ratified by 24 States.

Evidently, since this is a treaty-based norm, it ranks higher than the statutory and regulatory norms, so that the latter must be consistent with it.

Accordingly, by endorsing the friendly settlement agreement, as in this case, its content becomes part of the respective judgment of the Court, which is "final and not subject to appeal" according to Article 67 de the Convention, ceasing to be an instrument agreed by the Parties in litigation to become a ruling delivered by the Court.

C. The reparations and compensation

The judgment of the Court must include, among other matters, as indicated in Article 65(g) and (h) of the Rules of Procedure:

> *"the ruling on the case,"* and
> "the decision on reparations and costs, if applicable."

Also, it should be recalled that, according to Article 66(1) of the Rules of Procedure,

> "When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon."

The above signifies, therefore, that the corresponding judgment of the Court that endorses a friendly settlement agreement must indicate, as pertinent, on the one hand, if it endorses, rejects, amends or complements the settlement and, on the other hand, the reparations and costs; although the Court may also decide the latter in a judgment on reparations and costs.

From the foregoing, it can be concluded that there is no norm in the Convention, the Statute or the Rules of Procedure that exempts the Court from determining the corresponding reparations and compensation in its judgment, either on merits or on reparations and costs, including those that endorse a friendly settlement reached by the parties.

II. Execution of judgment

A. Confidentiality of the amount of the compensation

However, it must be added that there is also no provision in the Convention, the Statute or the Rules of Procedure that authorizes the Court to keep the amount of the reparations and compensation that it decides in its judgments confidential or secret.

Moreover, to the contrary, there is a treaty-based provision that supports precisely the publication of this amount or *quantum*. Thus, Article 68(2) of the Convention establishes:

> "That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the State."

According to this treaty-based provision, the execution at the domestic level of an international judgment necessarily implies that everything this judgment orders be publicized. Otherwise, its full and complete execution would be impossible. Thus, the question that arises in this regard is how can the international judgment be executed at the domestic level of the State concerned, as it relates to compensation, if it does not include the amount.

Since the Judgment orders that *"[t]he State must pay the amounts established in the agreement as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, as appropriate, in the terms of paragraphs 131 to 142 of the Judgment*" (eleventh operative paragraph), it is logical to conclude that, in order to comply with this obligation, the State will be obliged to publicize these amounts, at least to the institutions that must intervene in the said payment, so that there is no reasons for them not to appear in the judgment.

B. Principle of transparency

We must also consider the respect for the principle of transparency that inspires the rulings of the Court. This is established in particular in Article 69 of the Convention, which stipulates:

> "The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention."

In turn, Article 24(3) of the Court's Statute provides that:

> *"The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."*

Meanwhile, the Rules of Procedure establish, in their Article 32 entitled *"Publication of judgments and other decisions,"* that:

> *1. The Court shall make public:*
> *a. Its judgments, orders, opinions, and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules;*
> *b. Documents from the case file, except those considered unsuitable for publication;*
> *c. The conduct of the hearings, except private hearings, through the appropriate means;*
> *d. Any other document that the Court considers suitable for publication.*
> *2. Judgments shall be published in the working languages used in each case. All other documents shall be published in their original language.*
> *3. Documents submitted to the Secretariat of the Court that relate to cases already adjudicated shall be made accessible to the public, unless the Court decides otherwise.*

While Article 67(6) of the Rules of Procedure indicates:

> *"The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States Parties; the Commission; the victims or alleged victims, or their representatives; the respondent State; the petitioning State, if applicable; the Permanent Council through its Presidency; the Secretary General of the OAS; and any other interested person who requests them."*

Thus, the said provisions determine the publicity and publication of the Court's decisions, including its judgments. In addition, they stipulate their notification or communication not only to the parties to the respective litigation, but also to the States Parties to the Convention. And, lastly, it is not only the aforementioned that may request a copy of the judgments, but also the organs of the Organization of American States, and even any other person who requests them.

Hence, all the natural and legal persons indicated above have a right to know the judgments in full, especially when the provisions that regulate the judgments include no indication that the Court is empowered to decide that part of them is confidential or secret. Article 32(1)(b) of the Rules of Procedure merely authorizes the Court not to publish "*documents from the case file*" that it considers *"irrelevant" or "unsuitable"* and, evidently, the amount or *quantum* of the compensation cannot be considered, *per se*, to fall into these categories, as the Judgment appears to suggest.

C. Right of the injured party

But, with regard to the above, it should also not be overlooked that the matter in question entails, in particular, the exercise of the right of the party who has been injured by the human rights violations to claim from the respective State, under the second sentence of Article 63 de the Convention, reparation for "*the consequences of the measure or situation that constituted the breach of such right or freedom […] and that fair compensation be paid"* as decided in the corresponding judgment. Thus, the question is how "*the injured party*" can claim, at the domestic level, the "*fair compensation*" decided in an international judgment if this judgment does not include the respective amount; a circumstance that would evidently impede the assessment of whether or not the latter is fair. This is precisely what would happen in the case of the Judgment.

D. The right of third parties

The foregoing is especially relevant in the case of the right of third parties who were not parties to the proceedings. This is the point that is raised in the Judgment when it decides that the State must establish an appropriate mechanism for the accreditation before the Ombudsman's Office of the direct family members of the 89 deceased victims who were not identified in the Merits Report of the Inter-American Commission on Human Rights that originated this case and must also announce in different media that an effort is being made to identify the said family members so that they can *"be provided with reparation as beneficiaries of the measures set out in the friendly settlement agreement*" (paras. 85 to 90).

In other words, the issue that arises in relation to the decision made in the instant case is how the said family members, third parties who did not take part in the proceedings before the Court and whose number and identity is unknown, can determine whether or not it is desirable to accredit themselves as such in order to exercise their right to be provided with reparation, recognized in the Judgment in this case, if they do not know the amount of the compensation ordered in it and cannot access this information.

E. Security reasons

Lastly, we must take into account that, not only are the *"security reasons"* cited in the agreement to justify the requested confidentiality not explained or recorded in the proceedings, but also, if they exist, they are probably related to the eventual controversies or disputes that could arise among the victims' next of kin in this case based on their expectations concerning the *quantum* or amount of the compensation. Therefore, it might be possible to maintain that the *"security reasons"* cited, although not explained, in either the agreement or the Judgment, are related in this case to creating the conditions required for the agreement to be endorsed by the Court and that, consequently, once this endorsement was obtained, the requested confidentiality would not be necessary in this regard.

It should be added that the precedent established by deciding the said confidentiality in this Judgment based on *"security reasons"* that are not explained or reported could be detrimental to the administration of justice by the Court, inasmuch as it could grant a certain margin of doubt to the general public's assessment of the discretionality of such decisions that could be perceived as arbitrary.

And this is especially because the mere general mention of *"security reasons"* made by the entity requesting the said confidentiality or secret, without specifying what this consists in or is based on, is unreasonable and absolutely insufficient as justification for the Judgment that grants this confidentiality or secret, also without indicating the reasons that warrant it.

Conclusion

It is based on all the above that I conclude that the request to maintain the confidentiality of the amounts decided in the Agreement could only have been made for it to have effect until the Judgment was delivered, because the Judgment should, evidently, specifically include those amounts and, consequently, they should be public knowledge, particularly to ensure that the judgment may be duly executed and that third parties can assert their rights. The principle of transparency that inspires the proceedings before the Court and all its actions imposes this, with the obvious and justifiable exceptions that occur in certain cases, but which do not exist in this one or, at least, are not recorded in the proceedings, so that they cannot be assessed and understood as grounds for the decision taken.

Judge Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary