

**Inter-American Court of Human Rights**  
**Case of Juan Humberto Sánchez v. Honduras**

**Judgment of June 7, 2003**  
**(Preliminary Objections, Merits, Reparations and Costs)**

In the Juan Humberto Sánchez case,

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

Antônio A. Cançado Trindade, President;  
Sergio García Ramírez, Vice-President;  
Máximo Pacheco Gómez, Judge;  
Hernán Salgado Pesantes, Judge;  
Oliver Jackman, Judge; and  
Alirio Abreu Burelli, Judge;

also present,

Manuel E. Ventura Robles, Secretary, and  
Pablo Saavedra Alessandri, Deputy Secretary;

pursuant to Articles 29, 36, 55, 56 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), and to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), issues the following Judgment on the instant case.

**I**  
**INTRODUCTION OF THE CASE**

1. On September 8, 2001, pursuant to the provisions of Articles 50 and 51 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the Republic of Honduras (hereinafter "the State" or "Honduras") originating in complaint No. 11.073, received at the Secretariat of the Commission on October 19, 1992.

The Commission argued in its application that Juan Humberto Sánchez, the alleged victim, had twice been detained by the Honduran armed forces "for his alleged ties with the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) of El Salvador."

The first capture allegedly took place on July 10, 1992, and was carried out by members of the Tenth Infantry Battalion of Marcala, La Paz, under the command of second lieutenant Ángel Belisario Hernández González, and he

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\* Judge de Roux Rengifo informed the Court that, due to *force majeure*, he would be unable to attend the LIX Regular Session of the Court, for which reason he did not participate in the deliberation, decision, and signing of the instant Judgment.

was released on July 11, 1992 for lack of evidence on the charges for which he was detained.

The second capture was allegedly carried out by members of the First Battalion of Territorial Forces at his home during the night of that same day, July 11. On July 22, 1992 the next of kin of the alleged victim heard that the body of Juan Humberto Sánchez had been found "in a deep pool of the 'Río Negro,' stuck between the stones and in a state of decay [,] [...] with a rope around the neck that crossed his chest and tied his hands toward the back and there were signs of torture."

On the other hand, the Commission argued that on July 20, 1992, before the body of the alleged victim was found, a habeas corpus remedy had been filed before the Appellate Court of Comayagua for the "kidnapping and detention" of Juan Humberto Sánchez. This habeas corpus remedy was rejected on August 14, 1992.

Furthermore, the Commission pointed out that to date no person has been tried or punished for the "kidnapping, torture, and execution" of Juan Humberto Sánchez, for which reason there continues to be a situation of impunity with respect to the case. In this regard, the Commission also stated that the criminal proceeding followed there has been marked by a "lack of seriousness and effectiveness," that it has been insufficient and that from the start it has faced numerous obstacles, including intimidation and threats against witnesses and relatives of the alleged victim.

2. In view of the above, the Commission asked the Court to find that the following rights were breached to the detriment of Juan Humberto Sánchez: Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial) and 25 (Judicial Protection), in combination with the obligation set forth in Article 1(1) (Obligation to Respect and Ensure Rights) of the American Convention. The Commission also requested that the Court order the State to adopt a series of pecuniary and non-pecuniary measures of reparation (*infra* 154, 160, 171, 181 and 192).

## II COMPETENCE

3. Pursuant to the terms of Articles 62 and 63(1) of the American Convention, the Court is competent to hear the instant case, because Honduras has been a State Party to the Convention since September 8, 1977, and it accepted the contentious jurisdiction of the Court on September 9, 1981.

## III PROCEEDING BEFORE THE COMMISSION

4. Case No. 11.073 was opened by the Inter-American Commission on October 20, 1992 in view of a complaint filed by the *Comisión para la Defensa de los*

*Derechos Humanos en Centroamérica* (hereinafter "CODEHUCA" or "the applicants").<sup>1</sup>

5. The applicants submitted to the Commission their pleadings regarding admissibility and the merits of the matter on November 19, 1992, April 2, 1993, December 7, 2000, and January 29, 2001, and the State submitted its pleadings on April 6, 1993, July 14, 1997, and July 12, 1999. They were forwarded to the respective parties at the appropriate times.

6. On June 11, 1999, the Commission sent a communication to the parties making itself available with the aim of attaining a friendly settlement, pursuant to "Articles 48(1)(f) of the American Convention and 45(1) of the Rules of Procedure of the Commission."

7. On March 6, 2001, during its 111<sup>th</sup> Session, the Commission adopted Report No. 65/01 on admissibility and the merits of the case, and it decided:

1. That it is competent to hear th[e] case and that the complaint is admissible pursuant to Article 46 of the American Convention.

2. That, based on the proven facts and the analysis [carried out], the Commission finds that the State of Honduras is responsible for the violation, to the detriment of Juan Humberto Sánchez, of the rights to life (Article 4), to humane treatment (Article 5), to personal liberty (Article 7), to fair trial (Article 8(1)) and to judicial protection (Article 25), in combination with the general obligation to respect and ensure the rights protected by the American Convention, set forth in Article 1(1) of said treaty.

The Commission also recommended to the State that it:

1. Conduct a serious, impartial and exhaustive investigation of the facts stated in the complaint, with the aim of establishing the criminal responsibility of all the perpetrators of the kidnapping and execution of Mr. Sánchez and to establish whether there are other facts or actions by State agents that have obstructed the complete investigation and punishment of those responsible;

2. Make effective and prompt reparations for the violation to the next of kin of the victim;

3. Adopt such measures as m[ight] be necessary to prevent and avoid recidivism of similar facts.

8. Said report was sent by the Commission to the State on June 8, 2001, with a request for it to report, within two months, on the measures adopted to comply with the recommendations of the Commission and to correct the situation stated in the complaint. On August 22, 2001, the Commission received the reply by the State to Report No. 65/01, in which it requested that the latter be reconsidered.

#### IV PROCEEDING BEFORE THE COURT

9. The Commission filed the application in the instant case before the Inter-American Court on September 8, 2001 (*supra* 1).

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<sup>1</sup> On November 10, 2000 the *Comité de Familiares de Detenidos Desaparecidos en Honduras*, a committee of next of kin of missing detainees in Honduras (hereinafter "COFADEH") was accepted as co-applicant in the case.

10. The Commission appointed Julio Prado Vallejo as its delegate before the Court, and Santiago Cantón, Ariel Dulitzky, Martha Braga and María Claudia Pulido as its legal advisors.

11. In its September 27, 2001 communication, the Secretariat of the Court (hereinafter "the Secretariat"), under instructions by the President de the Inter-American Court of Human Rights (hereinafter "the President"), informed the Commission, pursuant to Article 34 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), that it was not possible to notify the application in the Juan Humberto Sánchez case (No.11.073), because it contained defects of substance and, therefore, it granted the Commission twenty days to make the pertinent corrections and to submit the required information. On October 17, 2001, the Commission sent the documentation requested.

12. In its October 26, 2001 note, the Court notified the State and the representatives of the alleged victim and his next of kin (hereinafter "the representatives of the alleged victim") of the application and its annexes. It also informed the State that it had the right to appoint an *ad hoc* judge to participate in consideration of the case.

13. On November 22, 2001, the representatives of the alleged victim requested a fifteen-day extension of the period to submit their brief with requests, pleadings and evidence in the instant case. Said extension to December 7, 2001, was authorized and communicated to them on November 23 of that same year.

14. On November 23, 2001, the State requested an extension "of no less than two months" to answer the application, appoint its agents and designate an *ad hoc* judge, due to the political transition period that the country was going through at that time. On November 24, the Secretariat, under instructions by the President, informed the State that "due to the exceptional circumstances stated [...], the extension requested ha[d] been granted until January 12, 2002, and was non-renewable."

15. In a brief received by the Court on December 7, 2001, the representatives of the alleged victim submitted their requests, pleadings and evidence with respect to the application in the instant case. On December 14, 2001, the Secretariat forwarded the documentation received to the Inter-American Commission and to the State and granted them a non-renewable thirty-day term to submit whatever observations they deemed pertinent.

16. On January 11, 2002 the State raised a preliminary objection regarding exhaustion of domestic remedies, answered the application and submitted its observations to the brief with requests, pleadings and evidence filed by the representatives of the alleged victim. On that same date, the State designated Carlos Humberto Arita Mejía as its agent and Jorge Alberto Milla Reyes as its deputy agent. On February 7 and August 19, respectively, the State appointed -as substitutes of the aforementioned persons- Sergio Zavala Leiva as agent and Argentina Wellerman Ugarte, as deputy agent.

17. On January 14, 2002, the Inter-American Commission submitted its observations on the brief with requests, pleadings and evidence filed by the representatives of the alleged victim.

18. In its January 16, 2002 note, the Court forwarded the brief on preliminary objections to the representatives of the alleged victim and to the Inter-American Commission, granting them one month to submit whatever observations they deemed pertinent. On February 15 and 20, respectively, the Inter-American Commission and the representatives of the alleged victim submitted their observations to the brief on preliminary objections filed by the State.

19. On September 12, 2002 the Secretariat asked the State, the Commission and the representatives of the alleged victim to send the definitive list of witnesses and expert witnesses, whose testimony and expert opinions they would offer at a possible public hearing on preliminary objections and possible determination of the merits and reparations in this case. The parties supplied the information requested on September 21 and 26, 2002.

20. On October 2, 2002 the Secretariat, under instructions by the President, asked the State, the Commission and the representatives of the alleged victim to send whatever observations they deemed pertinent regarding inclusion of two new witnesses by the State and the change of an expert witness proposed by the representatives of the alleged victim.

21. On October 11, 2002, the representatives of the alleged victim stated that they had no objection to the Court hearing the two new witnesses offered by the State. The Inter-American Commission and the State did not submit the observations requested.

22. In his November 30, 2002 Order, the President summoned the representatives of the alleged victim, the Inter-American Commission and the State to a public hearing to be held at the seat of the Court commencing on March 3, 2003, with the aim of hearing the testimony of the witnesses and the expert opinions offered by the parties, and it pointed out that the latter could submit their final verbal pleadings. Within one month of the end of the public hearing, they could also submit their final written pleadings.

23. The Court held the aforementioned public hearing (*supra* 22) on March 3, 4 and 5, 2003.

There appeared before the Court,

**For the Inter-American Commission on Human Rights:**

Martha Braga, legal assistant; and  
María Claudia Pulido, legal assistant.

**For the representatives of the next of kin of the alleged victim:**

Juan Carlos Gutiérrez, representative;  
Francisco Quintana, representative;  
Luguely Cunillera, representative; and  
Milton Jiménez Puerto, representative.

**For the State of Honduras:**

Sergio Zavala Leiva, agent; y

Argentina Wellerman Ugarte, deputy agent.

**Witnesses offered by the Inter-American Commission on Human Rights:**

Leonel Casco Gutiérrez;  
Domitila Vijil Sánchez; and  
María Dominga Sánchez.

**Expert witness offered by the Inter-American Commission on Human Rights:**

Leo Valladares Lanza.

**Expert witness offered by the representatives of the next of kin of the alleged victim:**

Débora Munczek.

**Witnesses offered by the State of Honduras:**

Luis Alonso Discua Elvir;  
Enmanuel Flores Mejía;  
José Germán Silvestrucci; and  
Lucinda Mena Amaya.

**Expert witness offered by the State of Honduras:**

Héctor Fortín Pavón.

Even though they were summoned by the Court, some witnesses did not appear before it to render their testimony.<sup>2</sup>

24. During the public hearing, the representatives of the alleged victim, the Commission and the State submitted various documents as evidence in this case (*infra* 36 to 40).

25. On March 20, 2003, the Secretariat, under instructions by the Court, asked the State and the representatives of the alleged victim to submit evidence to facilitate adjudication of the case. On April 10, 2003, the State replied that that said request seemed strange because it was their understanding that “in the cases in which the respondent party is found responsible, the evidence requested must be expressed in the execution of the judgment, for which reason [they] d[id] not understand, and [...] [they] request[ed] clarification regarding the reason for said request.” On the following April 22, the Secretariat, under instructions by the President, explained to the State that said request was made pursuant to Article 44 of the Rules of Procedure and that its aim was for “the Court to have all the evidence necessary in case it were to rule in one judgment both on preliminary objections and on the merits and reparations, based on the principle of procedural economy.” In

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<sup>2</sup> Celso Sánchez (*supra* para. 36), Modesto Rodas Hernández, Nelson Lagos, Mario Raúl Hung Pacheco, Donatila Argueta Sánchez, Velvia Lastenia Argueta Pereira and Reina Rivera.

view of the above, it asked the State to send the documents requested no later than April 28, 2003. On May 7, 2003, the State submitted the information requested.

26. On April 4, 2003, the representatives of the alleged victim requested an extension for submission of their final written pleadings, which was granted by the President until April 10. On that date, the representatives of the alleged victim submitted their final pleadings in writing, as well as the evidence to facilitate adjudication of the case. On April 7, 2003, the State submitted its final written pleadings and the respective annexes. Finally, on April 22 the Commission reiterated its considerations regarding the facts and the law made at the public hearing (*supra* 23) and it endorsed the claims made by the representatives of the alleged victim with respect to reparations.

## V EVIDENCE

27. Before examining the evidence received, the Court will state certain considerations, in light of the provisions of Articles 43 and 44 of the Rules of Procedure, applicable to the specific case, most of which have been developed in the case law of the Court itself.

28. First of all, it is important to point out that the principle of the presence of the parties to a dispute applies to probatory matters, and this principle involves respecting the parties' right to defense is respected. This principle is one of the foundations for Article 43 of the Rules of Procedure, regarding the time when evidence must be offered for there to be equality among the parties.<sup>3</sup>

29. According to the usual practice of the Court, at the start of each procedural stage the parties must state, at the first opportunity granted them to go on record in writing, what evidence they will offer. In addition, exercising its discretionary authority, the Court may ask the parties to submit additional evidence to facilitate adjudication of the case, without this possibility granting them a new opportunity to expand or complement their pleadings or to offer new evidence, unless the Court were to allow this.<sup>4</sup>

30. The Court has also stated before, regarding receipt and assessment of the evidence, that procedures before the Court are not subject to the same formalities as in domestic judicial proceedings, and that inclusion of certain items in the body of evidence must be done paying special attention to the circumstances of the concrete case, and bearing in mind the limits defined regarding respect for legal certainty and procedural balance among the parties.<sup>5</sup> In addition, the Court has taken into account that international case law, deeming that international courts have the

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<sup>3</sup> Cf. *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C No. 98, para. 64; and *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 86.

<sup>4</sup> Cf. *Las Palmeras Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 17; *El Caracazo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 37; and *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94, para. 64.

<sup>5</sup> Cf. *"Five Pensioners" Case*, *supra* note 3, para. 65; *Cantos Case*. Judgment of November 28, 2002. Series C No. 97, para. 27; *Las Palmeras Case, Reparations*, *supra* note 4, para. 18; and *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 65.

authority to appraise and assess evidence based on the rules of competent analysis, has always avoided rigidly determining the *quantum* of evidence necessary as the basis for a ruling.<sup>6</sup> This criterion is especially valid with respect to international human rights courts, which have ample flexibility in assessment of the evidence submitted to them regarding the pertinent facts, in accordance with the rules of logic and based on experience, to determine the international responsibility of a State for violation of the rights of a person.<sup>7</sup>

31. Based on the above, the Court will now examine and assess the set of items that constitute the body of evidence in the case, following the rules of competent analysis, within the relevant legal framework.

#### A) DOCUMENTARY EVIDENCE

32. When it filed its application, the Committee attached as evidence 26 annexes with 59 documents (*supra* 1 and 9).<sup>8</sup>

33. The representatives of the alleged victim attached 18 annexes with 25 documents to their brief of requests, pleadings and evidence (*supra* 15), as well as another annex with 171 documents pertaining to "legal costs and expenses incurred by the *Comité de familiares de detenidos-desaparecidos de Honduras* (COFADEH) in the course of processing the Juan Humberto Sánchez case."<sup>9</sup>

34. In the brief answering the application and filing the preliminary objection, the State forwarded four annexes with six documents (*supra* 16), including the case files of the domestic proceedings.<sup>10</sup>

35. When they submitted their observations to the brief on preliminary objections (*supra* 18), the representatives of the alleged victim offered five annexes with 11 documents.<sup>11</sup>

36. Before the public hearing was held (*supra* 23), the Commission supplied a medical certificate for Celso Sánchez Domínguez justifying his absence as a witness in this case, and submitted a document with his sworn testimony.<sup>12</sup>

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<sup>6</sup> Cf. "Five Pensioners" Case, *supra* note 3, para. 65; *Cantos Case*, *supra* note 5, para. 27; and *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 65.

<sup>7</sup> Cf. "Five Pensioners" Case, *supra* note 3, para. 65; *Cantos Case*, *supra* note 5, para. 27; *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 65.

<sup>8</sup> Cf. Annexes 1 to 26 of the brief filed by the Commission on September 8, 2001, leaves 117 to 318 of the main file at the Secretariat of the Court.

<sup>9</sup> Cf. Annexes 1 to 18 of the brief with requests, pleadings and evidence filed by the representatives of the alleged victim on December 7, 2001 and the volume containing the evidence on legal costs and expenses, ring bound in separate volumes of the main file at the Secretariat of the Court.

<sup>10</sup> Annexes 1 to 3 of the brief answering the application submitted by the State on January 11, 2002, leaves 647 to 742 of the main file at the Secretariat of the Court. Annex 4 is in a separate ring-bound file of the main case file at the Secretariat of the Court.

<sup>11</sup> Annexes 1 to 5 of the brief with observations on the preliminary objections filed by the representatives of the alleged victim on February 20, 2002, leaves 55 to 68 of the main file at the Secretariat of the Court.

37. The State submitted 23 documents in 18 annexes at the start of the public hearing (*supra* 23) in the case on March 3, 2003.<sup>13</sup>

38. On March 3, 2003, during the report by expert witness Leo Valladares Lanza (*supra* 23), he presented a 497-page book entitled "Los hechos hablan por sí mismos. Informe Preliminar sobre los desaparecidos en Honduras 1980-1993," by the *Comisionado Nacional de los Derechos Humanos*.<sup>14</sup>

39. On March 4, 2003, during testimony by witness Enmanuel Flores Mejía (*supra* 23), he presented various photographs pertaining to the customs of the Honduran army.<sup>15</sup>

40. On March 5, 2003, during the final pleadings of the parties at the public hearing (*supra* 23), the representatives of the alleged victim submitted a study certificate for Ángel Belisario Hernández González, two birth certificates for the alleged daughters of the alleged victim, and five photographs of the mother of the alleged victim.<sup>16</sup>

41. On April 7, 2003, when it submitted its final written pleadings (*supra* 26), the State included 10 annexes with 182 documents.<sup>17</sup>

42. On April 10, 2003, together with their final written pleadings, the representatives of the alleged victim sent 5 annexes with 29 documents.<sup>18</sup> That same day, said representatives submitted the evidence to facilitate adjudication of the case requested by the Court (*supra* 26).<sup>19</sup>

43. On May 7, 2003, the State submitted the documents requested by the Court as evidence to facilitate adjudication of the case (*supra* 25).<sup>20</sup>

#### B) TESTIMONIAL AND EXPERT EVIDENCE

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<sup>12</sup> Cf., leaves 50 to 59 of the file with the transcript of the public hearing on preliminary objections and possible merits and reparations stages.

<sup>13</sup> Cf. leaves 3 to 48 of volume I of the file with the transcript of the public hearing on preliminary objections and possible merits and reparations stages.

<sup>14</sup> Cf., leaves 64 to 313 of the file with the transcript of the public hearing on preliminary objections and possible merits and reparations stages.

<sup>15</sup> Cf., leaves 318 to 320 of the file with the transcript of the public hearing on preliminary objections and possible merits and reparations stages.

<sup>16</sup> Cf., leaves 325, 330 to 332, 333 to 335 of the file with the transcript of the public hearing on preliminary objections and possible merits and reparations stages.

<sup>17</sup> Cf., leaves 1257 to 1562 of the main file at the Secretariat of the Court.

<sup>18</sup> Cf., leaves 1604 to 1792 of the main file at the Secretariat of the Court.

<sup>19</sup> Cf., leaves 1796 to 1804 of the main file at the Secretariat of the Court.

<sup>20</sup> Cf., leaves 1832 to 1869 of the main file at the Secretariat of the Court.

44. On March 3 and 4, the Court heard the testimony of the witnesses and the expert opinions of the expert witnesses offered by the representatives of the alleged victim, the Inter-American Commission and the State. The Court will now summarize the significant parts of said statements.

**a) Testimony of María Dominga Sánchez, mother of the alleged victim**

She stated that Juan Humberto Sánchez lived in El Salvador, collaborated with the guerrilla forces and was a radio operator for *Radio Venceremos*. He had two different companions and a daughter with each of them. One of the daughters, Norma –whom she met personally-, was three months old at the time of the facts, and the other girl she was only able to see in photographs.

Her son, Juan Humberto Sánchez, returned on July 9, 1992, and this made her very happy. On July 10, 1992, at about 9 p.m., she was at home with her husband and some of their children when 5 soldiers arrived. They searched the house and bound Juan Humberto, then took him away, bound, providing no justification. She stated that at the time her son was detained, she lived in Santo Domingo, Colomoncagua with her husband Juan José Vijil Hernández, and their children Domitila, Florinda, Juan Carlos and Celio. Her other daughters, Rosa Delia and María Milagro, lived nearby.

Her husband went with the military and Juan Humberto to Colomoncagua and the latter was released the following day. On July 11, 1992, the military came again during the night, yelling with a Honduran accent and beating on the door. Five of them entered the house, threatened her husband, aiming a rifle at him, warning him not to file a complaint regarding the detention of Juan Humberto Sánchez, whom they bound and took away without providing any explanation.

She became ill, for which reason she was taken to a health center in Colomoncagua. Her husband told father Celso Sánchez de Camasca, in Intibucá, what had happened, and the priest recommended that he file a complaint. Due to this complaint, COFADEH began to file domestic remedies. Days later her husband was summoned by the military to render testimony in Tegucigalpa. The next of kin of Juan Humberto Sánchez made statements before COFADEH. Her daughter, Rosa Delia, who was not at home when her son was detained, stated that those who detained her brother were Salvadorans, but she recognizes that this was due to the erroneous information that she herself gave her when she repeated what the military had said when they took her son away.

When her son's body was found –with his hands and feet bound, the nose and the genitals severed and the eyes taken out-, from what she was told, because she herself was hospitalized at the health center, she was not able to bury him as she would have wanted to, “as a Christian should be buried,” instead he was buried “like [...] an animal.”

She commented that her family moved shortly thereafter, because the neighbors, after the death of her son, cut their water supply. Furthermore, due to that death, her husband, her mother- and father-in law, and she herself became ill. For two years, her husband was not able to work, for which reason her children had to drop out of school to help the family. She stated that all she wants is for justice to be served.

She stated that no one has been tried or punished for these facts, and that she does not trust the Honduran military authorities.

**b) Testimony of Domitila Vijil Sánchez, sister of the alleged victim**

Her brother, Juan Humberto, lived in El Salvador, worked for *Radio Venceremos*, wrote to his mother and talked of Norma, his daughter, whom she met personally. After her brother's death, she learned that he had another daughter called Breydi.

On July 10, 1992, during the night, several soldiers came, captured Juan Humberto and bound his hands, and the stepfather went with them to the detention center. She was then thirteen and lived at home with her parents and her siblings Juan Carlos, Celio and Florinda –all minors-. The following day, Juan Humberto Sánchez was released, but he was detained again that same night by soldiers, who came making a lot of noise and threatening to kill the whole family. They threw her father on the floor and placed a weapon on his back. Her brother, Juan Humberto, asked her mother to open the door so that they would not kill the whole family. Some military climbed the roof, removed the tiles, and others entered, bound Juan Humberto and took him away without providing any explanation.

Her mother became ill and was hospitalized in Colomoncagua and her father went to ask father Celso Sánchez in Camasca for advice regarding the steps he should take before the State authorities.

Her brother's body was found on July 21, 1992, the feet and hands bound behind, the nose and tongue severed and the eyes taken out. Her brother-in-law was there when they removed the body. The family was not able to bury her brother because the military had already done so at a very distant place.

She added that the military took her father to Tegucigalpa for him to render a statement and they came to visit his house, asking his father where he had buried Juan Humberto's weapons.

Because of what happened to her brother, the family had to move because the neighbors cut their water supply. They were also afraid to render a statement on these facts because the military had threatened to kill the family. However, she pointed out that she rendered testimony on what happened before a judge, and that those responsible for what happened have not been tried or punished, for which reason she does not trust the Honduran authorities.

Due to the death of her brother, Juan Humberto Sánchez, her father became ill, for which reason she and her younger brothers dropped out of school to work.

Finally, she stated that she lost her job at a drawback industry to come render testimony before the Court. She left her 9-month-old son in the care of her sister Reina Isabel, who also had to stop working to help her.

**c) Testimony of Leonel Casco Gutiérrez, former coordinator of the legal department of *Asociación de Cooperación Técnica Nacional*, a human rights advocacy organization in the western region of Honduras.**

He knew how the armed forces and the territorial forces were organized in the area where the facts of this case occurred. One of the former, regular forces was the Tenth Infantry Battalion, with its headquarters in the Municipality of Marcala, Department of La Paz; it headed all the military region, both the Department of Intibucá and the Department of La Paz.

On the other hand, the Territorial Forces had a military base in Los Llanos, Municipality of Marcala, Department of La Paz, another one in the Municipality of Concepción, Department of Intibucá, and finally, in the Municipality of Cuncuyá, Department of Copán. They were a special counterinsurgency force, constituted as an elite corps to monitor and counteract what they considered subversion all along the border zone. They were under the command of the joint Chiefs of Staff of the armed forces and they depended, to a certain extent, on funding from the Government of the United States of America. They were constituted by former, retired members of the army, from commanding officers to corporals, sergeants, and officers, with a salary quite different from those of the armed forces.

It was customary practice of the military forces to capture Salvadorans whom they suspected were collaborators of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN), even though they did not have such legal authority. He stated that the territorial forces customarily detained persons at night and imprisoned them, even though domestic legislation forbade this.

He heard of the detention of Juan Humberto Sánchez through a complaint forwarded to them by father Celso Sánchez, through Tobías Portillo, Procurador Popular en Derechos Humanos or people's prosecutor for human rights. They documented the case, informed COFADEH, and filed a habeas corpus remedy via telegram before the Appellate Court of Comayagua. Said telegram explained that Juan Humberto Sánchez had been detained by a patrol of the Tenth Infantry Battalion or of the territorial forces. They filed the remedy before a higher body for two main reasons: the first because of the fear that the Judiciary had of the army; and second, based on the Amparo Law, pursuant to which the Appellate Courts are competent to hear a habeas corpus remedy, when an authority has jurisdiction over a department or region, which is the case both of the Tenth Infantry Battalion and of the territorial forces.

Article 182 of the Constitution provides that any person may file a habeas corpus remedy. In the specific case of Juan Humberto Sánchez, after filing it via telegram, since there was no acknowledgment of receipt, it was reiterated by telephone. The Appellate Court said that they would admit it and that they were awaiting the report by the serving judge. However, he did not execute it immediately, but rather took four days to do so, justifying this situation due to absence of the unit Commander, Flores Mejía, without visiting the facilities of the territorial forces, as stated in the remedy filed. Finally, on August 14, 1992, the remedy was rejected, based on the August 4 report by the serving judge, deeming that Constitutional guarantees or rights had not been breached. On August 17, 1992, the Appellate Court of Comayagua forwarded the file to the Supreme Court of Justice for the latter to confirm the decision, but that body did not issue a ruling on the matter.

The objectives of the habeas corpus remedy were not attained due to the slowness and inefficiency of the authorities, because the serving judges were afraid to demand habeas corpus in the 1980s and early 90s, despite guarantees set forth in the laws and in the Constitution. In the *sub judice* case, habeas corpus was denied despite the fact that no grounds were given for the capture, that inviolability of the home

was breached, that domestic legislation forbade arrests between 6:00 p.m. and 6:00 a.m., and furthermore that the finding of the body of Juan Humberto Sánchez was notorious and public, showing signs of torture of his genitals, his tongue, and a shot in the forehead.

Juan Humberto Sánchez was buried in the same area where he was found, and the judge justified this conduct due to the state of decay of the body. Nevertheless, its disinterment was not requested to carry out an autopsy and to establish cause of death.

Finally, even though the Justices of the Peace can only hear the preliminary proceedings for a month and must refer the case to the departmental courts of first instance, in the case of Juan Humberto Sánchez it took them two years to refer the file to the higher court.

**d) Testimony of Luis Alonso Discua Elvir, former commander in chief of the armed forces**

Unit 316 was formed in 1983, to provide military intelligence and counterintelligence, in case of war, for the two major units with brigade-level armed forces. The armed forces had only three brigades: 110, 115 and 101, and the sum of the three constituted 316. They could participate in any war theater or in any neighboring country, such as Nicaragua.

In 1992, he was the commander in chief of the armed forces, responsible for the military institution as a whole and for all the components of the armed forces that were under that command. He does not remember the functions of the territorial forces, because although they belonged to the army they were not under his command, but under that of the respective lieutenant colonel or colonel.

He does not remember the units called "Tucán," nor whether he received intelligence reports in connection with them. He emphasized that a helicopter of the Honduran army had been shot down in the border area with El Salvador by agents of the *Frente Farabundo Martí de Liberación Nacional*. Due to the amnesty, people who had been involved in the conflicts in the countries of the region began to return.

He knew Enmanuel Flores Mejía, who was the commander of the Tenth Infantry Battalion until December 31, 1992. He knew Colonel Manuel Quintanilla Hernández, but he does not remember his rank. He did not know Captain Nelson Lagos nor does he recall the existence of a military detachment called "La Concepción".

Officer Ángel Belisario Hernández González was a member of the Tenth Infantry Battalion headquartered in Marcala and with jurisdiction in Colomoncagua. He acted in response to a request by the mayor of the municipality of Colomoncagua and the Justice of the Peace, who had received a complaint from the inhabitants of the community of Santo Domingo for alleged threats and attacks against them, carried out by Juan Humberto Sánchez, who dressed in semi-uniform and with illegal military gear not commonly used. According to the Constitution, no citizen can be detained without a court order, unless the person is found *in fraganti* and in that type of situations the commanders act independently, always under constitutional

guarantees. He deemed that the fact that Juan Humberto Sánchez bore arms and wore a uniform constituted flagrancy. However, when he analyzed Annex 1 of the application and stated that he had not signed that document, he clarified that the information contained in it established that Juan Humberto Sánchez was accused of crimes against private property. Nevertheless, he was released, as the villagers who had complained against him did not show up. Then he stated that he did not know why, if he bore weapons of an unauthorized caliber, he was released the following day, and he emphasized that a person who uses a rifle to frighten people, assault people and rob them is dangerous.

The armed forces learned, through the media and through the investigation carried out by the commander of the Tenth Battalion, the characteristics of the persons who had participated in the second detention, and they reached the conclusion that it was carried out by people with their faces covered, wearing beards, who were dirty and wore boots, for which reason they concluded that no members of the armed forces were involved in the detention.

They had no information on participation by officer Ángel Belisario Hernández in the murder, and the latter was discharged in 1996, the year in which the witness left his post, and up to that date no arrest warrant had been received. As he stated to "La Prensa," there are documents and information on the non-participation of the armed forces in the murder. That information can be requested from the file, as he does not remember having transferred it to a criminal investigation and there was no request in that regard.

He cannot recall whether on July 28, 1992 he ordered a military helicopter to go to the area of Santo Domingo, to take Juan José Vijil to Tegucigalpa.

**e) Testimony of Enmanuel Flores Mejía, former commander of the Tenth Infantry Battalion**

In 1992, he was the commander of the Tenth Infantry Battalion, which had its headquarters in the city of Marcala, Department of La Paz. His functions included command over a border unit, which was supposed to act in support of the population. Second lieutenant Ángel Belisario Hernández was under his command in 1992.

He had information that there were Salvadoran refugees in the area, as well as armed people wearing uniforms, but no orders were given to act against those groups. He does not know who conducted the counterinsurgency work, or whether said units existed, and he does not know what "territorial forces" were.

He recalls that he received a radio message from second lieutenant Ángel Belisario Hernández, who informed him that an individual illegally wearing military uniform and bearing an AK-47 rifle, who also had AK-47 and caliber 22 ammunition, had been detained in the village of Santo Domingo, municipality of Colomoncagua, in response to a request by the mayor and a local judge, due to complaints by certain inhabitants of Santo Domingo. He said that the detainee was taken to the military post and released the following day at 9:30 a.m., because no one came to accuse him "out of fear." He stated that the document showed to him at the hearing, which is Annex 1, was false.

In response to a request by general Discua, he conducted an exhaustive investigation of the events in connection with Juan Humberto Sánchez, but he does not recall having submitted a report to his commander on that investigation.

He stated that he did not receive any document asking him to place Ángel Belisario Hernández González in custody. He was aware neither of any participation of his in the murder of Juan Humberto Sánchez, nor of the participation of members of the military in the capture of Juan Humberto Sánchez on July 11, 1992, nor of the identity of those who captured him.

**f) Testimony of Lucinda Cecilia Mena Amaya, an official of the Attorney General's Office**

She had access to the file in the case against Ángel Belisario Hernández González, as the State seeks to solve the cases and avoid impunity. Several steps were taken in said case, and those having to do with it –the examining judge, the Attorney General and the Public Prosecutor's Office- have always followed the case, respecting due process.

She also stated that there have been no requests for ballistic tests or for exhumation of the body of Juan Humberto Sánchez, and she could not recall whether there was a forensic analysis of the inspection and removal of the body.

She said that obstacles to the case were because the witnesses for the prosecution did not specify the identity of those responsible for the facts, and this delayed capture of the accused. This had a bearing on the matter because the procedure followed was based on the previous Procedural Code, which was inquisitorial and established that the file was shelved until the accused was captured, and Mr. Hernández González was at large until January 17, 2003.

Ángel Belisario Hernández González has been accused because according to several witnesses for the prosecution, it was he who sent a group of soldiers to detain Juan Humberto Sánchez and this gave the examining judge reasonable grounds to order the arrest. At the appropriate time, the arrest warrants were issued to the local police, to the National Police, and to the Ministry of Defense, and today, after his capture, the case is active before the Appellate Court in Comayagua. At this time, processing of the case is in the indictment stage and testimony has been received. To date, the next of kin of Juan Humberto Sánchez have not appeared as plaintiffs.

**g) Testimony of José Germán Silvestrucci, official of the Attorney General's Office**

The first arrest warrants against Ángel Belisario Hernández González were issued in 1998, and several efforts were made; at the time, the accused had been discharged from the armed forces. He did not know that at that time he was an active student at *Universidad Nacional Autónoma de Honduras* since 1997.

He declared that the State had carried out several actions, through the Attorney General's Office, to capture Ángel Belisario Hernández González as soon as possible. Currently, the trial is in the indictment process.

There are no representatives of the family of Juan Humberto Sánchez in the proceeding, and only the Public Prosecutor's Office has appeared in it.

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**h) Expert opinion of Leo José Rodrigo Valladares Lanza, former National Human Rights Commissioner in Honduras**

The country's situation was set within the framework of the final stage of the peacemaking process in Central America. During the 1980s, there were conflicts throughout the region, and Honduras was in the midst of the countries with domestic conflicts: Guatemala, El Salvador, and Nicaragua. It was the final stage of the peacemaking process, at least in El Salvador, as the Peace Accords were already being signed, and in Nicaragua there had been a transfer of government from the Sandinistas to Mrs. Violeta Barrios.

During this stage in Honduras the judiciary system and its investigations of criminal acts were entrusted to the military forces; through the doctrine of national security, the latter deemed that the only way to combat so-called subversion or insurgency was to create clandestine groups that, outside all judicial control and that of other authorities, took upon themselves the right to signal persons who were dangerous, deprive them of their freedom, torture them, and sometimes kill them and make them disappear.

At the time, in 1992, Honduras still had a system in which the armed forces were clearly predominant and they were granted a special, autonomous status. This entailed control of the whole police system by the armed forces. Generally, the Commanders of the Public Security Forces came from the army, the land forces; they had strictly military training, and the police was militarized. They also controlled customs, airports, and immigration.

With respect to the security forces operating in the border region between Honduras and El Salvador at the time, on the Honduran side there were three important camps: Mesa Grande, San Antonio, and Colomoncagua. The Honduran authorities suspected that the refugee camps were rest areas for the Salvadoran guerrilla, as they were very close to the borders and this supposedly allowed the Salvadoran guerrillas to reach the camps, benefit from the humanitarian aid, rest, and then go back to fight. Therefore, the camps were subject to rigorous external control, as internally they were under the control of UNHCR by agreement with the Honduran authorities. The area was part of the jurisdiction of the Tenth Battalion, based in the town of Marcala, in the Department of La Paz. However, special border control was necessary, and therefore the territorial forces were created to guard the border.

The border problem between Honduras and El Salvador had not yet been solved at the time, and there were some sectors called "bolsones" or "pockets," claimed by both countries. What they did then was to maintain a type of *status quo* in which they did not intervene within those disputed areas or lands. Since they could not intervene in them, the Honduran military forces guarded the area more and more closely. In 1992, the public security forces, that is the police, and the Tenth Battalion as well as the territorial forces were all under the joint high command of the armed forces. The Tenth Battalion was a regular force. The territorial forces had a specific mission. When there was an action in which the Tenth Battalion had participated or which was in some manner a border protection one, they transferred it to the territorial forces. The military forces did not have legal authority as such,

but rather an actual power that was totally illegal. The only way to legally detain a person was in cases of flagrancy, and only to hand that person over to the authorities.

The military commanders, at that time, were *de facto* outside civilian control. In some cases they may have gone too far, but the pattern was always the same. It was impossible for the civil authorities to have been unaware and for the various governments in which these facts occurred to have done absolutely nothing; this makes the investigations more difficult due to the alleged participation of civil authorities by action or by omission.

Members of these two military corps: the Tenth Battalion and the territorial forces, were apparently involved in human rights violations in other cases. Nevertheless, the members of those military groups are still members of the police, which compromises their independence. This creates a degree of insecurity in civil society, and it is possible that the methods they learned in the 1980s continue to be used currently.

The factors of impunity at the time were: preponderance of military over civilian power, as well as the belief that what was being fought was a war and that there was an enemy to destroy and that, therefore, human rights did not count, and legal controls that the authorities should be subject to were not effective. On the other hand, the political class preferred to refrain from effecting any change with respect to the military out of fear of a coup. It was a situation of predominance of the armed forces and paralysis of the judiciary. At that time, the press played an important role.

Through the series of cases that he analyzed during his years as Commissioner, the expert witness noted the slowness and weakness of the judiciary and specifically the ineffectiveness of the habeas corpus remedy. Due to the latter factor, the case of Juan Humberto Sánchez was included in the Report "*Los Hechos hablan por sí mismos*," as it was clear that said habeas corpus remedies had been attempted and that they had been fruitless. The fact that the judiciary became politicized is what still makes the system not function adequately.

The situation of the judiciary was one of fear and abdication of its constitutional obligation to investigate and try those crimes. There was generalized fear, to the point that to date none of the 184 cases analyzed by the Office of the National Human Rights Commissioner have been investigated and there have been no judgments. The judiciary system was notoriously ineffective. Remedies were filed before judicial bodies and they were fruitless.

The *modus operandi* of the forced disappearances at the time was as follows: between the late 1970s and the early 1980s, special corps were created within the armed forces to monitor persons considered suspicious of being subversive. Once they were detained, they were usually interrogated, resorting to the most sophisticated tortures. Finally, many of these persons were murdered, often with a finishing shot, bound and buried in clandestine cemeteries or unauthorized places. This continued to happen throughout that period.

At that time, the human rights organizations sent a request for an investigation to clarify said disappearances and the expert witness undertook the responsibility of

conducting that investigation. Its result was the presentation, on December 29, 1993, of a preliminary report on disappearances in Honduras, entitled "*Los Hechos Hablan por sí Mismos.*" That report documented 184 cases and established the pattern of activities. The cases deemed typical of forms of disappearance included that of Juan Humberto Sánchez. It differed somewhat from the general pattern because his body was found, after having been illegally detained. The case of Juan Humberto Sánchez, even though it was in 1992, followed the same pattern of executions that was established throughout most of the decade of the 1980s. To his knowledge, at the time of the facts both military forces, the Tenth Battalion and the territorial forces, were in the area and Juan Humberto Sánchez was first detained by the Tenth Battalion, but he was then released. Then the territorial forces came. They must have known what happened to him.

**i) Expert opinion by Deborah S. Munczek, psychologist,**

She conducted a study for the organization called COFADEH on the psychosocial effects of disappearances and political assassinations on the surviving next of kin, based on various types of evidence and working with the persons affected by them who came to the organization.

In 1992, she was present when the mother of Juan Humberto Sánchez came to COFADEH and shared with her a few days. Some time later, she visited the area and met other next of kin of Juan Humberto.

**With respect to the mother,** she recalls that she could hardly talk, she was in a shock. In that type of situations, what must be done is to accompany the person and help her face reality. A death in and of itself is difficult to overcome, but even more so when it is violent and, furthermore, at the hands of the State. In face of impunity, there are feelings of injustice and powerlessness. There are states of depression, and instead of the process of grieving, this can become a permanent state. She said that María Dominga Sánchez was extremely affected and still is. While she had faced tragedies throughout her life, as she lost two children and her first husband in nine months, the death of Juan Humberto affected her to a greater extent, because as she said "it was men who killed him," and it was not "in the hands of God," as the previous events had been. The expert deemed that a significant fact that affects María Dominga is the impossibility of burying her child "like a Christian." She continues to suffer symptoms of post-traumatic stress.

**With respect to the daughter, Domitila,** she considers that she too was very much affected, although in a different manner. She remembers the raid on her house quite vividly. The greatest impact was the reaction of her mother and father, who became ill and could not be her support. The children had to work, and Domitila stated: "before they worked for us, and afterwards we worked for them." She continues to suffer the economic consequences, as she had to give up her job to attend the Court hearings, and she had to leave her child in the care of her sister, who also had to give up her job to help her.

**With respect to the father, Juan José Vijil,** while she did not interview him, apparently he suffered psychosis, paranoia, and loss of memory. He is not in normal conditions, he has distanced himself from reality, and for financial reasons it was not possible to give him medical treatment.

**With respect to the family**, she also stated that both the mother and the sister of Juan Humberto Sánchez expressed their fear of rendering testimony before the Court. She deemed it important for both the parents and the sister, as well as other next of kin of the alleged victim to receive psychotherapeutic treatment.

She said that the fact that Juan Humberto Sánchez collaborated with the guerrilla forces did not alter the scale of suffering that the family might have undergone if he had been a farmer, as in 1991 there had been an amnesty that led to his return to Honduras, beginning a different stage in the life of the family.

**j) Expert opinion of Héctor Fortín Pavón, Honduran attorney**

Since 1985, the legal codes adopted a mixed system, with the consequent hypertrophy of the preliminary proceedings that continued to be written procedures. The trial would commence due to an accusation filed by the authorities or delation, on their own motion or due to a complaint by a private individual. There was an examining judge who investigated, tried, and sentenced. At that time the Public Prosecutor's office was spread out in Honduras, as it was under the Attorney General's Office, with prosecutors in the various courts who had merely formal tasks, and the principle of unity was not respected.

In 1994, the Public Prosecutor's Office was established, as an eminently inquisitorial system, and therefore there was a duality with respect to the judges. The trial was divided into two stages, the preliminary proceedings and the plenary. The investigation was carried out in the preliminary proceedings, which could last from one to three months at most. If there was a *corpus delicti* it was inspected and removed, and if experts were available, whether officers or physicians, an expert opinion was ordered, and if there were no experts, two empirical experts were appointed.

The action could be a private one, carried out by the authorities on their own motion, or a public interest action, and it was not possible to try a person *in absentia*, for which reason if the person was at large or could not be found, the law authorized conclusion of the preliminary proceeding and shelving of the file.

In this system, an arrest warrant can be ordered *in absentia* when the judge deems that there is conclusive evidence that the crime was committed.

Articles 90 and 94 of the Constitution of Honduras provide that there is a violation of due process when a person is tried violating the guarantees set forth in the procedural code, when the person has not had access to the courts, when a constitutional principle regarding the parties was breached, and when a necessary and unavoidable procedural step was omitted. He stated that in the instant case there was no violation of due process.

From the constitutional standpoint, verbal arrest orders do not exist, unless the criminal is caught in the act. On certain occasions, the military acted as policemen and helped the Justices of the Peace to conduct any type of investigation, including a preliminary trial investigation. A verbal order is illegal, for which reason the first detention of Juan Humberto Sánchez was illegal.

With respect to the lack of autopsy in the case, he stated that in 1992 there was a forensic medical department under the Judiciary, with presence in Tegucigalpa and in San Pedro Sula. In other places, private physicians were hired. Nevertheless, in remote places, the judges appointed "lay experts." If the persons did not agree with the expert opinion, they requested exhumation of the corpse to perform an autopsy.

He stated that implementation of the 1985 code in the 1990s made the habeas corpus remedies 90% effective.

When a person for whom an arrest warrant was issued is still at large, but there are other, unidentified participants, the investigation must continue.

He declared that pursuant to the organizational law of the public security forces, it was the responsibility of the police to conduct the investigations. He deemed that if there were shortcomings, they could have been covered by a popular action initiative of the interested party.

In the 1985 system, investigation, preliminary proceedings and all the pre-trial proceedings were the responsibility of the examining judge, and the actions and investigations were "definitely" ex officio. The actions that the judge could order on his own motion included exhumation of the body, unless the judge deemed that the death was due to natural causes, in which cases he would not order it. In any case, if the next of kin disagree with the decision by the judge, a popular interest action is feasible.

With the entry into force of the new criminal procedural code, the files at the courts were counted and it was found that there were 125.000 without a judicial decision, which could take up to ten years if the interested parties did not move them forward.

There are two versions on the case, one that accuses Ángel Belisario Hernández González, in which case, if he conducted the arrest, logically he did not do so alone, as he had other persons under his command. Another version is that Juan Humberto Sánchez was captured by "bearded persons." It is a crime which must have been committed jointly by several persons. In this case, the timeframe of the statute of limitations does not elapse because there is an ongoing investigation.

He deems that the evidence is not sufficiently solid to accuse Ángel Belisario Hernández González of the crime of homicide.

### C) EVIDENCE ASSESSMENT

#### *Evaluation of the Documentary Evidence*

45. In this case, as in others,<sup>21</sup> the Court admits the evidentiary value of those documents that were submitted by the parties at the appropriate procedural time or as evidence to facilitate adjudication of the case, which were neither disputed nor challenged, and the authenticity of which was not questioned. On the other hand, pursuant to Article 43 of the Rules of Procedure, the Court admits the evidence

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<sup>21</sup> Cf. "Five Pensioners" Case, *supra* note 3, para. 84; Cantos Case, *supra* note 5, para. 41; Las Palmeras Case, *Reparations*, *supra* note 4, para. 28; and El Caracazo Case, *Reparations*, *supra* note 4, para. 57.

submitted by the parties with respect to the supervening events that occurred after the application was filed.

46. As regards the documents submitted during the public hearing held in this case, which are the three reward notices published in three national dailies on March 19, 20 and 21, 2001, the two documents pertaining to steps taken by the prosecutor of the Public Prosecutor's Office and the lower court, signed on November 20, 2001, February 1 and 26, 2002, and the briefs pertaining to the capture of Ángel Belisario Hernández González on January 17, 2003, the Court includes them in the body of evidence because they were produced after the answer to the application, in accordance with Article 43 of the Rules of Procedure.

47. In its final oral and written pleadings (*supra* 23 and 26), the State challenged the document included as Annex 1 of the application, which the Commission entitled "Informe Secreto del 'Caso Juan Humberto Sánchez' dirigido al Señor Comandante en Jefe de las Fuerzas Armadas, General de División Don Luis Alonso Discua Elvir, firmado por el Comandante de Infantería Enmanuel Flores Mejía con fecha 29 de junio de 1992," which the State characterized as false and submitted five documents in support of its challenge, basing this action on Article 43(3) of the Rules of Procedure of the Court. It furthermore argued that:

a) neither did Colonel Flores Mejía sign that document, nor did General Luis Alonso Discua Elvir receive it. The State also pointed out that this is made evident because the report is not drafted in the usual military language, the serial number in the report is not that of Colonel Flores Mejía, but rather that of another, already deceased military officer, that it contains certain mistakes, and that it mentions Captain Nelson Lagos, who was elsewhere at the time of that report.

b) with respect to the form of the document under discussion, the State called the attention of the Court to the fact that a series of items present in the report supplied by the Commission are not in accordance with the practices of the Armed Forces, such as the type of paper used, placement of the stamp labeling the document as "secret," the lack of a file and record number, the addressee, the language used in the greeting and the complimentary close, mistakes in the numbering of the paragraphs and subparagraphs, omission of the correct expression of names, ranks and positions of the persons mentioned in the report, spelling mistakes, and a stamp and signature that are not those of the person who supposedly signs the document. Specifically regarding the spelling mistakes, the State pointed out that these could not have been committed by Colonel Flores Mejía, who graduated from the Francisco Morazán Military Academy in Honduras and has taken several higher level courses.

c) with respect to the content of the challenged document, the State pointed out that the document shows inconsistencies, as it refers to facts that did not occur, such as appearance of the Mayor of the Municipality of Colomocagua at the facilities of the Tenth Infantry Battalion in the Municipality of Marcala to make a statement in 1992.

Therefore, the State argued that the content of the report filed by the Commission is "totally false."

48. Regarding the objection by the State to Annex 1 of the application, the Inter-American Commission argued that, pursuant to the principle of estoppel of the stages of the proceeding, these take place successively by definitively closing each one of them; in other words, it is not possible to go back to previous stages. In this regard, Article 43 of the Rules of Procedure provides that there are specific moments for submission of evidence. Pursuant to this provision, according to the Commission, the State had the opportunity to defend itself, when it answered the application, from the arguments made by the Commission in its application and to submit its considerations regarding the evidence offered by the Commission; therefore, that was the appropriate procedural time to challenge any evidence the Commission had submitted in its application.

49. The representatives of the alleged victim also reiterated the arguments of the Commission, stating that the public hearing was not the pertinent procedural time for the State to object to evidence submitted by the Commission at the time of the application, for which reason the objection by the State should be rejected because it is time-barred. Additionally, the representatives argued that in cases before the Inter-American Court, as it has stated in its own case law, and especially in cases of forced disappearance or extra-legal executions, a flexible criterion must prevail for assessment of the evidence. They added that the report under discussion "contains substantive items that would help the [...] Court to reach a well-founded conclusion regarding the facts" and that it fulfills the requirements that it has not been proven that it is not authentic, that it is legible and clear in its content, and that it clearly states its source and addressee. In light of the above, the representatives asked the Court to find the "secret report" submitted as Annex 1 of the application filed by the Inter-American Commission to be valid as documentary evidence.

50. This Court notes that it does not have sufficient elements to verify whether Annex 1 of the application is or is not authentic, for which reason it will not consider it in the body of evidence in this case.

51. On March 4, 2003, in the framework of the public hearing on the case at the seat of the Inter-American Court, the representatives of the alleged victim submitted a study certificate for Ángel Belisario Hernández González at *Universidad Nacional Autónoma de Honduras*, issued on February 8, 2003. The State objected to this document, as "submitting said document at the last minute is contrary to the rules of procedural good faith," since it should have been submitted at the start of the public hearing.

52. As this Court has repeatedly pointed out, admission of evidence in the international human rights ambit involves a certain degree of flexibility, and specifically this Court deems that the document supplied fulfills the requirement of being supervening evidence, as it was issued on February 8, 2003, that is, on a date subsequent to submission of the brief of requests, pleadings and evidence filed by the representatives, for which reason it admits this document and adds it to the body of evidence.

53. The report by the National Human Rights Commissioner, entitled "Los hechos hablan por sí mismos. Informe Preliminar sobre los desaparecidos en Honduras 1980-1993," offered by one of the expert witnesses during the public hearing and not challenged by the State, for which reason the Court includes it in the body of evidence as documentary evidence.

54. With respect to the statement by witness Celso Sánchez, set forth in the affidavit supplied by the Inter-American Commission at the time of the public hearing (*supra* 23), the State argued that it lacks evidentiary value, as the witness did not appear at the oral proceedings and it is contrary to the rules of “equity and competent analysis.” In their final written pleadings, the representatives, in turn, pointed out that said statement and its submission were in accordance with the practice of the Court, which follows the principles of procedural economy and promptness.

55. The Court, in turn, notes that in this case the statement by Celso Sánchez was contributed to the proceeding by means of the brief in which it is set forth. Its content and the signature of the person signing the statement were certified by a notary public. This, in itself, contributes to its credibility. Nevertheless, the Court will not consider the respective procedural item conclusive evidence, but rather will assess its content, as it has done in other cases, within the context of the body of evidence and applying the rules of competent analysis.<sup>22</sup>

56. This Court has deemed that with respect to newspaper clippings that, even though they are not documentary evidence proper, they may be taken into account when they reflect public or notorious facts, statements of officials of the State, or when they corroborate what has been set forth in other documents or testimony received during the proceeding.<sup>23</sup> Thus, the Court adds them to the body of evidence as a suitable means of verification, together with the other items of evidence supplied, inasmuch as they are relevant to the veracity of the facts in the case.

#### *Evaluation of the Testimonial Evidence and Expert Opinions*

57. With respect to the testimony rendered by María Dominga Sánchez and Domitila Vijil Sánchez in the instant case (*supra* 44a and 44b), the Court admits it insofar as it is in accordance with the object of the examination proposed by the Commission. In this regard, the Court deems that as they are next of kin of the alleged victim and have a direct interest in this case, their expressions cannot be assessed in an isolated manner, but rather within the context of the whole body of evidence of the proceeding. Regarding the merits and reparations, the testimony of the next of kin of the alleged victim are useful insofar as they can supply additional information on the consequences of the violations that may have been committed.<sup>24</sup>

58. Regarding the statements of the officers of the armed forces at the time of the facts, Luis Discua Elvir and Enmanuel Flores Mejía, and of the officials of the Attorney General’s Office, Lucinda Mena Amaya and José Germán Silvestrucci, the Court admits them insofar as they are in accordance with the object of the examination proposed by the State. The Court notes that the aforementioned

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<sup>22</sup> Cf. *El Caracazo Case, Reparations*, *supra* note 4, para. 60; *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 69; *Trujillo Oroza Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 37; and *Bámaca Velásquez Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 15.

<sup>23</sup> Cf. *Cantos Case*, *supra* note 5, para. 39; *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 78; and *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 94.

<sup>24</sup> Cf. *Cantos Case*, *supra* note 5, para. 42; *El Caracazo Case, Reparations*, *supra* note 4, para. 59; and *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 52.

persons have a direct interest in the *sub judice* case, and their statements must be assessed within the respective context and they are accepted insofar as they are in accordance with the rest of the body of evidence.<sup>25</sup>

59. Regarding the expert opinions of the expert witnesses offered (*supra* 23, 44 a, f, i), which were neither challenged nor disputed, the Court admits them and gives them evidentiary value. With respect to the expert opinion of Dr. Leo Valladares Lanza, the State argued that his statement should be disqualified, because “when he was cross-examined by the [a]gent of the State, he evasively accept[ed] that he made statements to the Honduran media, *‘that the State would lose the case.’*” In this regard, the State pointed out that there are “informal statements by the witnesses that contradict [the] statements [of the expert witness] rendered under oath in the witness stand, that were arranged.” The Court dismisses the objection raised by the State because it deems that said arguments are not sufficient to invalidate the expert opinion of Dr. Valladares.

60. The Court will assess in this case the evidentiary value of the documents, statements and expert opinions submitted and the latter rendered before it. The evidence submitted during all the stages of the proceeding has been included in a single body of evidence, for it to be considered as a whole.<sup>26</sup>

## VI PRELIMINARY OBJECTION

61. The State raised a preliminary objection of “lack of exhaustion of domestic remedies,” arguing that the Court must reject the application in the instant case *in limine* because:

a) the rule of international law regarding prior exhaustion of domestic remedies, recognized in the case law of international human rights courts, “is granted in the interest of the State” and seeks to give it the opportunity to remedy situations resorting to its own means before having to answer for them before international bodies, which also follows from the subsidiary nature of the international proceeding vis-à-vis the national systems to guarantee human rights in case there are no remedies available, or if the existing remedies are inadequate or ineffective. In its legislation, the State has effective and suitable remedies to address human rights violations, it has the instruments to attain the effects sought, and any person has access to them, to exercise said remedies and protect the situation of abridgment;

b) this objection was raised in a timely manner during the early stages of the proceeding before the Court, and the latter is not subject to what the Commission decided regarding this point;

c) in the instant case the habeas corpus remedy was applied and it was “duly complemented as it has been shown that at the time of its execution Sánchez had already been released by the Tenth Infantry Battalion;”

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<sup>25</sup> Cf. *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 115.

<sup>26</sup> Cf. *Las Palmeras Case, Reparations*, *supra* note 4, para. 34; *El Caracazo Case, Reparations*, *supra* note 4, para. 62; and *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 78.

d) while it is true that a long time has passed since the start of the domestic proceeding, this has been due to the “certain and unobjectionable” fact that the accused in said proceeding, Ángel Belisario Hernández González, has been at large from law enforcement, despite the fact that “as one can logically assume, several persons may have intervened in Sánchez’s crime.” This fact has not been dependent on the State, but rather on circumstances beyond the control of the courts in Honduras. There is no indication in the case file before the Second Departmental Court of First Instance of Intibucá or in the file before the Inter-American Court, that the long duration of the proceeding has been the responsibility of the State;

e) there are within the domestic system “the various domestic remedies set forth in the [Criminal Procedural Code, i.e.] reconsideration and appeal, including if appropriate the extraordinary cassation remedy for dismissal; there are also other remedies available regarding amparo guarantees, constitutional motions, and application for review.” Pursuant to said Code, the aggrieved party can also resort to civil action and criminal action, as in the Honduran State “[p]ublic [c]riminal action is not the monopoly of the Public Prosecutor’s Office,” and therefore the aggrieved party can appear in the criminal trial being heard by the Second Departmental Court of First Instance of Intibucá and intervene in the course of the proceeding. The next of kin of the alleged victim have had the opportunity to appear in the domestic proceeding, which is still open, yet they have not done so. At no time have they been denied access to any level of jurisdiction;

f) Ángel Belisario Hernández González was captured as the alleged perpetrator of the murder of Juan Humberto Sánchez, and while the former studied at a Honduran university, said studies were through distance education, which means that there has been no direct attendance or presence at the school where Ángel Belisario Hernández González supposedly studies; and

g) that Ángel Belisario Hernández González is being tried for the same facts that are being debated before the Inter-American Court, which means that there are two parallel proceedings, one domestic and the other international. The testimony of the accused may provide new elements in the investigation which it is necessary to address so as to clarify the facts and punish those responsible, and only then can it be said that the evidentiary proceedings have been completed.

### *Pleadings of the Commission*

62. With respect to the preliminary objection raised by the State, the Inter-American Commission asked the Court to reject each of its arguments for the following reasons:

a) the purpose of the rule regarding domestic remedies is to offer the State an opportunity to remedy the alleged violation before the inter-American system decides on the merits of the case; and in this case, “the reinforcing and complementary nature of the inter-American system [...] is in effect because the domestic jurisdiction has not been capable of remedying

the violations due to the ineffectiveness of [the] remedies provided in it;"

b) the State "alleges that the decision on admissibility adopted by the Commission [in Report N° 65/01], exercising the exclusive powers granted to it by the Convention [Articles 46 and 47], should be reviewed by the Court." Articles 46 and 47 of the Convention provide that it is for the Commission to determine admissibility of a complaint or lack thereof, and exercising said authority, it analyzed -in depth and in a detailed manner- compliance with the requirements of the Convention regarding admissibility, and it decided to reject the objection filed by Honduras before the Commission regarding lack of exhaustion of domestic remedies, "pursuant to the principle of estoppel according to which the stages of the proceeding take place successively, by definitively closing each of them, and it is thus not possible to go back to procedural stages and moments that have already been concluded and completed;"

c) habeas corpus "was ineffective to remedy the violations committed by the State of Honduras;"

d) the Inter-American Commission established in its Report No. 65/01 that the exception set forth in Article 46(2)(c) of the American Convention was applicable due to the unjustified delay in the criminal investigation undertaken by the Honduran court, as the steps taken in ten years of said proceeding were preliminary inquiries, investigation is in the stage of preliminary proceedings, and the process was suspended for over three years waiting for Ángel Belisario Hernández González to be captured;

e) while the State listed and generically referred to the remedies set forth in the Honduran legal system, it did not refer to the grounds for their application and the effectiveness they might have to protect the rights abridged. Among said actions, the State mentioned civil action, which "is not suitable to obtain comprehensive reparation of the violations committed against Juan Humberto Sánchez, namely torture, illegal detention and extra-legal execution, especially since they are attributable to the State and therefore it need not be exhausted." Regarding the State's argument that the aggrieved party can initiate penal action, it is "an attempt by the State to avoid its responsibility regarding exercise of penal action and an inadequate interpretation of the reinforcing nature of the regional system for protection of human rights;" and

f) the State argues in its favor that one of the alleged perpetrators of the facts was recently captured; however, the crime being investigated, due to its characteristics, could not have been committed by a single person. In July, 1999, the judge hearing the domestic case ordered the file shelved until one of the alleged perpetrators appeared, when he should have continued the investigation to identify the other perpetrators.

*Pleadings of the representatives of the alleged victim*

63. The representatives of the alleged victim, in turn, asked the Court to reject the preliminary objection raised by the State due to "the requirements regarding admissibility, both in terms of timeliness, adequacy and relevance. Their arguments were as follows:

a) the rule on exhaustion of domestic remedies is a means of defense established for the benefit of the States, and therefore the right to resort to it can be waived by them, even in an implied manner. Therefore, the State must "resort to it when admissibility is being studied, since not doing so is understood as a waiver of resorting to it later on" (principle of *estoppel/forclusion*);

b) in the case under discussion, the State did not explicitly allege lack of exhaustion of domestic remedies during the early stages of the proceeding before the Commission; even though "it could have resorted to those arguments regarding admissibility of said complaint during the early stage of the proceeding before the Inter-American Commission," in view of the fact that "the first notification of the complaint was toward the end of 1992, in other words, seven years before [the State resorted to this argument for the first time], and its first reply was in 1993." Pursuant to the criteria set forth by the Court, preliminary objections, to be timely, must be raised from the start of the proceeding, that is, since the Inter-American Commission began to hear the complaint. If that is not the case, it can be assumed that there is an implicit waiver by the State regarding the possibility of raising preliminary objections. The opposite criterion would endanger correct administration of justice and juridical stability;

c) the habeas corpus remedy -filed on July 20, 1992- was not effective either, and its execution was fraught with irregularities, in addition to the fact that "in the [current] procedural moment, said argument does not seek to solve the situation of abridgment [regarding the] extra-legal execution of Juan Humberto Sánchez;"

d) the domestic proceeding in the instant case has suffered an unjustified delay of more than 10 years in the investigation, and this is one of the exceptions to the requirement of exhaustion of domestic remedies, set forth in Article 46(2) of the American Convention. In turn, "if processing of the domestic remedies is delayed with no justification, it can be inferred that they have lost their effectiveness to attain the result for which they were established, 'thus placing the victim in a state of defenselessness,'" especially in light of the degree of complexity of the matter, the procedural activity of the interested party, and the behavior of the judicial authorities; and

e) the State is mistaken in its determination of the adequate remedy, as it "is necessary both for the domestic remedies to formally exist and for them to be adequate to protect the juridical situation of infringement and to be effective to attain the result for which they were conceived." In other words, the State cannot merely list the remedies that exist in domestic legislation, without demonstrating which would be adequate to protect the alleged situation of human rights violation. As regards the remedies of reconsideration and appeal, to which the State resorts in its argument, they are not remedies to be exhausted, "as they depend on a criminal investigation issuing a decision that is open to questioning by one of the parties." In addition, with respect to the civil action mentioned by the State, it is not an adequate remedy "to obtain justice regarding the disappearance, torture, and subsequent death of Juan Humberto Sánchez."

*Considerations of the Court*

64. With respect to the admissibility requirements set forth in Articles 46 and 47 of the American Convention that are under discussion in the instant case, the Court reiterates its inherent authority to exercise its jurisdiction *in toto* in the proceeding followed before the bodies of the inter-American system for protection of human rights, without this involving review of the proceeding carried out before the Commission in a case that has been submitted to the Court.<sup>27</sup>

65. The broad terms of the wording of the Convention indicate that the Court exercises full jurisdiction over the matters pertaining to a case. The Court is therefore competent to decide whether any of the rights and liberties protected by the American Convention has been abridged, and to adopt appropriate measures derived from said situation; but it is also competent to rule on the procedural prerequisites that are the basis for its possibility of hearing a case, as well as to verify compliance with all procedural rules involving interpretation or application of the Convention.<sup>28</sup>

66. In accordance with the context of application of the American Convention and its object and purpose, rules pertaining to procedures must be applied on the basis of a criterion of reasonability, because otherwise, there would be an imbalance among the parties and realization of justice would be compromised.<sup>29</sup>

67. This Court deems that in the *sub judice* case there has been an unjustified delay in the decision regarding the aforementioned domestic remedies, because while the criminal court investigations began in October 1992, to date the direct perpetrators and those who instigated the extra-legal execution of Juan Humberto Sánchez have not been punished. Unjustified delay is an acknowledged exception to prior exhaustion of domestic remedies. As the Court has stated, under international jurisdiction what is essential is to maintain the necessary conditions to avoid diminishing or creating an imbalance in the procedural rights of the parties, and to attain the aims for which the various procedures were designed.<sup>30</sup> In the instant case, since there was an unjustified delay in domestic remedies, the requirement of prior exhaustion does not apply as a condition for admissibility of the application.

68. Furthermore, in this regard, while the State attached copies of certain actions in the domestic court proceedings, in its communications to the Commission on April 6, 1993, July 14, 1997, and July 12, 1999, its argument on lack of exhaustion of

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<sup>27</sup> Cf. *"Street Children" Case (Villagrán Morales et al.). Preliminary Objections*. Judgment of September 11, 1997. Series C No. 32, paras. 17 and 19.

<sup>28</sup> Cf. *19 Tradesmen Case. Preliminary Objection*. Judgment of June 12, 2002. Series C No. 93, para. 27; *Constantine et al. Case. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 82, para. 71; *Benjamin et al. Case. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 81, para. 71; and *Hilaire Case. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 80, para. 80.

<sup>29</sup> *Case of the "White Van" (Paniagua Morales et al.). Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 40.

<sup>30</sup> *Baena Ricardo et al. Case. Preliminary Objections*. Judgment of November 18, 1999. Series C No. 61, para. 41; *Case of the "White Van" (Paniagua Morales et al.). Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 42; and *Gangaram Panday Case. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12, para. 18.

domestic remedies was only asserted by the State in its last brief in 1999, that is, almost 7 years after the start of the proceeding before the Commission. In Report No. 65/01 regarding admissibility and the merits in the instant case, issued pursuant to its Rules of Procedure in force, the Commission, in turn, dismissed the objection regarding non-exhaustion of domestic remedies, in light of Article 46(2)c) of the American Convention, based on the criterion with which this Court concurs.

69. Given the above and in accordance with its case law,<sup>31</sup> in the instant case the Court dismisses the preliminary objection raised by the State.

## VII PROVEN FACTS

70. The Court will now consider the significant facts that it deems proven, which it will present chronologically, and which issue from the study of the actions of the State, the Inter-American Commission and the representatives of the alleged victim, as well as the documentary evidence, testimony, and expert opinions submitted in the instant case.

### A) With respect to the situation of the country

1. during the 1980s and early '90s, there was a pattern of forced disappearances and extra-legal executions committed by the military forces in Honduras. These forces had a special, autonomous status, and they acted under a certain doctrine of national security, in light of which they captured "dangerous" persons or those who were "suspicious" of being alleged Honduran subversives, supporters of the Salvadoran guerrillas or of the Sandinistas. Usually these persons were detained at night, interrogated, tortured, and then given a finishing shot and buried in clandestine cemeteries or unauthorized places. The military forces, in turn, controlled the police forces, and the judges felt intimidated to effectively investigate criminal cases where human rights violations by the armed forces were alleged,<sup>32</sup> and this created a climate of impunity;<sup>33</sup>

<sup>31</sup> *Godínez Cruz Case. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 3, paras. 86, 96 and 97; *Fairén Garbí and Solís Corrales Case. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 2, paras. 83, 93 and 94; and *Velásquez Rodríguez Case. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, paras. 84, 94 and 95.

<sup>32</sup> *Expert Opinion rendered by Leo Valladares before the Inter-American Court on March 3, 2003.*

<sup>33</sup> *Godínez Cruz Case.* Judgment of January 20, 1989. Series C No. 5, paras. 153.b, 165, 167 and 198; *Velásquez Rodríguez Case.* Judgment of July 29, 1988. Series C No. 4, paras. 147.b), 157 and 188; *Statement by Leonel Casco Gutiérrez rendered before the Inter-American Court on March 3, 2003; Expert Opinion of Leo Valladares Lanza rendered before the Inter-American Court on March 3, 2003; Expert Opinion of Héctor Fortín Pavón rendered before the Inter-American Court on March 4, 2003; Report in the daily newspaper Tiempo, "Tres asesinatos en quince días y la inseguridad verdadera" on July 31, 1992; Report in the daily newspaper Tribuna, "Asesinatos Ideológicos son los de Borjas y Cayo Eng Lee" on July 31, 1992; Report in the daily newspaper Prensa "Piden interpelación de jefes militares" on September 18, 1992 in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 7, pp. 22 to 24; and *Sworn statement by Celso Sánchez Domínguez on February 28, 2003,* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59; and *Comisionado Nacional de los Derechos Humanos "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980 1993,"* Second Edition: Guaymurás, Tegucigalpa, 2002, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 255-260, 383-386.*

2. in 1992 in Honduras there was a joint command of the armed forces, the territorial forces and the Tenth Infantry Battalion, and they were in charge of security and order in the border region with El Salvador, which includes the area of Colomoncagua;<sup>34</sup>

## B) With respect to Juan Humberto Sánchez

3. Juan Humberto Sánchez was born in the Municipality of Colomoncagua, Department of Intibucá, Honduras, on May 15, 1965, and his place of residence was the Department of La Libertad, El Salvador;<sup>35</sup>

4. Juan Humberto Sánchez worked as a radio operator for *Radio Venceremos*, of the *Frente para la Liberación Farabundo Martí*, in El Salvador, and he earned US\$50,00 (fifty United States dollars) a month;<sup>36</sup>

5. on July 9, 1992, Juan Humberto Sánchez visited his parents' house to get his documents in order, in the border village of Santo Domingo, jurisdiction of

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<sup>34</sup> Cf. *Statement by Leonel Casco Gutiérrez rendered before the Inter-American Court on March 3, 2003*; *Expert Opinion of Leo Valladares Lanza rendered before the Inter-American Court on March 3, 2003*; *Sworn statement by Celso Sánchez Domínguez on February 28, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 53 to 54; and *Comisionado Nacional de los Derechos Humanos "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980 1993,"* Second Edition: Guaymuras, Tegucigalpa, 2002 in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 193 and ff., 383 to 386.

<sup>35</sup> Cf. *Certification by the Municipal Civil Registry Office of Colomoncagua of the death certificate of Juan Humberto Sánchez of September 24, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 657 to 658; *Certification of death certificate, of August 26, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 8, p. 25; *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 676; and *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 680-681.

<sup>36</sup> Cf. *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Report in the daily newspaper Prensa; "Hondureño asesinado pertenecía al FMLN," on September 16, 1992* and *"FMLN denuncia que FF.AA. ejecutó a hondureño que le servía de 'correo'"* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 4, pp. 5 to 6; *Expansion of the Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; *Expansion of the testimony by Donatila Argueta Sánchez before COFADEH on November 26, 2001* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 14, pp. 45 to 46; and *affidavit by Carlos Eduardo Henríquez Consalvi on April 8, 2003* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo V," Annex 3, final written pleadings of the representatives of the alleged victim, pp. 1612 to 1614.

Colomoncagua, Honduras.<sup>37</sup> The following day he was detained at their house at approximately 9 p.m., without a court order, by troops of the Tenth Infantry Battalion of Marcala, La Paz, commanded by second lieutenant Ángel Belisario Hernández González. Juan José Vijil, who raised Juan Humberto as his father, as a collaborator of the Army, accompanied them to the military post in Colomoncagua;<sup>38</sup> there he was informed by the Mayor, on July 10, 1992, that his son's detention was due to complaints of theft of money made by Clemente Sánchez

Márquez, that he bore an AK 47 rifle, in addition to alleged ties with the guerrilla forces of the *Frente Farabundo Martí para la Liberación Nacional (FMLN)*;<sup>39</sup>

<sup>37</sup> Cf. *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 680 to 681; and "Desaparecidos" Newsletter, published by COFADEH, volume 2, N° 20, June-July 1992, Tegucigalpa, Honduras in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 6, pp. 19-21.

<sup>38</sup> Accepted by the State in its final written pleadings in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1221 to 1222 and in the final oral pleadings in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Transcripción de Audiencia Pública," p. 224. Cf. *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717; and "Desaparecidos" Newsletter, published by COFADEH, volume 2, N° 20, June-July 1992, Tegucigalpa, Honduras in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 6, pp. 19 to 21.

<sup>39</sup> Cf. *Statement by Luis Alonso Discua Elvir rendered before the Inter-American Court on March 4, 2003*; *Statement by Enmanuel Flores Mejía rendered before the Inter-American Court on March 4, 2003*; *Statement by second lieutenant Angel Belisario Hernández González rendered before COFADEH on July 28, 1992*, in a file at the Secretariat of the Court entitled: "Anexos a la demanda presentados por la Comisión Interamericana de Derechos Humanos," Annex 3 of the application, pp. 132-133; *Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, p. 136 to 137; *Testimony of Clemente Sánchez before the Justice of the Peace in Colomoncagua on August 3, 1992 (copy authenticated by notary public on March 24, 1993)*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 7 of the application, pp. 139 to 140; *Habeas Corpus proceeding record drawn up by the serving judge, Rigoberto Osorio Bautista appointed by the Appellate Court of Comayagua on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 8 of the application, pp. 144 to 145; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 666 to 667; *Statement by Purificación Hernández Alvarado before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 670; *Statement by Vicente Hernández Pineda before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the

6. on July 11, 1992, Juan Humberto Sánchez was released in the morning due to lack of evidence against him, after he had been identified in the Civil Registrar's Office as a Honduran national. He was delivered to his stepfather, Juan José Vijil.<sup>40</sup>

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Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 670 to 671; *Statement by Clemente Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 672; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 677; *Preliminary statement by Ángel Belisario Hernández González on January 17, 2003* in a file at the Secretariat of the Court entitled; "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 26 to 33; *Certified Commitment Order against Ángel Belisario Hernández González dated February 11, 2003*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," Annex 14 with the final oral pleadings by the State, pp. 40 to 41; and *Expansion of statement of grievances made by the legal representative of Ángel Belisario Hernández addressed to the Appellate Court of Comayagua on February 10, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," Annex 1 of the final written pleadings by the State, pp. 1487 to 1495.

<sup>40</sup> Accepted by the State in its final written pleadings in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1221 to 1222 and in the final oral arguments in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Transcripción de Audiencia Pública," p. 224. *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Luis Alonso Discua Elvir rendered before the Inter-American Court on March 4, 2003*; *Statement by Enmanuel Flores Mejía rendered before the Inter-American Court on March 4, 2003*; *Expert Opinion rendered by Leo Valladares before the Inter-American Court on March 3, 2003*; *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Statement by second lieutenant Angel Belisario Hernández González, in charge of the Detachment of the Tenth Battalion of Colomoncagua rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 3 of the application, pp. 132 to 133; *Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, pp. 136 to 137; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; *Habeas Corpus proceeding record drawn up by the serving judge, Rigoberto Osorio Bautista appointed by the Appellate Court of Comayagua on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 8 of the application, pp. 144 to 145; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Trial document of the Second Court of First Instance of Intibucá, October 13, 1998* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 11 of the application, pp. 150 to 151; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187 to 192; *Statement by Pablo Vijil Argueta before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 20 of the application, pp. 193 to 194; *Habeas Corpus remedy filed before the Appellate Court of Comayagua on July 20, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 248; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on August 3, 1992*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 666 to 667; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on August 26, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 659 to 660; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the

The military warned the father not to comment on what had happened, because if he did they would return to their house. That day, both of them went back to the village of Santo Domingo.<sup>41</sup>

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answer to the application, pp. 662 to 663; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 663 to 664; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on March 6, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 664 to 665; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 665 to 666; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 666 to 667; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 10, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 667; *Statement by Vicente Hernández Pineda before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 670 to 671; *Statement by Miguel Hernández before the Justice of the Peace of Colomoncagua, February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 673; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 676; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 678; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 681 to 682; *Statement by Pablo Vijil Argueta before the Justice of the Peace of Colomoncagua March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 684 to 685; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685; *Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717; *Report in the daily newspaper Tiempo, "Un subteniente del Décimo Batallón de Infantería dio la orden de capturar al joven que apareció muerto en Colomoncagua" on August 1, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 1, p. 1; *Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; *Preliminary statement by Ángel Belisario Hernández González on January 17, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 26 to 33; *Certified Commitment Order against Ángel Belisario Hernández González dated February 11, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 40 to 41; *Sworn statement by Celso Sánchez Domínguez on February 28, 2003*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59; and *Comisionado Nacional de los Derechos Humanos or National Human Rights Commissioner, "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980 1993," Second Edition: Guaymuras, Tegucigalpa, 2002*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 296 to 297.

<sup>41</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, pp. 136 to 137; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31,*

7. during the night on July 11, 1992, a group of armed military forcefully entered the house of the parents of Juan Humberto Sánchez, threatened his family,

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1992 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; *Habeas Corpus proceeding record drawn up by the serving judge, Rigoberto Osorio Bautista appointed by the Appellate Court of Comayagua on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 8 of the application, pp. 144 to 145; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Trial document of the Second Court of First Instance of Intibucá October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 11 of the application, pp. 150 to 151; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187-192; *Statement by Pablo Vijil Argueta before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 20 of the application, pp. 193 to 194; *Habeas Corpus remedy filed before the Appellate Court of Comayagua on July 20, 1992* in a file at the Secretariat of the Court entitled: "Anexos a la demanda presentados por la Comisión Interamericana de Derechos Humanos," Annex 24 of the application, p. 248; *Statement by Rosa Della Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 666 to 667; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on August 26, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 659 to 660; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 662 to 663; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 663 to 664; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on March 6, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 664 to 665; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 665 to 666; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 10, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 667; *Statement by Vicente Hernández Pineda before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 670 to 671; *Statement by Miguel Hernández, before the Justice of the Peace of Colomoncagua February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 673; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 676; *Statement by María Dominga Sánchez. before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 678; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 681 to 682; *Statement by Pablo Vijil Argueta before the Justice of the Peace of Colomoncagua March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 684 to 685; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685; *Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001*, in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; *Preliminary statement by Ángel Belisario Hernández González on January 17, 2003* in a file at the Secretariat of the Court entitled; "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," p. 26-33; and *Sworn statement by Celso Sánchez Domínguez on February 28, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59.

pointed weapons at them, forced them to lie on the ground, bound Juan Humberto Sánchez and took him away, providing no explanation;<sup>42</sup>

<sup>42</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Luis Alonso Discua Elvir rendered before the Inter-American Court on March 4, 2003; Statement by Enmanuel Flores Mejía rendered before the Inter-American Court on March 4, 2003; Expert Opinion rendered by Leo Valladares before the Inter-American Court on March 3, 2003; Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; Statement by the Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992 in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" July 31, 1992 in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; Habeas Corpus proceeding record drawn up by the serving judge, Rigoberto Osorio Bautista appointed by the Appellate Court of Comayagua on July 28, 1992 in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 8 of the application, pp. 144 to 145; Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. 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Tomo I," Annex 24 of the application, p. 248; Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on August 3, 1992 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II, Annex 1 of the answer to the application, pp. 666 to 667; Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on August 26, 1992 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 659 to 660; Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on March 4, 1993 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. 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8. Juan Humberto Sánchez was taken by force to the military detachment post at Concepción, where he was interrogated by members of a special commando of the army, known as "Tucán";<sup>43</sup>
9. on July 12, 1992, Juan José Vijil Sánchez reported the capture of Juan Humberto Sánchez to the military detachment in Colomoncagua. The following day, officials of said detachment visited Mr. Vijil's house, took the pertinent statements, and checked the ceiling of the house. On July 15, 1992, five agents of the Tenth Battalion returned the house of the Vijil Sánchez family searching for weapons;<sup>44</sup>
10. on July 21, 1992, the lifeless body of Juan Humberto Sánchez was found by a group of persons in the Río Negro, close to a place called Cotala and in a pool known as El Mecatero, in a state of decay.<sup>45</sup> Juan Humberto Sánchez' lifeless body had a

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*Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685; *Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717; *Report in the daily newspaper Tiempo "Un subteniente del Décimo Batallón de Infantería dio la orden de capturar al joven que apareció muerto en Colomoncagua" on August 1, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 1, p. 1; *Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; *Preliminary statement by Ángel Belisario Hernández González on January 17, 2003*, in a file at the Secretariat of the Court entitled; "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," Annex 12 with the final oral pleadings by the State, p. 26-33; *Certified Commitment Order against Ángel Belisario Hernández González dated February 11, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," p. 40-41; *Sworn statement by Celso Sánchez Domínguez on February 28, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59; and *Comisionado Nacional de los Derechos Humanos "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980 1993,"* Second Edition: Guaymuras, Tegucigalpa, 2002, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 296 to 297.

<sup>43</sup> Cf. *Comisionado Nacional de los Derechos Humanos, "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980 1993,"* Second Edition: Guaymuras, Tegucigalpa, 2002, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 249, 296 and 297.

<sup>44</sup> Cf. *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; and *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681.

<sup>45</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, pp. 136 to 137; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex

rope around the neck, crossing his chest and binding the hands and feet toward his back; there was a bullet wound that entered through the forehead and the exit orifice was at the base of the skull; the nose, ears and genitals had been severed, and there were several flayings on the back;<sup>46</sup>

9 of the application, pp. 146 to 147; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187 to 192; *Statement by Pablo Vijil Argueta before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 20 of the application, pp. 193 to 194; *Record of the Justice of the Peace of Colomoncagua of July 22, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 249; *Statement by José Alfredo Ramos before the Justice of the Peace in Colomoncagua on July 23, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 648 to 649; *Statement by Leonidas Márquez Del Cid before the Justice of the Peace in Colomoncagua on July 24, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 649; *Statement by Santos Amaya before the Justice of the Peace in Colomoncagua on July 27, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 649 to 650; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on July 27, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on July 27, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; *Certification by the Municipal Civil Registry Office of Colomoncagua of the death certificate of Juan Humberto Sánchez of September 24, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 657 to 658; *Statement by Leonardo Sorto Hernández before the Justice of the Peace in Colomoncagua on March 12, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 667 to 668; *Statement by Leonidas Márquez Del Cid before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 683; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 687; *Statement by Santos Amaya Canales before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 687 to 688; *Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717; and *Certification of death certificate of August 26, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 8, p. 25.

<sup>46</sup> Cf. *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, pp. 136 to 137; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Trial document of the Second Court of First Instance of Intibucá October 13, 1998* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 11 of the application, pp. 150 to 151; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187 to 192; *Statement by Pablo Vijil Argueta before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 20 of the application, pp. 193 to 194; *Habeas Corpus remedy filed before the Appellate Court of Comayagua on July 20, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 248; *Record of the Justice of the Peace of Colomoncagua of July 22, 1992 on the finding of the body of Juan Sánchez and ordering the arrest of those responsible* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 249; *Statement by*

11. The Justice of the Peace of Colomoncagua and three empirical experts were present at the examination of the body of Juan Humberto Sánchez;<sup>47</sup>

12. The Justice of the Peace of Colomoncagua ordered that the body of Juan Humberto Sánchez be buried immediately at the place where it was found, due to its advanced state of decay;<sup>48</sup>

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*Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 650; *Certification by the Municipal Civil Registry Office of Colomoncagua of the death certificate of Juan Humberto Sánchez of September 24, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 657-658; *Statement by Leonardo Sorto Hernández before the Justice of the Peace in Colomoncagua on March 12, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 667-668; *Statement by Leonidas Márquez Del Cid before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 683; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 687; *Statement by Santos Amaya Canales before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 687 to 688; *Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717; *Report in the daily newspaper Tiempo, "Un subteniente del Décimo Batallón de Infantería dio la orden de capturar al joven que apareció muerto en Colomoncagua" on August 1, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 1, p. 1; *"Desaparecidos" Newsletter, published by COFADEH, volume 2, N° 20, June-July 1992, Tegucigalpa, Honduras* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima ante la Corte Interamericana de Derechos Humanos," Annex 6, pp. 19 to 21; *Certification of death certificate of August 26, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 8, p. 25; *Certified Commitment Order against Ángel Belisario Hernández González dated February 11, 2003*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 40-41; and *Sworn statement by Celso Sánchez Domínguez on February 28, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59.

<sup>47</sup> Cf. *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; *Letter by General Luis Alonso Discua Elvir to the Attorney General, Leonardo Matute Murillo on August 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 5 of the application, pp. 136 to 137; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Record of the Justice of the Peace of Colomoncagua of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 249; *Record of the Justice of the Peace of Colomoncagua, Intibucá of July 22, 1992 appointing as empirical experts José Santos Vijil and Mabel Sánchez Ramos* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 647; *Expert Opinion of José Santos Vijil and Mabel Sánchez Ramos of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 647; *Judicial inspection of the site "El Mecatero" of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 648; and *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685.

<sup>48</sup> Cf. *Statement by Dominga Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Leonel Casco Gutiérrez rendered before the Inter-American Court on March 3, 2003*; *Statement by Lucinda Mena Amaya rendered before the Inter-American Court on March 4, 2003*; *Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before*

### C) Facts subsequent to the death and burial of the body of Juan Humberto Sánchez

13. on July 22, 1992, a helicopter arrived at the village of Santo Domingo bringing army officers, who questioned the next of kin of Juan Humberto Sánchez and, subsequently, intimidated them so that they would not reveal what had happened. The next day, a major of the Tenth Battalion of Marcala asked the father of Juan Humberto Sánchez to sign a receipt in which he certified that Juan Humberto was delivered to him on July 11, 1992 in good physical conditions;<sup>49</sup>

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*COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134-135; *Statement by Pablo Vijil Argueta before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 20 of the application, pp. 193 to 194; *Expert Opinion of José Santos Vijil and Mabel Sánchez Ramos of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 647; *Judicial inspection of the site "El Mecatero" of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 648; *Statement by Domingo Hernández Canales before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 672 to 673; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 681 to 682; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 687; *Official Letter N° 047-DDHN of the Secretariat of Foreign Affairs of the Republic of Honduras of July 9, 1999* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 2 of the answer to the application, p. 729-732; *Report in the daily newspaper Tiempo "Un subteniente del Décimo Batallón de Infantería dio la orden de capturar al joven que apareció muerto en Colomoncagua" on August 1, 1992* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 1, p. 1; and *Forensic report on description of the finding of the body of Juan Humberto Sánchez, issued by the Forensic Department of the Judiciary of the State of Honduras, dated April 1, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," Annex 4 of the final written pleadings by the State, pp. 1518 to 1519.

<sup>49</sup> Cf. *Statement by Dominga Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Statement by second lieutenant Angel Belisario Hernández González rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 3 of the application, pp. 132 to 133; *Statement by The Justice of the Peace of Colomoncagua, Carlos Manuel Delcid Coello, rendered before COFADEH on July 28, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 4 of the application, pp. 134 to 135; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna "parientes de muchacho asesinado denuncian amenazas de militares" on July 31, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 6 of the application, p. 138; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187 to 192; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Attestation by the Mayor's Office and the Justice of the Peace of Colomoncagua of July 11, 1992* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 12, p. 43; and *Sworn statement by Celso Sánchez Domínguez on February 28, 2003*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," final oral pleadings of the Commission, pp. 51 to 59.

14. on July 28, 1992, Mr. Vijil Hernández was summoned again and questioned by the “group of military who were transported in the helicopter,” accompanied by the Mayor of Colomoncagua and the Justice of the Peace. They asked where his son had taken the weapons, but he did not know what weapons they were referring to, so he told them that they could search the house. After this, the military took him to Tegucigalpa, to some military facilities, where he was interrogated by military officers, who asked him to clarify that it was not the army that had murdered his stepson and they told him to state that the crime had been committed by a group within the community. That same day, María Dominga Sánchez, the mother of the alleged victim, informed the press that her husband had been taken by the military to an unknown destination with no advance notice and that he had been threatened and intimidated by the military;<sup>50</sup>

15. on July 29, 1992, two uniformed officers took Mr. Vijil Hernández to render testimony at the Attorney General’s Office. On July 30, 1992, Mr. Vijil Hernández was taken back to Colomoncagua;<sup>51</sup>

16. on July 31, 1992, after the next of kin accused the armed forces of kidnapping and killing Juan Humberto Sánchez, General Luis Alonso Discua Elvir, in a statement to the daily newspaper El Heraldo, denied any participation of the armed forces in the murder and he specified that Sánchez –whom he called a criminal- had been a member of the Salvadoran guerrilla forces;<sup>52</sup>

#### **D) With respect to the domestic remedies**

17. on July 12, 1992, Juan José Vijil requested advice from priest Celso Sánchez regarding what had happened to Juan Humberto Sánchez, and the priest recommended that he file a complaint;<sup>53</sup>

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<sup>50</sup> Cf. *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992* in a file at the Secretariat of the Court entitled: “Caso Juan Sánchez. Fondo. Tomo I,” Annex 2 of the application, pp. 120 to 131; *Statement to the press by María Dominga Sánchez, press report in the daily newspaper La Tribuna “parientes de muchacho asesinado denuncian amenazas de militares” on July 31, 1992* in a file at the Secretariat of the Court entitled: “Caso Juan Sánchez. Fondo. Tomo I,” Annex 6 of the application, p. 138; and *Statement by Modesto Rodas Hernández Hernández before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled “Caso Juan Sánchez. Fondo. Tomo II,” Annex 1 of the answer to the application, pp. 688 to 689.

<sup>51</sup> Cf. *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992* in a file at the Secretariat of the Court entitled: “Caso Juan Sánchez. Fondo. Tomo I,” Annex 2 of the application, pp. 120 to 131.

<sup>52</sup> Cf. Press reports published on July 31, 1992 in the daily newspaper El Heraldo, “Grupos anacrónicos de izquierda y derecha son los culpables de los últimos crímenes,” “Ajuste de cuentas” and “La criminalidad en el país es ideológica-política dice el general Discua,” in a file at the Secretariat of the Court entitled “Caso Juan Sánchez. Fondo. Tomo I,” Annex 14 of the application, pp. 178 to 180.

<sup>53</sup> *Statement by Dominga Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003*; *Statement by Leonel Casco rendered before the Inter-American Court on March 3, 2003*; *Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992*, in a file at the Secretariat of the Court entitled “Caso Juan Sánchez. Fondo. Tomo I,” Annex 2 of the application, pp. 120 to 131; and *Sworn statement by Celso Sánchez Domínguez on February 28, 2003*, in a file at the Secretariat of the Court entitled “Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones,” pp. 51 to 59.

### D.1) with respect to habeas corpus

18. on July 20, 1992, Leonel Casco Gutiérrez filed, by telegram,<sup>54</sup> a habeas corpus remedy against the commanders of the Tenth Infantry Battalion and of the territorial forces before the Appellate Court of Comayagua for the disappearance of Juan Humberto Sánchez. The Appellate Court informed Mr. Casco that they would admit it after the serving judge issued a report on the matter;<sup>55</sup>

19. on July 24, 1992, the Judge of First Instance of Marcala, La Paz, informed the Appellate Court of Comayagua that it had been impossible to execute the habeas corpus order "because the Commander of the Tenth Battalion was away." On July 28, 1992, that same judge went to the facilities of the Tenth Infantry Battalion to execute the habeas corpus order, and he was informed that Juan Humberto Sánchez had been detained on July 10 and released the following day;<sup>56</sup>

20. on August 14, 1992 the habeas corpus remedy was rejected by the Appellate Court of Comayagua, which forwarded said decision to the Supreme Court of Justice on August 17, 1992;<sup>57</sup>

### D.2) with respect to the criminal investigation

21. on July 22, 1992, the Justice of the Peace of the Municipality of Colomoncagua began the process of elucidation of the death of Juan Humberto Sánchez;<sup>58</sup>

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<sup>54</sup> Pursuant to Honduran legislation.

<sup>55</sup> Cf. *Statement by Leonel Casco Gutiérrez rendered before the Inter-American Court on March 3, 2003; Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992, with copies for the media, the Comisión Nacional de Reconciliación, Amnesty International, and the Comité contra la Tortura*, in a file at the Secretariat of the Court entitled: "Anexos a la demanda presentados por la Comisión Interamericana de Derechos Humanos," Annex 19, pp. 187-192; *Habeas Corpus remedy filed before the Appellate Court of Comayagua on July 20, 1992*, in a file at the Secretariat of the Court entitled: "Anexos a la demanda presentados por la Comisión Interamericana de Derechos Humanos," Annex 24, p. 248; *Official Letter N° 047-DDHN of the Secretariat of Foreign Affairs of the Republic of Honduras of July 9, 1999* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 2 of the answer to the application, pp. 729 to 732; and *Study prepared by the Centro de Investigación Pro Derechos Humanos on "La Aplicabilidad del Hábeas Corpus o exhibición personal en Honduras"* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 10, pp. 38 to 41.

<sup>56</sup> *Habeas Corpus proceeding record drawn up by the serving judge, Rigoberto Osorio Bautista, appointed by the Appellate Court of Comayagua on July 28, 1992*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 8 of the application, pp. 141 to 142.

<sup>57</sup> Cf. *Statement by Leonel Casco Gutiérrez rendered before the Inter-American Court on March 3, 2003*.

<sup>58</sup> Cf. *Attestation issued by the Second Court of First Instance of the Department of Intibucá on October 8, 1998* in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 15 of the application, p. 181; *Record of the Justice of the Peace of Colomoncagua of July 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 24 of the application, p. 249; *Attestation by the Second Court of First Instance of the Department of Intibucá of September 28, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 713; *Attestation by the Second Court of First Instance of the*

22. on October 22, 1992 the Justice of the Peace stated that "having carried out the first steps in the preliminary proceedings [...] these files are to be shelved [...] to continue afterwards if necessary;"<sup>59</sup>

23. on February 17, 1993 the Justice of the Peace of Colomoncagua forwarded the file to the Second Court of First Instance of the Department of Intibucá, for it to be filed.<sup>60</sup> Five days later, the Second Court of First Instance returned the file to the Justice of the Peace for annulment of the testimony of the parents of the alleged victim rendered in August, 1992, due to formal shortcomings.<sup>61</sup> On March 4, 1993, they rendered testimony again before the Justice of the Peace;<sup>62</sup>

24. on February 20, 1995 the Public Prosecutor appeared before the Justice of the Peace of Colomoncagua, to request that 21 persons be summoned again, and they were once more summoned to render testimony.<sup>63</sup> On February 22, 1995, the

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*Department of Intibucá on the status of the proceeding on October 8, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 716.

<sup>59</sup> *Order ending the investigative stage and shelving order by the Justice of the Peace for Criminal Matters of Colomoncagua of October 22, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 660.

<sup>60</sup> *Document forwarded by the Justice of the Peace of Colomoncagua to the Second Court of First Instance of the Department of Intibucá, with the preliminary proceedings conducted for their shelving on February 17, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 661.

<sup>61</sup> *Writ by the Second Court of First Instance of the Department of Intibucá in which it returns the case file for the Justice of the Peace to annul the testimony of María Dominga Sánchez and Juan José Vijil Hernández, of February 22, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 662.

<sup>62</sup> *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 662 to 663; and *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 663 to 664.

<sup>63</sup> *Appearance by the Prosecutor's Office on February 20, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 669; *Statement by Purificación Hernández Alvarado before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 670; *Statement by Vicente Hernández Pineda before the Justice of the Peace in Colomoncagua on February 21, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 670 to 671; *Statement by Clemente Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 672; *Statement by Domingo Hernández Canales before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 672 to 673; *Statement by Miguel Hernández, before the Justice of the Peace of Colomoncagua February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 673; *Statement by Lorenzo Marquez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 674; *Statement by Lorena Marquez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 674 to 675; *Statement by José Antonio Hernández Canales before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 675; *Statement by Gonzalo Gómez Amaya before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 675 to 676; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court

Prosecutor of the Second Court of First Instance of the Department of Intibucá asked the Justice of the Peace of Colomoncagua to summon 13 persons to render testimony.<sup>64</sup> That Court recorded on March 16, 1995 that it could not summon Angel Belisario Hernández González (the alleged perpetrator) because it did not know his address, and it sent the file once again to the Second Court of First Instance of the Department of Intibucá;<sup>65</sup>

25. on August 5, 1997, the Supreme Court of Justice requested the file *ad effectum videndi*. Said Court returned the file to the Second Court of First Instance of Intibucá on September 1, 1997, stating that it had no observations and that "respecting the independence of the lower [c]ourts, it issue[d] no ruling with respect to the case being discussed. Furthermore, the parties have access to the remedies

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entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 676; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 677; and *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 678.

<sup>64</sup> *Request for witnesses by the Public Prosecutor's Office on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 679; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 681 to 682; *Statement by Francisco Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 682; *Statement by Juana Bautista de Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 683; *Statement by Leonidas Márquez Del Cid before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 683; *Statement by Adán Vijil Ramos. before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 684; *Statement by Pablo Vijil Argueta before the Justice of the Peace of Colomoncagua March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 684 to 685; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685; *Statement by Pedro Canales before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 686 to 687; *Statement by José Alberto Ramos Alvarado before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 687; *Statement by Santos Amaya Canales before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 687-688; *Statement by Modesto Rodas Hernández Hernández before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 688 to 689; *Statement by José Celso Ramos before the Justice of the Peace in Colomoncagua on March 10, 1995*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 689; and *Statement by Antonio Hernández Márquez before the Justice of the Peace in Colomoncagua on March 10, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 689 to 690.

<sup>65</sup> *Attestation by the Justice of the Peace of Colomoncagua de March 16, 1995 in which it forwards the file to the Second Court of First Instance* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 690; and *Writ of receipt of the file by the Second Court of First Instance of the Department of Intibucá of March 20, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 691.

set forth in the law, to correct any irregularities that they deem [are] shown in the aforementioned files;<sup>66</sup>

26. on August 28, 1998, the Second Court of First Instance of Intibucá asked the Justice of the Peace of Colomoncagua for the testimony of 12 witnesses.<sup>67</sup> On September 1, 1998, the representative of the Public Prosecutor's Office appeared.<sup>68</sup> On September 18, 1998, the Justice of the Peace forwarded the testimony requested, save that of Ángel Belisario Hernández González and other persons;<sup>69</sup>

27. on September 29, 1998, the Second Court of First Instance asked the Director of the Oversight Board of the National Police and the General Commander of the Armed Forces to bring Ángel Belisario Hernández González before that court for him to make a preliminary examination statement. On October 28, 1998 the Judge Advocate General of the armed forces reported that they "d[id] not have any officer with the name stated in your official letter dated September 29, 1998." That same day, the Court provided the complete name to the Judge Advocate's office;<sup>70</sup>

<sup>66</sup> *Official Letter No.3045-SCSJ-97, Order of the Supreme Court of Justice of the Republic of Honduras of September 1, 1997 addressed to the Second Departmental Court of First Instance, La Esperanza, Department of Intibucá* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 694.

<sup>67</sup> *Writ requesting witnesses by the Second Court of First Instance of the Department of Intibucá to the Justice of the Peace of Colomoncagua of August 28, 1998*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 696.

<sup>68</sup> *Appearance of the Public Prosecutor's Office of September 1, 1998*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 697.

<sup>69</sup> *Statement by José Ángel Sánchez before the Justice of the Peace in Colomoncagua on September 17, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 705; *Statement by Juan Bautista Márquez Pineda before the Justice of the Peace in Colomoncagua on September 17, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 706; *Statement by Juan Antonio Ramos Márquez before the Justice of the Peace of Colomoncagua on September 18, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 707; *Statement by Victoriano Gómez Amaya before the Justice of the Peace of Colomoncagua on September 18, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 708; *Statement by Joaquina Ramos López before the Justice of the Peace of Colomoncagua on September 18, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 709 to 710; and *Attestation by the Justice of the Peace of Colomoncagua on September 18, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 710 to 711.

<sup>70</sup> *Cf. Statement by José Germán Silvestrucci rendered before the Inter-American Court on March 4, 2003; Official Letter No. 587 of the Second Court of First Instance of the Department of Intibucá of September 29, 1998 addressed to the Director of the Oversight Board and the National Police* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 714; *Official Letter No. 587 of the Second Court of First Instance of the Department of Intibucá of September 29, 1998 addressed to the Commander in Chief of the Armed Forces* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 715; *Report by the Armed Forces stating the lack of information on José Belisario, of October 16, 1998* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 718; *Official Letter No. 661 by the Second Court of First Instance of the Department of Intibucá of October 28, 1998 addressed to the Commander in Chief of the Armed Forces*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 720; and *Official Letter No. 390 by the Second Court of First Instance of the Department of Intibucá of June 23, 1999 Addressed to the Minister of Defense*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 724.

28. On October 8, 1998, the Second Court of First Instance of the Department of Intibucá certified that the case to elucidate the death of Juan Humberto Sánchez was in "the preliminary proceedings stage;"<sup>71</sup>

29. On October 13, 1998, the Second Court of First Instance of the Department of Intibucá issued a commitment order against Ángel Belisario Hernández González, for allegedly having participated in the murder of Juan Humberto Sánchez. On June 23, 1999, the Second Court of First Instance sent another official letter to the Ministry of Defense for Ángel Belisario Hernández González to be brought before that court, as it had received no reply to its September 29, 1998 communication;<sup>72</sup>

30. on July 1, 1999, the Second Court of First Instance of Intibucá shelved the case to await the capture of second lieutenant Ángel Belisario Hernández González;<sup>73</sup>

31. on August 6, 2001 the Secretariat of Foreign Affairs stated that it was aware of the whereabouts of the accused, Ángel Belisario Hernández González;<sup>74</sup>

32. on November 20, 2001, the prosecutor for the Public Prosecutor's Office appeared before the Second Court of First Instance of Intibucá and requested the necessary arrest warrants.<sup>75</sup> On February 26, 2002, the Second Court of First Instance requested a nation-wide arrest warrant against Ángel Belisario Hernández González from the regional commanders of the police. On March 19, 20 and 21,

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<sup>71</sup> *Attestation by the Second Court of First Instance of the Department of Intibucá on the status of the proceeding, on October 8, 1998, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 716.*

<sup>72</sup> *Cf. Statement by José Germán Silvestrucci rendered before the Inter-American Court on March 4, 2003; Official Letter No. 390 by the Second Court of First Instance of the Department of Intibucá of June 23, 1999, addressed to the Minister of Defense, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 12 of the application, p. 154; and Commitment order against Ángel Belisario Hernández by the Second Court of First Instance of the Department of Intibucá on October 13, 1998 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 717.*

<sup>73</sup> *Cf. Statement by Lucinda Mena Amaya rendered before the Inter-American Court on March 4, 2003; Expert Opinion of Héctor Fortín Pavón rendered before the Inter-American Court on March 4, 2003; and Order to shelve the case file by the Second Court of First Instance of the Department of Intibucá of July 1, 1999, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 725.*

<sup>74</sup> *Official Letter No. 146 DDHN, of August 6, 2001, by the Secretariat of Foreign Affairs of Honduras addressed to the Executive Secretariat of the Inter-American Commission in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 23 of the application, pp. 235 to 245; Official Letter No. 0401-2001 of August 8, 2001 by the State Secretariat of National Defense of Honduras addressed to the Secretary of Foreign Affairs in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 23 of the application, p. 246; Resolution No. 20 by the State Secretariat of National Defense of Honduras on January 28, 1997, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 23 of the application, p. 247; and Official Letter N° 047-DDHN of the Secretariat of Foreign Affairs of the Republic of Honduras of July 9, 1999 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 2 of the answer to the application, pp. 729 to 732.*

<sup>75</sup> *Request by the Public Prosecutor's Office for arrest warrants on November 20, 2001, in a file at the Secretariat of the Court entitled; "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones, p. 24; and Order accepting the request for an arrest warrant against Ángel Belisario Hernández issued by the Second Departmental Judge of First Instance of Intibucá, dated November 23, 2001 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1385.*

2002, the State published an offer of reward for the capture of Mr. Hernández González in national-circulation daily newspapers;<sup>76</sup>

33. Ángel Belisario Hernández appears as of April 25, 2002, through his legal representative, stating that he was transferred on July 11, 1992 to the facilities of the Tenth Battalion in Marcala, Department of La Paz.<sup>77</sup> During that year, the legal representative took various judicial steps;<sup>78</sup>

34. on January 17, 2003, Ángel Belisario Hernández González was captured and he was informed that the case against him was in the preliminary proceedings stage. Ángel Belisario Hernández González made his statement that same day.<sup>79</sup> On

<sup>76</sup> *Official Letter No. 81 of the Second Court of First Instance of la Esperanza, Intibucá of February 26, 2002* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," p. 46; *Notices of reward for information on Ángel Belisario Hernández published by the Office of the Attorney General of the Republic of Honduras on March 19 and 21, 2002*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 13 to 14; and *Publications in the press of the reward offered by the Office of the Attorney General to establish the whereabouts of Angel Belisario Hernández González, dated March 19, 20 and 21, 2002*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1481 to 1483.

<sup>77</sup> *Affidavit by Ángel Belisario Hernández González dated April 6, 2002*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1388 to 1389; *Attestation of authenticity of the photocopy of the affidavit by Ángel Belisario Hernández González, dated April 25, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1390; *Brief filed by the legal representative of Ángel Belisario Hernández González before the Second Judge of First Instance of La Esperanza, Intibucá, dated April 25, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1391 to 1392; and *Order to carry out actions requested by the Section Court of First Instance of Marcala issued by the Second Departmental Judge of First Instance of Intibucá, dated April 25, 2002*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1394.

<sup>78</sup> *Communication sent by the secretary of the Court of First Instance of Marcala, La Paz addressed to the commander of the Tenth Infantry Battalion, Marcala, La Paz, dated May 27, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1401; *Communication sent by the commander of the Tenth Infantry Battalion addressed to the secretary of the Court of First Instance of Marcala, La Paz, dated May 31, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1402; *Testimony rendered by Daniel Adalberto Salinas Guiraud before the Second Departmental Court of First Instance of Intibucá dated August 20, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1407 to 1409; *Request for proposal of a witness made by the legal representative of Ángel Belisario Hernández González before the Second Departmental Court of First Instance of La Esperanza, Intibucá, dated September 24, 2002*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1409; *Admission of the brief filed by the legal representative of Ángel Belisario Hernández González by the Second Departmental Court of First Instance of Intibucá dated September 24, 2002* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1410; *Testimony rendered by Miguel Ángel Hernández Pineda before the Second Departmental Court of First Instance of Intibucá on September 25, 2002*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1411 to 1412.

<sup>79</sup> *Statement by Lucinda Mena Amaya rendered before the Inter-American Court on March 4, 2003; Preliminary statement by Ángel Belisario Hernández González on January 17, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 26 to 33; *Writ remitting Ángel Belisario Hernández from the Section Court of First Instance of Catacamas to the Second Departmental Court of First Instance of Intibucá dated January 17, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1413; *Handwritten note by the Head of the Municipality of Catacamas addressed to the Section Court of First Instance of Catacamas dated January 16, 2003* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1414 to 1415; *Writ on the rights of the detainee issued to Ángel Belisario Hernández González by the Secretariat of Security, General Directorate of Criminal Investigation on January 16, 2003* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1416; *Receipt of the Official Letter remitting detainee Ángel Belisario Hernández issued by the Section Court of First Instance of Catacamas, dated January 17, 2003* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1418; *Official Letter No. 20 sent by the Second Departmental Court of First*

that same date, the legal representative of the accused requested that his preventive detention be at a police or military center, invoking for this the guidelines issued by the Supreme Court of Justice in 1996. On January 17, 2003, the Second Court of First Instance of the Department of Intibucá ordered the legal representative of the accused to certify the military status of the accused at the time of the facts and the danger that he might suffer in terms of his physical safety.<sup>80</sup> On January 23 of that year, the legal representative supplied the information requested, and the Second Court of First Instance of Intibucá therefore transferred Mr. Hernández González to the police force facilities;<sup>81</sup>

35. on January 21, 2003, the legal representative of the accused requested annulment of the commitment order "as there is no reasonable evidence that [his] client was responsible for committing the crime of murder against Juan Humberto Sánchez."<sup>82</sup> On January 23, 2003, the Second Court of First Instance of Intibucá rejected the request for annulment.<sup>83</sup> The legal representative of Mr. Hernández appealed said ruling, and it was remitted to the Section Court of Appeals of Comayagua on January 30, 2003;<sup>84</sup>

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*Instance of Intibucá addressed to the Second Section Court of First Instance Catacamas in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1419; Receipt of Official Letter by the Second Departmental Court of First Instance of Intibucá dated January 17, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1420; and Judicial proceeding for information on rights and preliminary statement by Ángel Belisario Hernández González carried out by the Second Departmental Court of First Instance of Intibucá dated January 17, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1421 to 1430.*

<sup>80</sup> *Official Letter No. 1891-SCSJ-96, Form Letter No. 10 issued by the Supreme Court of Justice of Honduras on July 2, 1996 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1431 to 1432; Handwritten request for designation of a military or police center to transfer defendant Ángel Belisario Hernández submitted by his legal representative, dated January 17, 2003, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1433 to 1434; and Trial document of the Second Departmental Court of First Instance of Intibucá in response to the brief filed by the legal representative of Ángel Belisario Hernández dated January 17, 2003, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1435 to 1436.*

<sup>81</sup> *Request for transfer of prisoner in accordance with the request by the legal representative of Ángel Belisario Hernández González before the Second Departmental Court of First Instance of Intibucá, dated January 23, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1449 to 1450; Certificate of services rendered by Ángel Belisario Hernández González in the armed forces of Honduras from January 20, 1985 until March 1, 1997, dated January 22, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1451; Communication by the Director of the Penitentiary of La Esperanza, Intibucá, addressed to the Second Departmental Court of First Instance of Intibucá dated January 23, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1452; Trial document of the Second Departmental Court of First Instance of Intibucá for provisional transfer to the preventive national Police facilities of Ángel Belisario Hernández, dated January 23, 2003, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1454 to 1455; and Official Letter No. 31 sent by the Second Departmental Court of First Instance of Intibucá addressed to the commissioner of the preventive national Police dated January 23, 2003, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1458.*

<sup>82</sup> *Brief requesting annulment of the commitment order, submitted by the legal representative of Ángel Belisario Hernández González before the Second Departmental Court of First Instance of Intibucá, dated January 21, 2003 in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1440 to 1444.*

<sup>83</sup> *January 23, 2003 Decision of the Second Court of First Instance of Intibucá to deny the request for annulment, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 42 to 45.*

<sup>84</sup> *Attestation by the Second Departmental Court of First Instance of Intibucá regarding remittal of actions to the Appellate Court of said judicial section dated January 30, 2003, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1466.*

36. on January 24, 2003, the Second Court of First Instance of Intibucá requested information from the Section Judge of First Instance of Marcala on the order to transfer Ángel Belisario Hernández González, and the habeas corpus remedy, and instructed Regional Command No. 10 to certify the complaint by Miguel Ángel Pineda and provide information on policeman Ponce, who was with Mr. Hernández González on July 11, 1992. That same day the police reported that it was unable to supply that information, as said files "were accidentally burned in the institution's warehouse;"<sup>85</sup>

37. on February 3, 2003, the Public Prosecutor's Office and the legal counsel for the accused appeared before the Section Court of Appeals of Comayagua.<sup>86</sup> On February 7, 2003, he sent his brief to the Attorney General of the Republic.<sup>87</sup> On February 10, 2003 the legal representative of the accused expanded his request for annulment of the contested order, stating that there were no grounds to keep him in remand;<sup>88</sup>

38. on February 26, 2003, the prosecutor for the Public Prosecutor's Office asked that the request made by the legal representative be admitted and that the arrest warrant be annulled, as "there [wa]s not the slightest reasonable evidence that Ángel Belisario Hernández participated in the death of Juan Humberto Sánchez."<sup>89</sup> On March 3, 2003, the legal representative stated that Ángel Belisario Hernández González should not be kept in prison merely due to the existing international application;<sup>90</sup>

## **E) With respect to the family of Juan Humberto Sánchez**

<sup>85</sup> *Communication by the Second Departmental Court of First Instance of Intibucá addressed to the Section Court of First Instance of Marcala dated January 24, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1456; *Communication by the Second Departmental Court of First Instance of Intibucá addressed to regional commander No. 10 of the national preventive police, dated January 24, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1457; and *Attestation issued by the preventive police, operational section, in response to the communication sent by the Second Departmental Court of First Instance of Intibucá dated January 24, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1461.

<sup>86</sup> *Writ of appearance of the prosecutor of the Public Prosecutor's Office addressed to the Appellate Court of Comayagua dated February 3, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1469; *Receipt of the brief by the Appellate Court of Comayagua dated February 4, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," p. 1470; and *Writ of appearance of the defense counsel for Ángel Belisario Hernández addressed to the Appellate Court of Comayagua dated February 3, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1471 to 1474.

<sup>87</sup> *Request for attestation made by the Attorney General of the Republic addressed to the Appellate Court of Comayagua and its receipt by that Court, dated February 7, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1477 to 1480.

<sup>88</sup> *Expansion of statement of grievances made by the legal representative of Ángel Belisario Hernández addressed to the Appellate Court of Comayagua dated February 10, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1487 to 1495.

<sup>89</sup> *Brief by the court agent of the Public Prosecutor's Office with respect to notification, answer to grievances and assent to appeal filed before the Appellate Court of Comayagua dated February 26, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1498 to 1500.

<sup>90</sup> *Brief by the legal counsel of Ángel Belisario Hernández returning notification, filed before the Appellate Court of Comayagua on March 3, 2003* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo IV," pp. 1503 to 1506.

39. Juan Humberto Sánchez had two companions with whom he had two daughters: Breidy Maybeli Sánchez Argueta, with his permanent companion, Donatila Argueta Sánchez; and Norma Iveth Sánchez Argueta, with Velvia Lastenia Argueta Pereira;<sup>91</sup>

40. the next of kin of Juan Humberto Sánchez were his stepfather, Juan José Vijil Hernández; his mother, María Dominga Sánchez, and his siblings, Domitila, María Florinda, Juan Carlos, Celio, Rosa Delia, Julio, Reina Isabel, and María Milagro;<sup>92</sup>

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<sup>91</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Expansion of the testimony by Donatila Argueta Sánchez before COFADEH on November 26, 2001* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 14, pp. 45 to 46; *Birth certificate of Norma Iveth Sánchez Argueta on January 15, 2003 by the Mayor's Office of Jocoaitique, Morazán, El Salvador*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," p. 330; and *Birth certificate of Breidy Maybeli Sánchez Argueta on January 7, 2003 by the Mayor's Office of Meanguera, Morazán, El Salvador*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," p. 332.

<sup>92</sup> *Cf. Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Statement by Juan José Vijil Hernández before the Inter-Institutional Human Rights Committee of the Republic of Honduras on July 28, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 9 of the application, pp. 146 to 147; *Letter addressed by COFADEH to the Constitutional Compliance Committee of the National Congress on September 3, 1992* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo I," Annex 19 of the application, pp. 187 to 192; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 677; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 662 to 663; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 4, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 663 to 664; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on March 6, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 664 to 665; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 665 to 666; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on March 8, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 666 to 667; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 10, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 667; *Statement by María Milagro Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 676; *Statement by Rosa Delia Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 677; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 678; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Statement by Domitila Vijil Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 681 to 682; *Statement by Pablo Vijil Argueta before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 684 to 685; *Statement by Mario de Jesús Sánchez before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 685;

41. the father, the mother, the siblings and the companion Donatila Argueta Sánchez suffered pecuniary and non-pecuniary damage due to the detention, torture, and extra-legal execution of Juan Humberto Sánchez.<sup>93</sup> In this regard, the following points stand out:

- a) the father and one of the companions, Donatila Argueta Sánchez, began the search in various institutions and took pertinent judicial steps, pursuant to domestic law, as well as international steps to locate Juan Humberto Sánchez, all of which made them incur various expenses;<sup>94</sup>
- b) due to the capture of Juan Humberto Sánchez, his mother was taken to the health center in Colomoncagua on July 13, 1992;<sup>95</sup> and after what happened to Juan Humberto Sánchez, Juan José Vijil became ill and for two years he could not work, for which reason some of his children had to drop out of school to help the family;<sup>96</sup>

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and *Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37.

<sup>93</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Expert Opinion of Leo Valladares Lanza rendered before the Inter-American Court on March 4, 2003; Expert Opinion of Deborah Munczek rendered before the Inter-American Court on March 4, 2003; Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; and *Certificate issued by the maternal and children's health care clinic of Médecins sans Frontières on January 23, 1993* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo V," p. 1804.

<sup>94</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Expansion of the testimony by Donatila Argueta Sánchez before COFADEH on November 26, 2001* in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 14, pp. 45 to 46; *Statement by Juan José Vijil Hernández before the Justice of the Peace in Colomoncagua on March 9, 1995* in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; and *Attestation of money lent to Ms. Donatila Argueta Sánchez in 1992 and 1993*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo V," p. 1801.

<sup>95</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Juan José Vijil Hernández before COFADEH on August 5, 1992*, in a file at the Secretariat of the Court entitled: "Caso Juan Sánchez. Fondo. Tomo I," Annex 2 of the application, pp. 120 to 131; *Statement by María Dominga Sánchez before the Justice of the Peace in Colomoncagua on February 22, 1995*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, p. 678; *Statement by Juan José Vijil Hernández. before the Justice of the Peace in Colomoncagua on March 9, 1995*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo II," Annex 1 of the answer to the application, pp. 680 to 681; *Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001*, in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37; and *Photographs of María Dominga Sánchez at the place where Juan Humberto Sánchez was buried and when she was being taken to the hospital at Colomoncagua*, in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones, pp. 333 to 335.

<sup>96</sup> *Statement by Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; and Expert Opinion of Deborah Munczek rendered before the Inter-American Court on March 4, 2003.*

- c) As a consequence of what happened to Juan Humberto Sánchez, Donatila Argueta lost her jobs and as an outcome of this, she suffered a nervous breakdown that led her to require medical and psychological treatment;<sup>97</sup>
- d) Reina Isabel Sánchez and Domitila Vijil Sánchez lost their jobs due to the steps taken before the Inter-American Court;<sup>98</sup>
- e) in view of the threats of the neighbors in the community, the family of Juan Humberto Sánchez had to move to another community;<sup>99</sup>
- f) priest Celso Sánchez suffered threats and harassment during August and September, 1992, due to his participation in the case;<sup>100</sup>
42. persisting impunity in this case causes a continuation of suffering of the next of kin of Juan Humberto Sánchez;<sup>101</sup>

**F) with respect to representation of the next of kin before the inter-American system for protection of human rights and the expenses pertaining to said representation**

43. COFADEH and the Center for Justice and International Law (hereinafter "CEJIL") appeared before the inter-American human rights system, representing the alleged victim or his next of kin, and incurred certain expenses pertaining to said actions.<sup>102</sup>

<sup>97</sup> *Expansion of the testimony by Donatila Argueta Sánchez before COFADEH on November 26, 2001* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 14, pp. 45 to 46.

<sup>98</sup> *Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Expert Opinion of Deborah Munczek rendered before the Inter-American Court on March 4, 2003; Employment certificate of Domitila Vijil Sánchez issued by Jerzees de Honduras certifying that she worked for said firm from January 17, 2001 until January 16, 2003*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo V," p. 1610; and *Letter of dismissal of Donatila Argueta Sánchez issued by the Patronato para el desarrollo de las comunidades de Morazán y San Miguel on August 15, 1992*, in a file at the Secretariat of the Court entitled "Caso Juan Sánchez. Fondo. Tomo V," p. 1790.

<sup>99</sup> *Statement by Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; Expansion of Statement by María Dominga Sánchez before COFADEH on November 10, 2001* in a file at the Secretariat of the Court entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 9, pp. 26 to 37.

<sup>100</sup> *Sworn statement by Celso Sánchez Domínguez on February 28, 2003* in a file at the Secretariat of the Court entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones," pp. 51 to 59.

<sup>101</sup> *Statement by María Dominga Sánchez rendered before the Inter-American Court on March 3, 2003; Statement by Domitila Vijil Sánchez rendered before the Inter-American Court on March 3, 2003; and Expert Opinion of Deborah Munczek rendered before the Inter-American Court on March 4, 2003.*

<sup>102</sup> *Cf.* Copies of powers of attorney issued before a notary public to COFADEH by: a) María Dominga Sánchez and Juan José Vijil Hernández, b) Reina Isabel Sánchez, Rosa Delia Sánchez, Domitila Vijil

**VIII**  
**VIOLATION OF ARTICLE 7**  
**IN COMBINATION WITH ARTICLE 1(1)**  
**(RIGHT TO PERSONAL LIBERTY)**

*Pleadings of the representatives of the alleged victim*

71. The representatives of the alleged victim deemed that Article 7 was breached to the detriment of Juan Humberto Sánchez and his stepfather, Juan José Vijil, because:

- a) Juan Humberto Sánchez was twice deprived of his liberty at his home: on the night of July 10, 1992, and on the night of July 11, 1992, in an arbitrary manner, resorting to violence, and those who detained him did not identify themselves, nor did they explain the detentions;
- b) the circumstances of the second detention of Juan Humberto Sánchez, carried out by the First Battalion of Territorial Forces, under the command of Captain Nelson Lagos, on the night of July 11, 1992, are more grave, because in addition to the fact that there was no court order for the detention, the operation was conducted in such a way that it allowed those who conducted it to remain completely anonymous, and they kidnapped him violently, threatening the family. Furthermore, the armed forces intended to keep the alleged victim in solitary confinement, interrogating him under torture, and then executing him, and no explanation was given to the family, who only heard of Juan Humberto Sánchez again when his tortured body was found next to a river;
- c) the second detention was exclusively in line with the pattern of clandestine detentions or arrests conducted by the military with the aim of identifying and eliminating alleged guerrilla fighters, and they never observed the legal requirements for a formal arrest, which involved bringing the detainee before a competent judicial authority;
- d) the State did not fulfill its obligation to ensure due legal process to Juan Humberto Sánchez, so as to establish the legality of his detentions, or if there was an accusation against him, for him to be tried within a reasonable term. Judicial control of the detentions would have enabled detection and prevention of threats against his life or serious mistreatment, which violate fundamental rights; and
- e) Juan José Vijil Hernández, the alleged victim's stepfather, was arbitrarily deprived of his liberty on July 28, 1992, when he was taken by helicopter to the city of Tegucigalpa by a group of military officers, after

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Sánchez and María Milagro Sánchez c) María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, d) Donatila Argueta Sánchez and Breidy Maybeli Sánchez Argueta," in a file at the Secretariat of the Court entitled; "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos," Annex 5, pp. 7 to 18; evidence file in the Juan Humberto Sánchez case, entitled "Anexos correspondientes a los gastos y costas incurridos por el COFADEH correspondiente a los escritos de solicitudes, argumentos y pruebas y el de alegatos finales. Tomo I," available at the Secretariat of the Court, pp. 62 to 243 and 1615 to 1792.

having been interrogated regarding the alleged participation of his son in subversive groups. Mr. Vijil's detention continued until July 30, 1992, the date on which he was released. During his detention, he was interrogated by various members of the armed forces at the Chiefs of Staff, and then he rendered a statement before the Office of the Attorney General, where an attempt was made to invalidate said statement. Said detention was arbitrary, as there was no arrest warrant, nor any cause for Mr. Vijil to be detained, violating his rights to liberty and to personal safety.

*Pleadings of the Commission*

72. The Commission argued that the State violated the right to personal liberty protected by Article 7 of the American Convention, to the detriment of Juan Humberto Sánchez, because:

- a) Juan Humberto Sánchez was captured on July 11, 1992, and remained under detention by the army, in a clandestine manner, at the detachment post in La Concepción, where he was interrogated by a specialized intelligence group known as "Tucán;"
- b) while at the time of the facts, Article 273 of the Constitution in force in Honduras allowed detentions by the police, which was part of the armed forces, this did not mean that they were authorized to carry out arbitrary detentions, incompatible with the rights enshrined in the American Convention; and
- c) the capture of Juan Humberto Sánchez constituted a clear act of misuse of power, as it was not conducted with the aim of bringing him before a judge or other official authorized by law to perform judicial functions and to decide, forthwith, on the legality of his arrest or detention and order that he be released if the arrest or detention had been illegal, pursuant to Article 7(6) of the Convention. Instead, it was carried out during the night, resorting to violence, with no identification, without providing any explanation of the reasons for the detention, and with the obvious intention of secretly keeping the alleged victim under detention, interrogating him under torture, and then executing him. On the contrary, the State should have ensured to the detainee the rights set forth in the American Convention and submitted him to a legal proceeding.

*Pleadings of the State*

73. The State acknowledged its responsibility regarding the first detention of Juan Humberto Sánchez by agents of the State, establishing that:

on July 10, 1992, in the village of Santo Domingo, Municipality of Colomoncagua, Department of Intibucá, Honduras, approximately at 9:00 p.m.[,] he was summoned by a competent authority to render his statement, in view of a complaint that he was allegedly the perpetrator of criminal acts; he rendered this statement on the night of July 10, 1992 at the Detachment of the Tenth Infantry Battalion; on July 11, 1992, at 10:00 a.m., he left said detachment post with his stepfather, due to lack of evidence of the allegations against him.

74. With respect to the detention of Juan Humberto Sánchez on July 11, 1992, the State denied that he was detained by agents of the State, as there is evidence in the proceeding being tried before the Second Court of First

Instance of the Department of Intibucá that contradicts this, establishing that it was done by “bearded” men who were not members of the armed forces.

*Considerations of the Court*

75. The American Convention regulates the guarantees required to safeguard personal liberty in Article 7, which provides:

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

[...]

76. Previously (*supra* 70.5 and 70.7), the Court has established that Juan Humberto Sánchez was detained twice by agents of the State (*supra* 70.5 and 70.7), for which reason it will now develop the pertinent considerations to determine whether the facts are consistent with the provisions set forth in the Convention.

77. This Court has stated that protection of liberty can safeguard “both the physical liberty of the individual and his personal safety [...], in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection.”<sup>103</sup>

78. Subparagraphs 2 and 3 of Article 7 establish limits to public authorities, explicitly forbidding both illegal and arbitrary detentions. In this regard, the Court has made the following statement:

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that - although qualified as legal - may be considered incompatible with respect for the fundamental

<sup>103</sup> Cf. *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, para. 72; *Bámaca Velásquez Case*, *supra* note 25, para. 141; and “*Street Children*” *Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 135.

rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion.<sup>104</sup>

79. Pursuant to Article 84 of the Political Constitution of Honduras, in force since January 20, 1982, “[n]o one may be arrested or detained without a written order by a competent authority, issued in accordance with legal formalities and for a reason previously set forth in the Law” or for having been caught *in fraganti* “with the exclusive effect of bringing him before the authority.” Furthermore, “[t]he person arrested or detained must be clearly informed, in the act, of his rights and of the charges against him.” Article 99 of the Constitution, in turn, provides that official entry and search of homes “may not take place between six p.m. and six a.m. without incurring responsibility.”<sup>105</sup> It is obvious that the two detentions of Juan Humberto Sánchez fit the provisions of the Convention: first, they were conducted by military agents, and not by the police (*supra* 70.5 and 70.7); the alleged victim was not caught *in fraganti*, but rather was detained at the house of his parents at nighttime, which in turn was contrary to domestic provisions regarding official entry and search; Juan Humberto Sánchez was not immediately brought before a judge (*supra* 70.5, 70.7 and 70.8); neither he nor his next of kin present were informed of the facts for which he was considered responsible for a given crime (*supra* 70.5 and 70.7). In light of the above, the detentions of Juan Humberto Sánchez constitute a violation of Article 7(2) of the American Convention.

80. With respect to Article 7(3) of the Convention, this Court notes that the detentions of Juan Humberto Sánchez come within the framework of abuse of power, the objective of which was to interrogate, torture, and possibly kill the alleged victim with impunity, a situation that fits into the pattern of human rights violations committed by agents of the State at the time of the facts of the case (*supra* 70.1). Because the detention and retention were arbitrary, Article 7(3) of the Convention was breached to the detriment of Juan Humberto Sánchez.

81. Subparagraphs 4, 5 and 6 of Article 7 of the American Convention establish positive obligations that impose specific or special requirements both on the agents of the State and on third parties acting with their tolerance or consent and who are responsible for a detention.

82. Article 7(4) of the American Convention is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee. In this same vein, Article 84 of the Honduran Constitution in force establishes that “[t]he person arrested or detained must be clearly informed, in the act, of his rights and of the facts he is accused of.” It has been proven that in the first detention, Juan Humberto Sánchez was not informed of the criminal behavior that he was accused of, but rather that on the following day his stepfather was informed by the Mayor of Colomocagua of the reasons for his detention (*supra* 70.5). The second detention of Juan Humberto Sánchez was carried out by agents of the State without a court order, during the night, following the pattern that has been shown in this case

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<sup>104</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 139; *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para. 85; *“Street Children” Case (Villagrán Morales et al.)*, *supra* note 25, para. 131; *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, para. 43; and *Gangaram Panday Case*. Judgment of January 21, 1994. Series C No. 16, para. 47.

<sup>105</sup> Preliminary statement by Ángel Belisario Hernández González on January 17, 2003, in a file at the Secretariat of the Court entitled “Transcripción de audiencia pública. Excepciones/Fondo/Reparaciones,” p. 28; Ángel Belisario stated that they could not make arrests at night and he pointed out that they were not authorized to enter the house.

(*supra* 70.1). Neither Juan Humberto Sánchez nor his next of kin present at the time of the detention were told the reasons for it, thus breaching Article 7(4) of the American Convention to the detriment of Juan Humberto Sánchez.

83. The objective of Article 7(5) of the Convention is for the detention of a person to be subject to judicial review, the latter being the appropriate control mechanism to avoid arbitrary and illegal arrests. In the *sub judice* case, contrary to the provisions of said subparagraph, in the second detention of Juan Humberto Sánchez he was not “br[ought] before the competent authority for his trial [within 24 hours of his detention]” either, as ordered by the aforementioned Article 71 of the Political Constitution of Honduras. It is evident that Juan Humberto Sánchez was not brought before the competent authority, as follows from the silence of the military authorities the day after his second detention, despite the insistence of the stepfather (*supra* 70.9); from the ineffectiveness and delay in the processing of the habeas corpus remedy (*supra* 70.1), 70.19 and 70.20/*infra* 121, 122 and 123); and from the state in which the body was found, with obvious signs of torture (*supra* 70.10/*infra* 96 to 100); situations that are all consistent with the pattern of behavior of the authorities at the time of the facts. In this regard, the Court notes that the State agents who conducted the second detention of Juan Humberto Sánchez at no time intended to submit their actions to judicial review or to a control mechanism; on the contrary, they acted in a clandestine manner to cover up the detention and possible extra-legal execution of Juan Humberto Sánchez. Thus, there was a violation of Article 7(5) of the American Convention to the detriment of Juan Humberto Sánchez.

84. Both the Inter-American Court and the European Court of Human Rights<sup>106</sup> have attached special importance to judicial control of detentions so as to prevent arbitrariness and illegality. An individual who has been deprived of his liberty with no judicial control, as occurs in some cases of extra-legal executions, must be released or immediately brought before a judge, because the essential content of Article 7 of the Convention is protection of the liberty of the individual against interference by the State. The European Court of Human Rights has affirmed that while the term “immediately” must be interpreted according to the special characteristics of each case, no circumstance, however grave, grants the authorities the power to unduly prolong the detention period without affecting Article 5(3) of the European Convention.<sup>107</sup> Said Court emphasized “that detention, not recognized by the State, of a person constitutes a complete denial of said guarantees and one of the most serious forms of violation of Article 5.”<sup>108</sup>

85. This Court deems that when the arbitrary detention of Juan Humberto Sánchez occurred, within the prevailing pattern of extra-legal executions, he did not

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<sup>106</sup> Cf. Eur. Court HR, *Aksoy v. Turkey*. judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, para. 76; and *Eur. Court H.R., Brogan and Others judgment of 29 November 1988, Series A no. 145-B*, para. 58.

<sup>107</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 140; *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 108; and *Eur. Court H.R., Brogan and Others judgment of 29 November 1988, Series A no. 145-B, supra* note 106, para. 58-59, 61-62.

<sup>108</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 140; *Villagrán Morales et al. Case (“Street Children” Case)*, *supra* note 103, para. 135; and *Cf. Eur. Court HR, Kurt v. Turkey judgment of 25 May 1998, Reports of Judgments and Decisions* 1998 III, para. 124.

have the possibility of filing a simple and effective remedy<sup>109</sup> on his own, such that he could assert his right to personal liberty and possibly avoid the violation of his rights to humane treatment and to life (*infra* 121 to 124). As this Court has pointed out, this person was “in the power of agents of the State and, therefore, the latter was under the obligation to create the necessary conditions for any remedy to attain effective results,”<sup>110</sup> thus breaching Article 7(6) in combination with Article 25, both of the American Convention, to the detriment of Juan Humberto Sánchez.

86. This Court established that Juan Humberto Sánchez was detained by the Honduran army in at least one clandestine detention center, thus violating Article 7 of the Convention (*supra* 70.8). In this case, if Juan Humberto Sánchez was detained because he was a collaborator of the Salvadoran guerrilla and because he was allegedly “dangerous” (*supra* 70.16), the detainee should have been ensured the guarantees of any State where the rule of law prevails and through a legal proceeding. This Court has pointed out before that while the State has the right and the obligation to guarantee its security and to maintain public order, its power is not unlimited, as it has the duty, at all times, of applying procedures that are in accordance with the Law and that respect the fundamental rights of all individuals under its jurisdiction<sup>111</sup> and, in this regard, it must conduct its actions “within limits and according to procedures that preserve both public safety and the fundamental rights of the human person.”<sup>112</sup>

87. With respect to the detention of the stepfather of the alleged victim, Juan José Vijil Hernández, it has been proven that he was taken from his community to the capital city without being able to inform his next of kin and that he was detained for at least two days, during which he was taken to the Office of the Attorney General to render a statement on the activities of his stepson, Juan Humberto Sánchez (*supra* 70.13, 70.14 and 70.15). In light of the above, the Court concludes that the detention of Juan José Vijil Hernández was illegal and arbitrary, in violation of Article 7 of the American Convention.

88. As a consequence of the above, the Court finds that the State breached Article 7(1), Article 7(2), Article 7(3), Article 7(4), Article 7(5), Article 7(6) and the latter in combination with Articles 25 and Article 1(1) of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, and Article 7 in combination with Article 1(1) to the detriment of Juan José Vijil Hernández.

**IX**  
**VIOLATION OF ARTICLE 5**  
**IN COMBINATION WITH ARTICLE 1(1)**  
**(RIGHT TO HUMANE TREATMENT)**

*Pleadings of the representatives of the alleged victim*

<sup>109</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 165.

<sup>110</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 194; and *Case of the “White Van” (Paniagua Morales et al.)*, *supra* note 109, para. 167.

<sup>111</sup> Cf. *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 101; *Bámaca Velásquez Case*, *supra* note 25, para. 174; and *Durand and Ugarte Case*, *supra* note 104, para. 69.

<sup>112</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 143; *Durand and Ugarte Case*, *supra* note 104, para. 69; and *Castillo Petruzzi et al. Case*, *supra* note 107, paras. 89 and 204.

89. The representatives of the alleged victim asked the Court to declare that the State has violated the right to humane treatment set forth in Article 5 of the American Convention, in combination with Article 1 of that Convention, to the detriment of Juan Humberto Sánchez and of his next of kin as follows: María Dominga Sánchez (the mother); Juan José Vijil Hernández (the stepfather); Reina Isabel Sánchez (sister), María Milagro Sánchez (sister), Rosa Delia Sánchez (sister), Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister), Juan Carlos Vijil Sánchez (brother), Celio Vijil Sánchez (brother), Julio Sánchez (brother), Donatila Argueta Sánchez (companion), Breidy Maybeli Sánchez Argueta (daughter), Velvia Lastenia Argueta Pereira (companion), and Norma Iveth Sánchez Argueta (daughter).

90. With the aim of substantiating their request, they alleged with respect to Juan Humberto Sánchez that:

a) the detentions of Juan Humberto Sánchez, carried out by the Tenth Infantry Battalion, and by the First Battalion of Territorial Forces on July 10 and 11, 1992, respectively, were conducted in a violent and arbitrary manner and without an arrest warrant, a situation which caused great psychological suffering to the detainee. This anguish, which is typical of any illegal detention, becomes more acute in the framework of a pattern of disappearances and executions of persons detained in similar situations;

b) the abandoned body of Juan Humberto Sánchez was found at the Río Negro, "between two large rocks, facing down, and [...] well bound as it had a rope tied to the neck, which went down toward the arms where he was also bound with that same rope, and the two legs and the feet were bound with that same rope [...]." The Justice of the Peace of Colomocagua and the experts who inspected the body stated that the corpse had an orifice in the forehead with an exit one in the back of the head, and "that part of the scalp was missing." Furthermore, Juan José Vijil Hernández, the stepfather, and Pablo Vijil Argueta stated that the testicles, the nose and the ears had been severed from the body of the alleged victim, that it lacked part of its denture, and that the legs were bruised. The State was responsible for the physical safety of the alleged victim while he was under its custody. The State has been unable to explain the reasons why the corpse Juan Humberto Sánchez was found with grave signs of physical violence; and

c) Juan Humberto Sánchez remained incommunicado during his two detentions; the period in which the alleged victim was retained in a clandestine manner was between two circumstances of extreme violence: forced capture and death by impact of a firearm.

91. With respect to the next of kin listed (*supra* 15), they alleged the following:

a) the detentions suffered by Juan Humberto Sánchez caused suffering, anguish and fear to his next of kin, as they no longer were at ease, nor did they feel safe after the first detention of Juan Humberto Sánchez;

b) during the second detention, Juan Humberto Sánchez was once again in the company of his family, at his home, in the presence of María Dominga Sánchez (the mother), Juan José Vijil Hernández (the stepfather), Domitila,

María Florinda, Juan Carlos, and Celio Vijil Sánchez, all minors at the time of the events. Juan Humberto was captured by military officers who burst into the house pointing their weapons at its occupants, taking him away by force and threatening to kill his next of kin if they went before the authorities;

c) Juan José Vijil was summoned and interrogated by military agents several times thereafter, on July 15, 22, 23 and 28, 1992, with the aim of obtaining information from him regarding the activities carried out by Juan Humberto Sánchez, and of persuading him to convince his wife that the army had not participated in the facts. The first time, on July 15, 1992, they showed up at his house and inspected its roof as well as the interior, without a search warrant. The last time, on July 28, 1992, Mr. Vijil was taken to Tegucigalpa for interrogation, without allowing him to inform his next of kin;

d) María Dominga Sánchez, the mother of the alleged victim, suffered a "nervous breakdown" as a direct consequence of the kidnapping and disappearance of her son, and her health worsened with the detention and kidnapping of her husband on July 28, 1992;

e) in face of the imminent danger and general fearfulness of the family, some days after the death of Mr. Sánchez its members moved to Tegucigalpa, where COFADEH provided psychological care to help them overcome the loss;

f) the next of kin of Juan Humberto Sánchez also suffered due to the order by which the body of the alleged victim was buried at the place where it was found, taking into account only the consideration of prompt burial, and they were denied the possibility of burying their beloved one according to their traditions; this entailed suffering that clearly constitutes cruel, inhuman and degrading treatment; and

g) impunity tolerated by the State and the behavior of the authorities that impede the judicial remedies from attaining positive results, for lack of a serious and effective investigation, not punishing those responsible, has generated a feeling of deep grief, fear, frustration and powerlessness of the next of kin of the victim for over nine years.

*Pleadings of the Commission*

92. The Commission alleged that the State breached Article 5 of the Convention because:

a) despite the fact that the alleged victim had already been detained and interrogated once by members of the Tenth Infantry Battalion and released for lack of evidence, and the case had been closed, the intelligence officers of the First Battalion of Territorial Forces once again captured Mr. Sánchez, took him to the detachment post at La Concepción, held him there in a clandestine manner, and interrogated him, which caused anguish and deep suffering. These circumstances constitute the subjective element of torture that is defined as "the intervention of a will deliberately directed at obtaining certain ends, such as obtaining information from, intimidating or punishing a person;"

b) when the body of Juan Humberto Sánchez was found, several days later, not only were the hands tied in back to the neck with a rope, but furthermore the testicles, the nose and the ears had been severed, some of his teeth and part of his scalp were missing, and his legs were bruised, and these facts were not contradicted by the State with suitable evidence; and

c) it is reasonable to infer that Juan Humberto Sánchez was tortured during the interrogations conducted in his clandestine detention, so as to obtain information on the location of the weapons that, according to the "Tucán" intelligence group, the alleged victim supposedly hid.

*Pleadings of the State*

93. The State, in turn, argued that:

a) it did not accept that the second detention and subsequent disappearance of Juan Humberto Sánchez was carried out by agents of the State;

b) it recognized that a complaint was filed regarding disappearance of the alleged victim and that when his body was found, there were multiple wounds on it; and

c) it denied that agents of the State threatened, intimidated, or carried out other actions allegedly "with the aim of covering up their participation in the detention, disappearance, and subsequent execution [of] Juan Humberto Sánchez".

*Considerations of the Court*

94. Article 5 of the Convention provides that:

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

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[...]

95. In view of the assertion by the representatives of the alleged victim, the Court deems it necessary to conduct an analysis of the possible violation of Article 5 of the American Convention to the detriment of Juan Humberto Sánchez and his next of kin.

96. The Court deems it proven that on the night of July 11, 1992, Juan Humberto Sánchez was detained by members of the army. As this Court has stated, a "person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated."<sup>113</sup>

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<sup>113</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 150; *Cantoral Benavides Case*, *supra* note 103, para. 90; *"Street Children" Case (Villagrán Morales et al.)*, *supra* note 103, para. 166, and likewise, *Eur.*

97. With respect to how Juan Humberto Sánchez was treated by the State authorities during his detention, the Court deems it proven that he was subject to interrogation (*supra* 70.8) which, in accordance with the existing pattern at the time of the facts (*supra* 70.1), necessarily led to preparing and deliberately inflicting tortures to obtain information. In this regard, it should be recalled that this Court has deemed it proven that during the decade of the 1980s and into the early '90s, in Honduras there was a pattern of forced disappearances and extra-legal executions committed by the military forces. The latter had a special, autonomous status and acted under a certain doctrine of national security, due to which they captured persons who were "suspicious" or "dangerous" of being alleged Honduran subversives, supporters of the Salvadoran guerrilla forces or of the Sandinistas. Usually these persons were detained at night, interrogated, tortured, given a finishing shot, and buried in clandestine centers or unauthorized places. The military forces, in turn, controlled the police forces, and the judges felt intimidated from effectively investigating criminal cases in which there were allegations of human rights violations by the armed forces, and this created a climate of impunity.

98. While this Court does not have sufficient evidence to establish precisely the days or hours that Juan Humberto Sánchez was detained, due to the illegality of the detention, a brief period of detention is enough for it to constitute an infringement of his mental and moral integrity according to the standards of international human rights law.<sup>114</sup> The Court has also stated that when said circumstances occur, it is possible to infer, even if there is no additional evidence in this regard, that treatment of the victim during his isolation was inhuman, degrading, and extremely aggressive.<sup>115</sup>

99. It has also been proven that the body of Juan Humberto Sánchez was found lifeless between two rocks in the Río Negro, with the hands and feet tied toward the back, the nose, ears and genitals severed, flayings on his back and a shot in the forehead, exiting at the base of the skull, characteristics that are in keeping with the existing pattern of human rights violations at the time of the facts (*supra* 70.1). According to the expert witness, Leo Valladares Lanza, these marks of violence are typical of the pattern of extra-legal executions at the time of the facts. Said expert witness stated that the practice was to "keep close watch over presumably suspicious persons and capture them without a warrant and take them to clandestine places, not authorized by law. There, they were usually interrogated, but resorting to torture. Finally, these persons were murdered, many of them with a finishing shot, hand-tied and buried in clandestine cemeteries or unauthorized places." The characteristics of the existing pattern combine with what this Court has stated regarding the existence of a presumption of responsibility of the State for the mistreatment and torture shown by a person who has been under the custody of State agents.<sup>116</sup>

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*Court H.R., Case of Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25. para. 167.*

<sup>114</sup> *Cf. Bámaca Velásquez Case, supra note 25, para. 128; Cantoral Benavides Case, supra note 103, paras. 82 and 83; and "Street Children" Case (Villagrán Morales et al.), supra note 103, paras. 162 and 163.*

<sup>115</sup> *Cf. Bámaca Velásquez Case, supra note 25, para. 150; Cantoral Benavides Case, supra note 103, paras. 83, 84 and 89; and "Street Children" Case (Villagrán Morales et al.), supra note 103, para. 162.*

<sup>116</sup> *Cf. Eur. Court H. R., Aksoy v. Turkey judgment of 18 December 1996, Reports of Judgments and Decisions 1996 VI, supra note 106, para. 61; Eur. Court HR, Ribitsch v. Austria judgment of 4 December*

100. The Court deems that the State breached Article 5 of the American Convention to the detriment of Juan Humberto Sánchez, as the conditions in which his mortal remains were found authorize the inference that he suffered severe tortures at the hands of his captors. In this regard, the Court emphasizes that, on the night of July 11, 1992, before he was captured by the military, Juan Humberto Sánchez was in normal physical conditions, in view of which the State should reasonably explain what happened to him. At the time the instant Judgment is issued, the State has not yet provided a reasonable explanation of how and why the corpse of Juan Humberto Sánchez was in said conditions when it was found, and this therefore constitutes a violation of Article 5 of the American Convention.

101. This Court has stated, before, that the next of kin of the victims of human rights violations may, in turn, be victims.<sup>117</sup> In the *sub judice* case, abridgment of the right to mental and moral integrity of the next of kin of Juan Humberto Sánchez comes as a direct consequence: of his illegal and arbitrary detention on July 10 and 11, 1992, which took place at the home of his parents, with the latter present as well as some of the younger siblings; of the uncertainty of not knowing the whereabouts of Juan Humberto Sánchez for over a week; of the signs of extreme violence on the corpse when it was found; of the illegal and arbitrary detention and the threats and harassment suffered by the stepfather at the hands of agents of the State; of the illnesses suffered by the mother and the stepfather; of lack of investigation and punishment of those responsible for these facts. All of this causes suffering, anguish, insecurity, frustration, and a feeling of powerlessness of the next of kin vis-à-vis the State authorities.<sup>118</sup> Therefore, the next of kin can be considered to have been the victims of cruel, inhuman, and degrading treatment.<sup>119</sup>

102. In this specific case, the next of kin of the victim suffered additionally due to the treatment given to the mortal remains of Juan Humberto Sánchez, which were found in an advanced state of decay with signs of great violence, wedged between two rocks in a river; and when they were found by the local authorities, they did not conduct the necessary inquiries for a serious investigation, such as, for example, taking photographs or performing an autopsy for lack of the respective economic means in that part of the country. Furthermore, due to the state of decay of said remains, the Justice of the Peace of Colomocagua ordered their burial at the place where they were found, without the consent of the next of kin (*supra* 70.12). As the mother of the victim stated, "as they buried him [...] as if they had buried an animal, as if my son had not been a Christian." Said treatment of the remains of the victim "which were sacred for his relatives, and specifically for [his mother], constituted for [them] a cruel and inhuman treatment."<sup>120</sup>

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1995, Series A, no. 336, para. 34; and *Eur. Court H. R., Case of Tomasi v. France judgment of 27 August 1992, Series A no. 241-A*, paras. 108-111; and *Bámaca Velásquez Case, supra* note 25, paras. 152-153; and *Villagrán Morales et al. Case, supra* note 103, para. 170.

<sup>117</sup> Cf. *Bámaca Velásquez Case, supra* note 25, para. 160; *Cantoral Benavides Case, supra* note 103, para. 105; "*Street Children*" *Case (Villagrán Morales et al.)*, *supra* note 103, para. 175; and *Castillo Páez Case. Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 59.

<sup>118</sup> Cf. *Bámaca Velásquez Case, supra* note 25, para. 160; *Cantoral Benavides Case, supra* note 103, para. 105; and *Durand and Ugarte Case, supra* note 104, para. 128.

<sup>119</sup> Cf. *Bámaca Velásquez Case, supra* note 25, para. 162; *Eur. Court HR, Kurt v. Turkey, supra* note 108, paras. 130-134.

<sup>120</sup> Cf. "*Street Children*" *Case (Villagrán Morales et al.)*, *supra* note 103, para. 174.

103. For the aforementioned reasons, the Court finds that the State violated Article 5(1) and 5(2) of the American Convention in combination with Article 1(1) of said Convention, to the detriment of Juan Humberto Sánchez, as well as of the following next of kin of the victim: María Dominga Sánchez (the mother); Juan José Vijil Hernández (the stepfather); Julio Sánchez (brother); Reina Isabel Sánchez (sister); María Milagro Sánchez (sister); Rosa Delia Sánchez (sister); Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister); Juan Carlos Vijil Sánchez (brother); Celio Vijil Sánchez (brother); Donatila Argueta Sánchez (companion); Breidy Maybeli Sánchez Argueta (daughter); Velvia Lastenia Argueta Pereira (companion) and Norma Iveth Sánchez Argueta (daughter).

**X**  
**VIOLATION OF ARTICLE 4(1)**  
**IN COMBINATION WITH ARTICLE 1(1)**  
**(RIGHT TO LIFE)**

*Pleadings of the representatives of the alleged victim*

104. The representatives of the victim also asked the Court to declare the violation of Article 4 of the American Convention by the State to the detriment of Juan Humberto Sánchez, and in this regard, they argued that:

- a) participation of State agents in the planning and execution of the murder of Juan Humberto Sánchez, as well as subsequent obstruction and denial of justice regarding the investigation and punishment of those involved, make the State responsible for the violation of the right to life of Juan Humberto Sánchez;
- b) the capture of Juan Humberto Sánchez was carried out in a violent and arbitrary manner by State agents, and this was acknowledged by the State itself in a letter sent by the Commander of the Tenth Infantry Battalion to his commanding officers, regarding participation of agents of the Armed Forces in the facts of the case. It was also corroborated by the *modus operandi* of the persons involved in the detentions, the manner of execution of the alleged victim, as well as the maneuvers to obstruct and harass his next of kin during the investigations they carried out. Said actions “enable us to infer, in a well-founded manner, that those participating in the kidnapping, torture, and execution of Juan Humberto Sánchez were agents of the State [...]”
- c) participation and responsibility of the agents of the State in the death of Juan Humberto Sánchez is clear and is set within the framework of a pattern of disappearances, extra-legal executions and impunity by the armed forces against alleged guerrilla fighters, which extended into the early moments, encompassing the time of the events. This pattern of disappearances, executions and impunity in Honduras can be corroborated by the information and the cases presented in the Report by the National Human Rights Commissioner of Honduras and in the Report of the United Nations Special Rapporteur on extra-legal, summary, and arbitrary executions. The aim of the disappearances in Honduras, according to the report of the

National Commissioner, was to seek information and to execute subversive Hondurans or supporters of the guerrilla force in Nicaragua and El Salvador;

d) the death of Juan Humberto Sánchez, set within the framework of the human rights violations at the time, corroborates the following circumstances:

a)

that his murder by agents of the armed forces of the State was political in nature and motivated by his alleged activities with the guerrilla fighters; b) planning, surveillance and execution of the alleged victim occurred by orders of authorities of the armed forces; and c) the lack of investigation was tolerated by the State, and the judicial proceedings that were attempted were processed in an obviously slow and disinterested manner, and some of them were ultimately dismissed;

e) Article 4 of the American Convention, in combination with Article 1(1) of that Convention, imposes a positive obligation on the States to adopt all appropriate measures to protect and preserve the right to life and to investigate and punish violations to it; however, in the instant case the State has not fulfilled this obligation of conducting a serious and impartial investigation, because the necessary steps were not taken in the preliminary proceedings, evidence was omitted, key testimony for the investigation was not taken, and the body of the alleged victim was buried immediately after it was found without taking photographs or a video to document the finding; and

f) the State did not take the necessary measures at the time to put an end to the practice of forced disappearances, extra-legal executions and impunity that seriously endangered the lives of the persons who were under its jurisdiction.

*Pleadings of the Commission*

105. The Commission asked the Court to declare that the State is responsible for the violation of Article 4 of the American Convention to the detriment of Juan Humberto Sánchez, because:

a) State agents deliberately planned and carried out the arbitrary detention of Juan Humberto Sánchez on July 11, 1992, and that was the last time that he was seen alive. Several elements allow us to infer participation of agents of the State in the execution of Juan Humberto Sánchez, such as accusations regarding ties to the Salvadoran guerrilla forces and his participation in hiding weapons; prior detention of Juan Humberto Sánchez by the military on July 10, 1992; threats made by military officers against Mr. Sánchez and his father when the former was released on the morning of July 11, 1992; his recapture by members of the intelligence unit of the army; and the state in which the corpse was found, with the hands tied by the same rope that bound his neck, and a shot in the forehead with an exit orifice at the base of the skull;

b) after more than eight years of the summary execution of Juan Humberto Sánchez, the responsibility of the perpetrators of his death has not been elucidated; and

c) the conduct of the State is worsened by other factors such as obstructions by the armed forces of normal administration of justice; reluctance of the armed forces to bring one of their members before justice in a timely manner; concern and diligence shown by them to cover up the truth and to distance themselves from assuming any responsibility; and, among others, the retroactive receipt that they made the stepfather of the alleged victim sign to demonstrate that he had been released in good conditions; these examples authorize the conclusion that the State has tolerated continuing impunity regarding the death of Juan Humberto Sánchez.

*Pleadings of the State*

106. The State, in turn, denied having violated Article 4 of the American Convention to the detriment of Juan Humberto Sánchez, and it pointed out that:

a) the second capture of the alleged victim was not carried out by State agents, a statement that can be corroborated with evidence on record in the domestic case file;

b) with respect to the death of Juan Humberto Sánchez, it has only been proven that his body was found on July 21, 1992, in a pool in the Río Negro, and there is no evidence of participation of State agents in those facts;

c) when the corpse was found, an autopsy was not performed due to the advanced state of decay of the body and because there was no "legal physician" at the place; for said reason, only an examination by the judge and by the experts he appointed took place; and

d) the State set in motion the jurisdictional and police functions to investigate the facts and identify those responsible. There have also been efforts to capture the alleged murderer, so as to investigate the facts and try him, to punish him if that were the case and at the appropriate legal moment. He was captured in January, 2003.

*Considerations of the Court*

107. Article 4(1) of the American Convention sets forth that:

[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

108. The Court recognizes the high evidentiary value of the testimonial and circumstantial evidence and of the pertinent logical inferences in cases of extra-legal executions, with all the difficulties regarding evidence derived from them when they are set within the framework of a practice of grave human rights violations promoted or tolerated by the State.<sup>121</sup> This Court deems that if it is proven for the specific case

<sup>121</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 131; *Cantoral Benavides Case*, *supra* note 103, paras. 47-48; *Durand and Ugarte Case*, *supra* note 104, paras. 47-48; and *Blake Case*. Judgment of January 24, 1998. Series C No. 36, para. 51.

that it fits within the pattern of extra-legal executions, it is reasonable to assume and conclude that there is an international responsibility of the State.

109. This Court underlines that in light of the proven facts, the State violated the right to life to the detriment of Juan Humberto Sánchez from a triple perspective. First, in the *sub judice* case there are sufficient grounds to conclude that the death of Juan Humberto Sánchez was due to an extra-legal execution committed by military agents, set within the framework of a pattern of grave human rights violations that occurred at the time of the facts (*supra* 70.1).

110. Secondly, since there was a pattern of extra-legal executions tolerated and promoted by the State, this generated a climate that was incompatible with effective protection of the right to life. As the Court has stated, the right to life plays a key role in the American Convention as it is the essential corollary for realization of the other rights.<sup>122</sup> When the right to life is not respected, all other rights lack meaning. The States have the obligation to ensure creation of the conditions required to avoid violations of this inalienable right and, specifically, the duty of avoiding violations of this right by its agents.<sup>123</sup> Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation),<sup>124</sup> as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.<sup>125</sup> This active protection of the right to life by the State does not only involve legislators, but all State institutions and those who must protect security, both its police forces and its armed forces.<sup>126</sup> Due to the above, the States must take all necessary measures not only to prevent and punish deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by its own security forces.<sup>127</sup>

111. Third, the State is furthermore responsible for observance of the right to life of all persons under its custody as guarantor of the rights enshrined in the American Convention. As this Court has affirmed, “although the State has the right and obligation to guarantee its security and maintain public order, its powers are not unlimited, because it has the obligation, at all times, to apply procedures that are in

<sup>122</sup> “Street Children” Case (*Villagrán Morales et al.*), *supra* note 103, para. 144.

<sup>123</sup> Cf. *United Nations Human Rights Committee*, General Comment 6/1982, para. 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 6 (1994) and also cf. with *United Nations Human Rights Committee*, General Comment 14/1984, para. 1 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 18 (1994).

<sup>124</sup> *Bámaca Velásquez Case*, *supra* note 25, para. 172; and “Street Children” Case (*Villagrán Morales et al.*), *supra* note 103, para. 139.

<sup>125</sup> Cf. *Cantoral Benavides Case, Reparations*, *supra* note 103, para. 69 “Street Children” Case (*Villagrán Morales et al.*). *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 99; and *Case of the “White Van” (Paniagua Morales et al.)*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 199.

<sup>126</sup> Cf. U.N.Doc.CCPR/C/SR.443, para. 55.

<sup>127</sup> *Bámaca Velásquez Case*, *supra* note 25, para. 172; and “Street Children” Case (*Villagrán Morales et al.*), *supra* note 103, paras. 144-145. Likewise, General Comment No. 6 (Sixteenth session, 1982), para. 3, *supra* note 123; *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N. Doc. Supp. No. 40 (A/37/40) en 137 (1982), p. 137.

accordance with the law and to respect the fundamental rights of each individual in its jurisdiction."<sup>128</sup> As guarantor of this right, the State must prevent those situations –such as the current *sub judice* one- that might lead, by action or omission, to suppression of inviolability of the right to life. In this regard, if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence,<sup>129</sup> because in its role as guarantor the State has the responsibility both of ensuring the rights of the individual under its custody and of providing information and evidence pertaining to what happened to the detainee.<sup>130</sup>

112. Likewise, the European Court of Human Rights has stated that safeguarding the right to life implicitly requires the existence of an effective form of official investigation when people die as the result of use of force by agents of the State.<sup>131</sup> In this regard, it pointed out:

[the] general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under Article 2, read in conjunction with the State's general duty [...] to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be [an] effective official investigation when individuals have been killed as a result of the use of force.<sup>132</sup>

113. In light of the above, the Court concludes that the State violated, to the detriment of Juan Humberto Sánchez, Article 4(1) in combination with Article 1(1) of the American Convention.

## XI VIOLATION OF ARTICLES 8 AND 25 IN COMBINATION WITH ARTICLE 1(1)

<sup>128</sup> *Bámaca Velásquez Case*, *supra* note 25, para. 174; and *cf. Durand and Ugarte Case*, *supra* note 104, para. 69.

<sup>129</sup> Eur. Court HR, *Timurtas v. Turkey* judgment of 13 June 2000, *Reports of Judgments and Decisions* 2000-VI, para. 82; Eur. Court HR, *Salman v. Turkey* judgment of 27 June 2000, *Reports of Judgments and Decisions* 2000-VII, para. 99; *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, para. 42.b); *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 99; *Cantoral Benavides Case*, *supra* note 103, para. 55; *Durand and Ugarte Case*, *supra* note 104, para. 65; *Gangaram Panday Case*, *supra* note 104, para. 49; *Godínez Cruz Case*, *supra* note 33, para. 141; and *Velázquez Rodríguez Case*, *supra* note 33, para. 135.

<sup>130</sup> *Cf. Durand and Ugarte Case*, *supra* note 104, para. 65; *Cantoral Benavides Case*, *supra* note 103, para. 55; and *Bámaca Velásquez Case*, *supra* note 25, paras. 152-153. Likewise, the European Court has extensive case law: Eur. Court HR, *Aksoy v. Turkey*, *supra* note 106, para. 61; *Eur. Court H.R., Ribitsch v. Austria*, *supra* note 116, para. 34 and *Eur. Court H.R., Case of Tomasi v. France*, *supra* note 116, paras. 108-111.

<sup>131</sup> *Cf. Eur. Court H.R., Case of Hugh Jordan v. the United Kingdom* judgment of 4 May 2001, para. 105; *Eur. Court H.R., Case of Çiçek v. Turkey* judgment of 27 February 2001, para. 148; *Eur. Court HR, Mc Cann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, para. 161; Eur. Court H.R., *Kaya v. Turkey* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, para. 105.

<sup>132</sup> *Cf. Eur. Court H.R., Case of Hugh Jordan v. the United Kingdom*, *supra* note 131, para. 105; *Eur. Court H.R., Case of Çiçek v. Turkey*, *supra* note 131, para. 148; *Eur. Court HR, Mc Cann and Others v. the United Kingdom*, *supra* note 131, para. 161; *Eur. Court H.R., Kaya v. Turkey*, *supra* note 131, para. 105.

**(RIGHT TO FAIR TRIAL AND JUDICIAL PROTECTION)***Pleadings of the representatives of the alleged victim*

114. The representatives of the alleged victim alleged violation by the State of Articles 8 and 25 of the American Convention on the basis of the following arguments:

- a) the two times that Juan Humberto Sánchez was detained, he was not taken before any competent, independent and impartial judicial authority "to establish his rights and obligations," which violated Article 8(1) of the Convention. He was not informed of the reasons for his detentions, which is a violation of Article 8(2)(b), nor was he provided the legal representative to which he had a right, thus limiting his right to prepare his defense, which violated Article 8(2)(c) and (d). The right of the victim to presumption of innocence, set forth in Article 8(2), was also breached, as the head of the armed forces repeatedly referred to the victim as "nothing other than a criminal;"
- b) the next of kin of the alleged victim did not have access to an effective remedy before a competent authority for investigation of the death of Juan Humberto Sánchez. In this regard, the proceeding begun with the aim of investigating said death was protracted and ineffective and there were a number of irregularities in it that obstructed justice;
- c) the first anomalies in the investigation occurred at the scene of the crime and during the initial stage of the forensic investigation. In point of fact, the lack of an autopsy and mismanagement of the scene of the crime led to a loss of very important evidence to establish responsibilities for the death of the alleged victim. On the contrary, the corpse of Juan Humberto Sánchez was buried immediately, with no substantial precautions;
- d) even though the next of kin of the alleged victim have rendered statements before the domestic authorities several times, the arrest warrant issued in connection with the facts was based on their first statements, without taking into account subsequent statements, which shows negligence and ineffectiveness in the investigation;
- e) one of the methods of obstruction of the criminal investigation consisted of a series of threats and harassment against the next of kin of the alleged victim; these threats and harassment are not only a violation of the right to humane treatment of the family of Juan Humberto Sánchez, but also a form of obstruction of justice;
- f) more than 9 years after the facts, key witnesses for full elucidation of the facts have not yet been summoned to render testimony, no person has been brought to justice nor have the perpetrators of the facts been punished; thus, the right to truth has been breached to the detriment of the next of kin of the alleged victim; and
- g) there was also a pattern of impunity and general ineffectiveness in establishing criminal responsibilities of those responsible for the facts, as another obstacle to attainment of justice;

*Pleadings of the Commission*

115. The Inter-American Commission alleged that the State violated Articles 8(1), 25 and Article 1(1) of the American Convention, based on the following arguments:

- a) the State denied the right to justice to the next of kin of the alleged victim, because it did not provide them with an effective judicial remedy or adequate due process, as set forth in Articles 8 and 25 of the Convention. The investigation conducted regarding the facts was insufficient and ineffective, and furthermore it remained incomplete, for which reason the State did not fulfill its international obligation to investigate, try and punish, stemming from Article 1(1) of the American Convention, despite the fact that it was a public action crime;
- b) the judicial authorities focused the investigation on a single person, Ángel Belisario Hernández González, whose absence was the basis for shelving the proceeding. Even though the authorities issued an arrest warrant against Mr. Hernández González, in the understanding that he was the “military officer in charge of the subdelegation in said municipality,” they refrained from ordering an investigation of the other military personnel posted in that military jurisdiction, and not even the identity of the latter was established;
- c) not all the crimes committed were investigated. The only crime investigated by the judicial authorities was the murder, setting aside arbitrary detention and alleged tortures suffered by the alleged victim; and
- d) the State did not comply with the principle of promptness of the habeas corpus remedy. Said remedy was rejected almost one month after the body of the victim was found.

*Pleadings of the State*

116. The State argued that it “did not violate international obligations or [...] right[s] or guarantees protected by the American Convention [on] Human Rights” and, therefore, it rejected any claim that it be found responsible in this case. Specifically, regarding the alleged violations of Articles 8, 25 and Article 1(1) of the American Convention, it stated that:

- a) one of the purposes of the State is to safeguard the security of its population and, therefore, in face of complaints submitted against Juan Humberto Sánchez, “it took investigative steps [...] and [...] on July 10, 1992 the respective authorities deemed that as part of said investigative activities it was important to receive the statement of JUAN HUMBERTO SÁNCHEZ,” against whom the complaints had been made. Once Mr. Sánchez made his statement, he “left with his stepfather” the respective offices of the agents of the authorities;
- b) in certain cases the “agents of the authorities” can detain a person for investigative purposes, a detention that must not surpass 24 hours, due to constitutional provisions;

c) in the ongoing trial at Intibucá not only the Public Prosecutor's Office can intervene as plaintiff, but also "the victims, their next of kin and any other person;"

d) in view of the second capture of Juan Humberto Sánchez, the State activated the jurisdictional and police functions to conduct an investigation of the facts and identify those responsible, as a result of which the criminal proceeding was begun by the Justice of the Peace in Colomoncagua, Intibucá, which is still open at the Second Departmental Court of First Instance of Intibucá. In this proceeding, a "commitment order" was issued as well as several arrest warrants against Ángel Belisario Hernández González, and efforts were made to capture him, and he was in January 2003. His preliminary examination statement provides new elements to take into account in the investigation; and

e) the allegations that in 1992 there was no "guarantee of due process" must be rejected because "in the early nineties the [human rights] situation [in Honduras] improved substantially." The State pointed out that it "[is] able to demonstrate that in Honduras there is fair trial and [that] it is effective."

#### *Considerations of the Court*

117. Before analyzing in this case the situations pertaining to Articles 8 and 25 of the American Convention in combination with Article 1(1) of that Convention, this Court will refer again to those pleadings of the parties regarding the preliminary objection on non-exhaustion of domestic remedies that have not yet been discussed, to bring them up and analyze them in the instant chapter.

118. Article 8 of the American Convention provides that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g) the right not to be compelled to be a witness against himself or to plead guilty; and

h) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

119. Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b) to develop the possibilities of judicial remedy; and

c) to ensure that the competent authorities shall enforce such remedies when granted.

120. In similar cases, this Court has established that “[i]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings.”<sup>133</sup> In light of the above, the domestic proceedings must be considered as a whole, including the rulings of the appellate courts, and the role of the international court is to establish whether the proceedings as a whole, as well as the way evidence was produced,<sup>134</sup> were in accordance with international provisions.

121. This Court has established that it is not enough for the remedies to exist formally, as they must yield positive results or responses to human rights violations, for them to be deemed effective. In other words, every person must have access to simple and prompt recourse before competent courts or judges that protect their fundamental rights.<sup>135</sup> Said guarantee “constitutes one of the basic pillars, not only of the American Convention, but also of the Rule of Law in a democratic society as per the Convention.”<sup>136</sup> In addition, as the Court has also stated, “those remedies

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<sup>133</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 188; and “*Street Children*” *Case (Villagrán Morales et al.)*, *supra* note 103, para. 222.

<sup>134</sup> Cf. *Bámaca Velásquez*, *supra* note 25, para. 189; and “*Street Children*” *Case (Villagrán Morales et al.)*, *supra* note 103, para. 222; cf., *inter alia*, *Eur. Court H.R., Edwards v. the United Kingdom judgment of 16 December 1992, Series A no. 247-B*, para. 34; and *Eur. Court H.R., Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B*, para. 33.

<sup>135</sup> Cf. “*Five Pensioners*” *Case*, *supra* note 3, para. 126; *Cantos Case*, *supra* note 5, para. 52; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 112; and *Bámaca Velásquez Case*, *supra* note 25, para. 191.

<sup>136</sup> Cf. *Cantos Case*, *supra* note 5, para. 52; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 112; and *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, para. 135.

that, due to the general conditions of the country or even due to the specific circumstances of a given case, are illusory, cannot be deemed effective."<sup>137</sup>

122. In this regard, among the indispensable guarantees of fair trial, habeas corpus is the suitable means to ensure liberty, to control respect for life and the right to humane treatment, and to impede their disappearance or non-determination of their place of detention, as well as to protect the individual against torture or other cruel, inhuman or degrading treatment or punishment.<sup>138</sup> As follows from the proven facts, on July 20, 1992 a habeas corpus remedy was filed by telegram<sup>139</sup> to establish the whereabouts of Juan Humberto Sánchez (*supra* 70.18). It has been proven that the serving judge took over a week, from July 20 to 28, 1992, to report to the Appellate Court of Comayagua that the commander of the Tenth Battalion had informed him that Juan Humberto Sánchez was not detained at that military detachment post, even though the body had been found on the banks of the Río Negro on July 21, 1992 (*supra* 70.18 and 70.19).

123. Ineffectiveness of the habeas corpus remedy in Honduras was proven (*supra* 70.18, 70.19 and 70.20) by the various testimonial and documentary evidence included in the file, especially the statements of Leo Valladares Lanza, who at the time was the Human Rights Commissioner and who stated that because the Judiciary was influenced by the military forces, habeas corpus remedies were usually ineffective.<sup>140</sup>

124. With respect to fair trial or procedural guarantees, the Court has established that for true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that "are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof,"<sup>141</sup> in other words, "the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination."<sup>142</sup>

125. As this Court pointed out above (*supra* 85), Juan Humberto Sánchez was unable to file any remedy to demonstrate the illegality of his detention, to find out the reasons for said detention, to appoint a legal representative, or to exercise his right to defense, as his detention was illegal and arbitrary, since he was captured

<sup>137</sup> Cf. "Five Pensioners" Case, *supra* note 3, para. 126; *Las Palmeras Case*, *supra* note 129, para. 58; and *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, paras. 113-114.

<sup>138</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 192; *Cantoral Benavides Case*, *supra* note 103, para. 165; and *Durand and Ugarte Case*, *supra* note 104, para. 103.

<sup>139</sup> Pursuant to Honduran legislation.

<sup>140</sup> Cf. *Velásquez Rodríguez Case*, *supra* note 33, paras. 66 and 68.

<sup>141</sup> *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 147; and *El Hábeas Corpus bajo suspensión de garantías* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8; para. 25.

<sup>142</sup> *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 147; *The right to information on consular assistance in the framework of guarantees of the due process of law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 118; and *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 28.

without respecting the rules regarding detention, and he was taken in a clandestine manner to a detention center, where he was interrogated, tortured, and subsequently executed extra-legally by agents of the State (*supra* 97 to 99 and 109 to 111), with the attendant violation of the right to fair trial set forth Article 8 of the American Convention.

126. Judicial actions to elucidate the death of Juan Humberto Sánchez and punish those responsible have, on the whole, showed shortcomings in the investigation. For example, once his body was found there was no autopsy nor were photographs taken of the location of the body, because as the Justice of the Peace and witness Héctor Fortín said there were no financial resources for this type of steps. It should be underlined that the State itself affirmed that in this kind of situations those steps were not taken (*supra* 70.12 and 106.c), and thus in the *sub judice* case the evidence necessary to carry out a serious and effective investigation on what happened to Juan Humberto Sánchez was not available.

127. This Court deems that in cases where there have been extra-legal executions the State must conduct a serious, impartial and effective investigation of what happened. In this regard, the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, or Minnesota Protocol, has set forth certain basic guidelines to conduct the respective investigations and establish whether the executions have been extra-legal, summary, and arbitrary.<sup>143</sup> The Protocol has listed as minimum requirements for the investigation: identification of the victim, gathering and preserving evidence pertaining to the death so as to help in possible prosecution of those responsible; identification of possible witness and obtaining their statements regarding the death; determination of the cause, manner, place and time of death, as well as any pattern or practice that might have caused the death; establishing the distinction among natural death, suicide, and homicide; identification and capture of the person or persons involved in the death, and bringing the alleged perpetrators before a competent tribunal established by law. In this case, said parameters were not fulfilled.

128. The Court notes that in cases of extra-legal executions it is crucial for the competent authorities to conduct an exhaustive investigation of the scene, to examine the body of the victim, and for professional experts to perform an autopsy to establish the cause of death whenever possible, or to carry out a test that must also be rigorous, under the circumstances.<sup>144</sup> In the case under discussion, the Court underlines that for various reasons the authorities did not take the necessary steps to preserve the evidence available at the scene of the crime and to perform an autopsy that might enable a serious and effective investigation of what happened, to ultimately punish those responsible.

129. Based on the criteria set forth regarding the subject-matter by this Court, and taking into account reasonable time in judicial proceedings, it can be said that the ongoing proceeding before the Justice of the Peace of Colomoncagua and the Second Court of First Instance of Intibucá exceeded the principle of a reasonable time embodied in the American Convention, as the three elements that must be taken

<sup>143</sup> Cf. U.N. Doc E/ST/CSDHA/12 (1991)

<sup>144</sup> Cf. Committee of Ministers of the Member States of the Council of Europe, Recommendation N. R (99) 3 on Harmonization of the Rules for Forensic Medical Autopsy.

into account to establish whether reasonable time has been breached are found, i.e. those regarding the complexity of the case, behavior of the authorities, and behavior of the interested party.<sup>145</sup>

130. As regards the complexity of the case, first of all we should underline that the Court has corroborated that the *sub judice* case is a proceeding before the Justice of the Peace of Colomoncagua and the Second Court of First Instance of Intibucá that began on July 22, 1992, and in January 2003 it was in the stage of preliminary proceedings (*supra* 70.21 and 70.34). In other words, after more than ten years, despite the fact that according to the statements of witness Leonel Casco and expert opinion Héctor Fortín, this stage should not last more than three months according to domestic legislation. The files supplied in this case show that testimony was received from various witnesses, including the next of kin, in 1992, 1993, 1995 and 1998 (*supra* 70.23, 70.24 and 70.26). In other words, the judicial authority received various evidence for approximately 6 years, with the aim of identifying those allegedly responsible for the murder of Juan Humberto Sánchez. Even if this were a complex case regarding the merits, the domestic courts must act with due diligence to decide on hearing of the case.<sup>146</sup> In the case under discussion, there has been no complexity; instead, the judicial authorities have incurred unnecessary delays, as evidence was received from 1992 to 1998, with some protracted periods of inactivity (between 1993 and 1994, and in 1997). The commitment order against Ángel Belisario Hernández González was issued in October, 1998, and the proceeding was suspended from July 1, 1999 to November, 2001, because the accused had not been captured and Honduran legislation provided that the file should be shelved until the accused was captured. As of February, 2002, there were arrest warrants against Ángel Belisario Hernández González, and he was captured on January 17, 2003, despite the fact that he appeared in the proceeding by means of a legal representative in April, 2002 (*supra* 70.33 and 70.34).

131. With respect to the behavior of the authorities, first of all we must underline that actions or omissions that abridge fundamental rights may be committed by any public authority, whether the Executive, the Legislative, or the Judiciary, as has been established in the case law of this Court.<sup>147</sup> Due to the above, in the *sub judice* case regarding the period from 1992 to 2001 it is necessary to weigh not only what occurred in the proceeding before the Justice of the Peace of Colomoncagua and the Second Court of First Instance of Intibucá, but all processes or procedures that in one way or another had a bearing on this case and make it possible to glimpse the behavior of the public authorities:

- a) it should be underlined that while the respective courts did not know the address of the possible accused since March 16, 1995, they did not make efforts to locate said person despite knowing that he was an agent of the State, until September 29, 1998, the date on which the Second Court of First Instance of Intibucá asked the director of the oversight board of the national police and the general commander of the armed forces to place Ángel

<sup>145</sup> Cf. *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 4, para. 143; *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C No. 71, para. 93; and *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 109, para. 152.

<sup>146</sup> Cf. *Eur. Court H.R., Baraona judgment of 8 July 1987, Series A no. 122*, para. 50.

<sup>147</sup> Cf. *"Five Pensioners" Case*, *supra* note 3, para. 163; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 154; *Ivcher Bronstein Case*, *supra* note 136, para. 168; and *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 178.

Belisario Hernández González in the custody of the court. In the case of the armed forces, for a year they did not answer the request, which was reiterated on June 23, 1999, and since no answer was forthcoming the case was shelved until November 20, 2001. According to the accused, in his statement before the Second Court of First Instance of Intibucá, he was discharged from the armed forces on January 28, 1997 and he learned that he was being investigated through the publication of rewards for his capture in the daily newspapers in March 2002. This type of suspensions should only be allowed for extremely grave causes,<sup>148</sup> but not, as in the *sub judice* case, due to not being able to locate the person allegedly responsible for the facts, as the investigation should have been directed toward establishing the responsibility of the other participants in the detention, torture, and extra-legal execution of Juan Humberto Sánchez (*supra* 70.30); and

b) no investigation was carried out regarding any other agent of the State, but rather only regarding the person against whom the first arrest warrant had been issued. even though he had been investigated and acquitted in the internal jurisdiction of the armed forces. Likewise, due to the detention, the conditions of the body and the prevailing pattern in the country, it is reasonable to assume that several agents were involved in violation of the rights of Juan Humberto Sánchez.

132. With respect to the behavior of the interested party, as the Court previously pointed out regarding the phenomenon of extra-legal executions, the State's answer to the application cannot rest on the judicial activity of the next of kin of the alleged victim, as the Supreme Court of Justice stated in 1997 when it affirmed that "respecting the independence of the lower [c]ourts, it issue[d] no ruling with respect to the case being discussed. Furthermore, the parties have access to the remedies set forth in the law, to correct any irregularities that they deem [are] shown in the aforementioned files." In this type of situations, it is the obligation of the State to conduct a serious and effective investigation, which in this case would involve the elucidation of what happened to Juan Humberto Sánchez. Nevertheless, this Court notes that the next of kin of the alleged victim rendered statements at various times in the proceedings, in 1992, 1993, 1995 and 1998, because they were annulled by the Second Court of First Instance of Intibucá for lack of some legal requirement when they were taken by the Justice of the Peace of Colomoncagua, and they did so despite the fact that they were being threatened by the military authorities to discontinue their investigations (*supra* 70.13 and 70.14). In any case, regarding extra-legal executions the authorities must act on their own motion and further their investigation, and the burden of the initiative must not lie on the next of kin,<sup>149</sup> as the State affirmed in its allegations (*supra* 61.e and 116.c).

133. The preventive mechanisms established by the State must include effective procedures to investigate, seriously and in depth, the circumstances in which a violation of the right to life may have occurred.<sup>150</sup> In this regard, Principle Four of the United Nations "Principles on the Effective Prevention and Investigation of Extra-

<sup>148</sup> The European Court of Human Rights deemed in the Baraona case that suspension of proceedings in three different periods adding up to almost 2 years is unjustifiable, save in very exceptional circumstances. *Eur. Court H.R., Baraona judgment of 8 July 1987, supra* note 146, para. 54 *in fine*. Likewise, *Eur. Court HR, Paccione v. Italy judgment of 27 April 1995, Series A no. 315-A*, paras. 20-21.

<sup>149</sup> *Cf. Eur. Court H.R., Hugh Jordan, supra* note 131, paras. 105 et seq.

<sup>150</sup> *Cf. Human Rights Committee, General Comment No. 6 (Sixteenth session, 1982), para. 4, supra* note 123.

legal, Arbitrary and Summary Executions” provides that effective protection must be ensured, by means of judicial or other remedies, to persons who are in danger of being executed in an extra-legal, arbitrary, or summary manner.

134. This phenomenon of extra-legal execution also involves “a disregard of the duty to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention,”<sup>151</sup> by carrying out or tolerating actions directed toward effecting extra-legal executions, by not investigating them adequately, and by not punishing those responsible, if applicable, the State violates the duty to respect the rights recognized in the Convention and to ensure their free and full exercise,<sup>152</sup> both by the alleged victim and by his next of kin, and for society as a whole to know what happened.<sup>153</sup>

135. On the other hand, it has been proven that, despite the various domestic recourses to clarify the facts, they were not effective to try and, if applicable, to punish those responsible (*supra* 70.21 to 70.38). The State has not identified any person or persons criminally responsible for the illegal acts referred to in the application. On the contrary, in the case under discussion it has been proven that the death of Juan Humberto Sánchez was set within the framework of a pattern of extra-legal executions (*supra* 70.1), one characteristic of which is that there has also been a situation of impunity (*infra* 143), in which judicial remedies are not effective, the judicial investigations have serious shortcomings, and the passing of time plays a fundamental role in erasing all traces of the crime, thus making the right to defense and judicial protection an illusion, as regards the terms set forth in Articles 8 and 25 of the American Convention.

136. For the aforementioned reasons, the Court finds that the State violated Articles 8 and 25 of the American Convention, in combination with Article 1(1) of that Convention, to the detriment of Juan Humberto Sánchez and his next of kin, María Dominga Sánchez (the mother); Juan José Vijil Hernández (the stepfather); Reina Isabel Sánchez (sister); María Milagro Sánchez (sister); Rosa Delia Sánchez (sister); Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister); Julio Sánchez (brother), Juan Carlos Vijil Sánchez (brother); Celio Vijil Sánchez (brother); Donatila Argueta Sánchez (companion); Breidy Maybeli Sánchez Argueta (daughter); Velvia Lastenia Argueta Pereira (companion) and Norma Iveth Sánchez Argueta (daughter).

## XII NON-COMPLIANCE WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)

*Pleadings of the representatives of the alleged victim*

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<sup>151</sup> *Bámaca Velásquez Case*, *supra* note 25, para. 129; *Fairén Garbi and Solís Corrales Case*. Judgment of March 15, 1989. Series C No. 6, para. 152; *Godínez Cruz Case*, *supra* note 33, paras. 168-191; and *Velásquez Rodríguez Case*, *supra* note 33, paras. 159-181.

<sup>152</sup> *Cf. Bámaca Velásquez Case*, *supra* note 25, para. 129; *Fairén Garbi and Solís Corrales Case*, *supra* note 151, para. 152; *Godínez Cruz Case*, *supra* note 33, paras. 168-191; and *Velásquez Rodríguez Case*, *supra* note 33, paras. 159-181.

<sup>153</sup> *Trujillo Oroza Case, Reparations*, *supra* note 22, paras. 99-101 and 109; and *Bámaca Velásquez Case. Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, paras. 74-77.

137. The representatives of the alleged victim argued that as a consequence of the violation of the rights protected by Articles 4, 5, 7, 8 and 25 of the American Convention, the State also breached Article 1(1) of the Convention, which sets forth the duty to respect the rights and liberties embodied in the Convention and to ensure and guarantee the free and full exercise of said rights by all persons under the jurisdiction of the State. Therefore, the State has the duty to organize the apparatus of government and all structures through which public authority is exercised, in such a manner that they are able to juridically ensure the free and full exercise of human rights. The above also entails the juridical duty of the States to prevent, investigate, and punish all violations of rights protected by the American Convention.

138. With respect to Article 2 of the American Convention, the representatives alleged that the State has not adopted the appropriate domestic legal measures to make the rights protected by the Convention effective. For example, the Honduran Criminal Code does not define the crime of forced disappearance. Furthermore, there are serious shortcomings in the practice of habeas corpus, which make it an ineffective remedy. On the other hand, numerous irregularities have been identified in implementation of habeas corpus, such as delays in processing requests filed before the courts and ineffectiveness of the serving judge.

#### *Pleadings of the Commission*

139. The Inter-American Commission alleged that the State is responsible for violation of its obligation to ensure free and full exercise of the rights recognized by the Convention, set forth in Article 1(1) of that Convention, as well as for not fulfilling its duty, derived from said provision, to prevent, investigate with all means available to it, punish, and ensure adequate reparation to the victim and his next of kin. In addition, the Commission pointed out that the State has not used all the means available to it, in a diligent manner, to conduct a serious and effective investigation within a reasonable time, as the basis for indictment, elucidation of the facts, trial and punishment of the direct perpetrators and those who instigated them.

#### *Pleadings of the State*

140. The State deemed that it has not violated international obligations or rights and guarantees protected by the American Convention, for which reason it "rejects any claim to declare the Honduran State responsible in the instant case," as it has, instead, acted within a legal and constitutional framework and in accordance with the international treaties in force.

#### *Considerations of the Court*

141. In previous chapters, the Court has established the violation of the rights protected by Articles 7, 5, 4, 8 and 25 (*supra* 88, 103, 113 and 136) in combination with Article 1(1) of the Convention to the detriment of Juan Humberto Sánchez and of his next of kin. In addition, given the consequences of said violations, the Court deems it pertinent to consider the scope of the general obligation of the State embodied in Article 1(1) of the American Convention.

142. Based on Article 1(1) of the American Convention, the Court deems that the State is under the obligation to respect the rights and liberties recognized therein<sup>154</sup> and to organize public authority in such a way as to ensure to all persons under its jurisdiction the free and full exercise of human rights.<sup>155</sup> The above obligation applies independently of whether those responsible for violation of said rights are agents of public authority, private individuals, or groups of individuals,<sup>156</sup> as according to the rules of International Human Rights Law, action or omission by any public authority is an act attributable to the State, one that involves its responsibility under the terms set forth in that Convention.<sup>157</sup>

143. The Court has established that in Honduras there was and is a state of impunity regarding the facts of the instant case (*supra* 135), as the State has the obligation to prevent and investigate what happened.<sup>158</sup> It is the understanding of the Court that impunity is:

the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human right violations, and total defenselessness of victims and their relatives.<sup>159</sup>

In the *sub judice* case, it should be recalled that more than ten years have passed without all those allegedly responsible being tried, as has been proven.

144. This Court has clearly stated that the obligation to investigate must be fulfilled:

in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government.<sup>160</sup>

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<sup>154</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 210; *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C No. 22, paras. 55 and 56; *Fairén Garbí and Solís Corrales Case*, *supra* note 151, para. 161; and *Velásquez Rodríguez Case*, *supra* note 33, para. 165.

<sup>155</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 210; *Caballero Delgado and Santana Case*, *supra* note 154, paras. 55 and 56; *Godínez Cruz Case*, *supra* note 33, paras. 175 and 176; and *Velásquez Rodríguez Case*, *supra* note 33, paras. 166 and 167.

<sup>156</sup> *Bámaca Velásquez Case*, *supra* note 25, para. 210; and *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 109, para. 174.

<sup>157</sup> Cf. *"Five Pensioners" Case*, *supra* note 3, para. 163; *Bámaca Velásquez Case*, *supra* note 25, para. 210; *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 3, para. 154; and *Baena Ricardo et al. Case*, *supra* note 147, para. 178.

<sup>158</sup> The meaning of this concept is that set forth in case law, *Bámaca Velásquez Case*, *supra* note 25, para. 211; *Castillo Páez Case*. Judgment of November 3, 1997. Series C No. 34, para. 90; *Caballero Delgado and Santana Case*, *supra* note 154, para. 58; and *Velásquez Rodríguez Case*, *supra* note 33, paras. 174-177.

<sup>159</sup> *Bámaca Velásquez Case, Reparations*, *supra* note 153, para. 64; *Bámaca Velásquez Case*, *supra* note 25, para. 211; and *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 109, para. 173.

<sup>160</sup> Cf. *Bámaca Velásquez Case*, *supra* note 25, para. 212; *"Street Children" Case (Villagrán Morales et al.)*, *supra* note 103, para. 226; *Godínez Cruz Case*, *supra* note 33, para. 188; and *Velásquez Rodríguez Case*, *supra* note 33, para. 177.

145. The violations of the right to liberty and personal safety, to life, to physical, mental and moral integrity, to a fair trial and to judicial protection that have been established in this Judgment, are attributable to the State, which had the duty to respect and ensure said rights. Therefore, the State is responsible for non-observance of Article 1(1) of the Convention, in connection with the violations found regarding Articles 4, 5, 7, 8 and 25 of that Convention.

146. For the aforementioned reasons, the Court finds that the State did not fulfill its obligation to respect rights, embodied in Article 1(1) in connection with Articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez. In addition, it finds that the State did not fulfill its obligation to respect rights, embodied in Article 1(1) in connection with Articles 5, 7, 8 and 25 of the American Convention on Human Rights, to the detriment of Juan José Vijil Hernández. The State did not fulfill its obligation to respect rights, embodied Article 1(1) in connection with Articles 5, 8 and 25 of the American Convention on Human Rights, to the detriment of María Dominga Sánchez (the mother); Reina Isabel Sánchez (sister); María Milagro Sánchez (sister); Rosa Delia Sánchez (sister); Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister); Julio Sánchez (brother); Juan Carlos Vijil Sánchez (brother); Celio Vijil Sánchez (brother); Donatila Argueta Sánchez (companion); Breidy Maybeli Sánchez Argueta (daughter); Velvia Lastenia Argueta Pereira (companion); and Norma Iveth Sánchez Argueta (daughter).

### XIII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE CONVENTION)

#### *Obligation to Redress*

147. Pursuant to the foregoing explanation in previous chapters, the Court has found, in connection with the facts in this case, that Articles 7, 5, 4, 8 and 25 of the American Convention were breached, all of them in combination with Article 1(1) of that Convention, to the detriment of Juan Humberto Sánchez and, in some of these instances, with one or all of his next of kin (*supra* 88, 103, 113 and 136). This Court has reiterated, in its case law, that it is a principle of International Law that all violations to an international obligation that have caused harm generate an obligation to adequately redress said harm.<sup>161</sup> To this end, the Court has based itself on Article 63(1) of the American Convention, pursuant to which,

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party (not underlined in the original text).

148. As the Court has pointed out, Article 63(1) of the American Convention reflects a common law rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. Thus, when an illegal act is attributable to a State, the latter incurs immediately the international responsibility

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<sup>161</sup> “Five Pensioners” Case, *supra* note 3, para. 173; Cantos Case, *supra* note 5, para. 66; Las Palmeras Case, *Reparations*, *supra* note 4, para. 37; El Caracazo Case, *Reparations*, *supra* note 4, para. 76; and Trujillo Oroza Case, *Reparations*, *supra* note 22, para. 60.

for violation of an international rule, with the attendant duty to redress and to make the consequences of the violation cease.<sup>162</sup>

149. Redress of the harm caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not possible, as in the instant case, this international Court must order the adoption of a set of measures that, in addition to ensuring respect for the rights abridged, will provide reparation for the consequences caused by the infractions and payment of a compensation for the harm caused in the pertinent case.<sup>163</sup> The obligation to redress, which is regulated in all its aspects (scope, nature, modes, and determination of beneficiaries) by international law, cannot be modified by the State nor can it avoid compliance with it by invoking domestic legal provisions.<sup>164</sup>

150. As regards the violation of the right to life and certain other rights (personal liberty and the right to humane treatment, fair trial and judicial protection), if *restitutio in integrum* is not possible and given the nature of the right infringed, reparation is carried out, *inter alia*, according to the practice of international case law, by means of fair pecuniary compensation when this is appropriate, to which it is necessary to add the positive measures that the State must adopt to ensure that injurious acts such as those of the instant case do not recur.<sup>165</sup>

#### XIV BENEFICIARIES

151. The Court will now summarize the pleadings of the representatives of the victim and of the Inter-American Commission on who should be considered beneficiaries of the reparations ordered by the Court.

##### *Pleadings of the representatives of the victim*

152. The representatives of the victim argued in their brief with requests, pleadings and evidence (*supra* 15) that the following persons should be considered beneficiaries of the reparations ordered by the Court: Juan Humberto Sánchez, María Dominga Sánchez (the mother), Juan José Vijil Hernández (the stepfather), Julio Sánchez (brother), Reina Isabel Sánchez (sister), María Milagro Sánchez (sister), Rosa Delia Sánchez (sister), Domitila Vijil Sánchez (sister), María Florinda Vijil Sánchez (sister), Juan Carlos Vijil Sánchez (brother), Celio Vijil Sánchez (brother), Donatila Argueta Sánchez (companion), Breidy Maybeli Sánchez (daughter) and Norma Iveth Sánchez (daughter). In the brief with its final pleadings, they did not include Julio Sánchez (brother) and, on the other hand, they included Velvia Lastenia

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<sup>162</sup> Cf. "Five Pensioners" Case, *supra* note 3, para. 174; Cantos Case, *supra* note 5, para. 67; Las Palmeras Case, Reparations, *supra* note 4, para. 37; and El Caracazo Case, Reparations, *supra* note 4, para. 76.

<sup>163</sup> Cf. Las Palmeras Case, Reparations, *supra* note 4, para. 38; El Caracazo Case, Reparations, *supra* note 4, para. 77; and Hilaire, Constantine and Benjamin et al. Case, *supra* note 4, para. 203.

<sup>164</sup> Cf. Las Palmeras Case, Reparations, *supra* note 4, para. 38; El Caracazo Case, Reparations, *supra* note 4, para. 77; and Hilaire, Constantine and Benjamin et al. Case, Judgment of June 21, 2002. Series C No. 94, para. 203.

<sup>165</sup> Cf. Las Palmeras Case, Reparations, *supra* note 4, para. 37; El Caracazo Case, Reparations, *supra* note 4, para. 77; and Trujillo Oroza Case, Reparations, *supra* note 22, para. 62.

Argueta (companion). Pursuant to the pleadings of the representatives of the victim, these persons must be deemed beneficiaries based on the following considerations:

- a) with the exception of Juan Humberto Sánchez, these persons are entitled to reparations in two different ways: first, as beneficiaries or successors of the reparations that the State must pay as a consequence of the violations of the human rights of Juan Humberto Sánchez; and second, as victims *per se*;
- b) previously, the Court has deemed proven that violation of human rights of the victim causes non-pecuniary damage to the parents and siblings, for which reason the eight siblings and half-siblings of Juan Humberto Sánchez are entitled to the right to redress;
- c) even though Juan José Vijil Hernández was not the biological father of Juan Humberto Sánchez, since he married the latter's mother the two of them developed a very close emotional relationship, to the point that Mr. Vijil Hernández accompanied the victim during his detention by agents of the State; and
- d) Juan Humberto Sánchez was involved in two emotional relationships from which he had offspring: he lived with Donatila Argueta Sánchez, with whom he had a daughter by name Breidy Maybeli Sánchez, and he had another daughter with Velvia Lastenia Argueta Pereira, whose name is Norma Iveth Sánchez Argueta.

*Pleadings of the Commission*

153. The Inter-American Commission argued that the following persons should be considered beneficiaries of the reparations ordered by the Court: María Dominga Sánchez, the mother of the victim; Juan José Vijil Hernández, the stepfather of the victim, and Domitila Vijil Sánchez Hernández, sister of the victim. The Commission also pointed out that Juan Humberto Sánchez "had offspring with a Salvadoran woman" and they should also be considered beneficiaries of the reparations. The Commission based its statements on the following arguments:

- a) it can be assumed that violation of the right to life causes direct and moral harm to the successors of the right of the deceased and it is for the counterpart to prove that said harm did not occur;
- b) given the nature of the violations committed by the State, it is evident that those persons who had close emotional ties to Juan Humberto Sánchez were deeply affected;
- c) both the mother and the father of the victim had suffered threats and harassment by agents of the Honduran State with the aim of intimidating them; and
- d) in this case, a "humble family" has fruitlessly sought, for over eight years, that justice be served and has challenged impunity in Honduras.

*Pleadings of the State*

154. On the various occasions in which it submitted pleadings in connection with the instant case, the State has not referred to the issue of the beneficiaries of the reparations.

*Considerations of the Court*

155. The Court will now determine the person or persons who are the “injured party” in the instant case, pursuant to the terms of Article 63(1) of the American Convention. Since the violations to the American Convention found in this same Judgment were to the detriment of Juan Humberto Sánchez, María Dominga Sánchez (the mother); Juan José Vijil Hernández (the stepfather); Reina Isabel Sánchez (sister), María Milagro Sánchez (sister), Rosa Delia Sánchez (sister), Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister), Juan Carlos Vijil Sánchez (brother), Julio Sánchez (brother), Celio Vijil Sánchez (brother), Donatila Argueta Sánchez (companion), Breidy Maybeli Sánchez Argueta (daughter), Velvia Lastenia Argueta Pereira (companion) and Norma Iveth Sánchez Argueta (daughter), all of them –as victims- must be included in said category and are entitled to the reparations ordered by the Court, both regarding pecuniary damage, when appropriate, and regarding non-pecuniary damage. With respect to Juan Humberto Sánchez, it will also be necessary to establish which of the reparations ordered in his favor can be transmitted through inheritance to his next of kin, and to which of these.

156. With respect to these applicants the *onus probandi* is for the next of kin of the victim,<sup>166</sup> understanding the term “next of kin of the victim,” pursuant to Article 2(15) of the Rules of Procedure,<sup>167</sup> as a broad concept that includes all persons tied by close kinship, including the children, parents and siblings, who may be considered next of kin and have the right to receive compensation, insofar as they meet the requirements established in the case law of this Court.<sup>168</sup> It is necessary to underline the criterion followed by the Court to assume that the death of a person causes non-pecuniary damage to the closest members of the family, especially to those who were in close emotional contact with the victim.<sup>169</sup> For the purposes of the *sub judice* case, this type of reparation will be analyzed in the respective section, under the circumstances of the case and of the body of evidence supplied to this Court by the next of kin.

**XV**

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<sup>166</sup> Cf. *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 57; *Bámaca Velásquez Case, Reparations*, *supra* note 153, para. 34; and “*Street Children*” *Case (Villagrán Morales et al.)*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 68.

<sup>167</sup> Pursuant to Article 2 of the Rules of Procedure, the term “next of kin” means “the immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable.”

<sup>168</sup> Cf. *Las Palmeras Case, Reparations*, *supra* note 4, paras. 54 and 55; *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 57; *Bámaca Velásquez Case, Reparations*, *supra* note 153, para. 34; and “*Street Children*” *Case (Villagrán Morales et al.)*. *Reparations*, *supra* note 166, para. 68.

<sup>169</sup> *Las Palmeras Case, Reparations*, *supra* note 4, paras. 54-55; *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 57; and “*Street Children*” *Case (Villagrán Morales et al.)*, *Reparations*, *supra* note 166, para. 68.

## DETERMINATION OF REPARATIONS

157. In accordance with the evidence gathered during the various stages of the proceeding and in light of the criteria established by this Court in its case law, the Court will now analyze the claims submitted by the parties in this stage of the proceeding, with the aim of determining the measures of reparation pertaining to pecuniary and non-pecuniary damage and other forms of reparation.

### A) PECUNIARY DAMAGE

#### *Pleadings of the representatives of the victim*

158. The representatives of the victim asked the Court to consider the following points to establish compensatory indemnification:

- a) lost earnings of Juan Humberto Sánchez as a telecommunications technician, in addition to other benefits such as severance pay, vacations, Christmas bonus and educational bonus, with the respective deductions for personal expenses. This item is estimated to be US\$4,501.14 (four thousand five hundred and one United States dollars and fourteen cents);
- b) the expenses incurred by the Sánchez family and Domitila Sánchez Argueta, companion of Juan Humberto Sánchez, to obtain information on the facts stated in the claim, including extra-legal expenses for transportation, per diem allowance, medical treatments, estimated to be US\$5,427.25 (five thousand four hundred twenty-seven United States dollars and twenty-five cents);
- c) the expenses for psychological treatment to overcome the traumas caused by the violations, as regards the mother, the stepfather and Domitila Vijil, sister of the victim, for which the State must pay US\$3,000.00 (three thousand United States dollars) as an amount established in fairness by the Court; and
- d) reparation to the sisters of the victim, Domitila Vijil Sánchez and Reina Isabel Sánchez, who lost their jobs due to the constant steps they had to take with the aim of rendering testimony before the Inter-American Court.

#### *Pleadings of the Commission*

159. With respect to pecuniary damage, the Commission argued that:

- a) estimates of the damage in cases pertaining to the violation of the right to life refer to the income that the victim would have obtained during his lifetime of work. In this regard, the amount of lost earnings to be compensated for follows from the average of what the victim earned at the time of the facts as a radio operator and what persons with similar activities as those the victim might be carrying out earn today, with a 25% deduction for his personal consumption; it is also necessary to add the interest from the date when he died to the date when payment is made, so as to preserve the value of the salaries not received, at the same time that the sum of future losses should be deducted from the current value; and

b) with respect to the other items, it expressed its agreement with the criteria set forth by the representatives of the victim to establish compensation for pecuniary damage.

*Pleadings of the State*

160. The State argued that "it is not under the obligation to redress the 'alleged violation' to the next of kin of the 'alleged victim,' as it is not responsible" for the facts alleged.

161. As regards the claims filed regarding lost income of Juan Humberto Sánchez, the State pointed out that it has not been proven that Juan Humberto Sánchez was an operator for "Radio Venceremos", which was a "clandestine radio station of the guerrilla fighters of the *Frente de Liberación Nacional* (FMLN) of the Republic of El Salvador."

*Considerations of the Court*

162. This Court will now determine, in this section, the pecuniary damage, which involves the loss or detriment to the income of the victims, the expenses incurred due to the facts and the pecuniary consequences that are causally linked to the facts of the *sub judice* case,<sup>170</sup> for which it will set a compensatory amount that will seek to compensate for the patrimonial consequences of the violations found in the instant Judgment.

*a) Lost income*

163. The representatives of the victim and the Inter-American Commission requested compensation for lost earnings of Juan Humberto Sánchez based on the monthly salary he received as an operator at *Radio Venceremos* in El Salvador, which belonged to the *Frente para la Liberación Nacional Farabundo Martí*. In this regard, this Court recognizes that it is not possible to establish with certainty what the occupation and income of Juan Humberto Sánchez would have been at the time of his possible entry into the labor force in his country. Bearing in mind the lack of definitive evidence regarding the possible income that the victim might have obtained, the Court decides to set US\$25,000.00 (twenty-five thousand United States dollars), in fairness, as the amount of compensation to be paid for the lost income of that period.

164. With respect to inheritance of the compensation for the deceased victim, the Court has established the following criteria:<sup>171</sup>

a) fifty percent (50%) of the compensation will be distributed, in equal parts, among the children of the victim. If one or several of the children have already died, their part will augment that of the other children of the same victim; in the case under discussion, this means that the two daughters,

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<sup>170</sup> Cf. *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 65; *Bámaca Velásquez Case, Reparations*, *supra* note 153, para. 43; and *Castillo Páez Case, Reparations*, *supra* note 117, para. 76.

<sup>171</sup> *El Caracazo Case, Reparations*, *supra* note 4, para. 91.

Breidy Maybeli Sánchez Argueta and Norma Iveth Sánchez Argueta, who have been stated by the representatives, will inherit said amount;

b) twenty-five percent (25%) of the compensation will be given to the person who was the spouse or permanent companion of the victim at the time of his death; in the *sub judice* case, it has been proven by means of testimony that at the time of the facts Juan Humberto Sánchez had two companions, Velvia Lastenia Argueta Pereira and Donatila Argueta Sánchez, who will receive the amount allotted to them in equal parts; and

c) twenty-five percent (25%) of the compensation will be given to the parents. If one of the parents has died, his or her part will augment that of the other. It has been proven that the parents of Juan Humberto Sánchez are María Dominga Sánchez and Juan José Vijil Hernández; the latter is his stepfather and the facts of the case have proven his close relationship, for which reason the compensation will be divided in equal parts between these two persons.

165. The criteria established in the previous paragraph regarding the beneficiaries of compensation for pecuniary damage will also apply to distribution of compensation for non-pecuniary damage (*infra* 177).

*b) Consequential damage*

166. Taking into account the claims of the parties, the body of evidence, the proven facts in the instant case and its case law, the Court rules that compensation for pecuniary damage in the instant case must also include the following:

a) the various expenses incurred by the next of kin of Juan Humberto Sánchez, both his parents and his companion, Donatila Argueta Sánchez, with the aim of establishing his whereabouts, given the cover-up of what had happened and the lack of investigation of the facts by the Honduran authorities. These expenses include visits to public institutions, expenses for transportation, mainly to the city of Colomoncagua and La Esperanza, lodging, and others. With respect to the requests by COFADEH and CEJIL regarding expenses incurred in domestic proceedings and before the inter-American system, this Court will rule on the matter in the chapter pertaining to legal costs and expenses (*infra* 194). For all the aforementioned reasons, in fairness, the Court decides to grant US\$1,700.00 (one thousand seven hundred United States dollars) for expenses incurred by the next of kin of the victim searching for him, US\$200.00 (two hundred United States dollars) of which will be distributed in equal parts between the parents of the victim and US\$1,500.00 (one thousand five hundred United States dollars) to his companion, Donatila Argueta Sánchez;

b) as regards the earnings lost by the companion, Donatila Argueta Sánchez, trying to establish the whereabouts of Juan Humberto Sánchez; and the earnings lost by the sisters of the victim, Reina Isabel Sánchez and Domitila Vijil Sánchez, as a consequence of the latter's trip to the public hearing at the Inter-American Court (*supra* 23), the representatives have proven that they lost their jobs; however, the Court notes that they have not set an amount to compensate for said damage, for which reason it sets as the amount of compensation in fairness, taking into account the specific

circumstances of the instant case, US\$1,500.00 (one thousand five hundred United States dollars) for each of the sisters and US\$1,500.00 (one thousand five hundred United States dollars) for Donatila Argueta Sánchez;

c) with respect to the medical treatments received by the parents and the companion, Donatila Argueta Sánchez, they required medical treatment due to various illnesses<sup>172</sup> as a consequence of the detention and extra-legal execution of Juan Humberto Sánchez. The parents' illnesses, as stated by expert witness Munczek, are set within the framework of the situation of arbitrary detention of their son, the uncertainty regarding his whereabouts, the suffering for lack of knowledge of the circumstances of his death, the anguish for the injuries on his corpse, the grief caused by his being buried at the place where he was found, and their frustration and powerlessness in face of the results of the investigations of the facts by the Honduran public authorities. For the aforementioned reasons, this Court deems it appropriate to grant María Dominga Sánchez and Juan José Vijil Hernández, in fairness, US\$3,000.00 (three thousand United States dollars) each, for medical expenses incurred. It also grants Donatila Argueta Sánchez, in fairness, US\$500.00 (five hundred United States dollars); and

d) with respect to the fact that the next of kin of Juan Humberto Sánchez moved from the village of Santo Domingo to another community, as a consequence of the harassment that they began to suffer after the facts in the instant case, the Court deems it possible to establish a causal link between the fact and the alleged consequences suffered by the family as a result of the facts in this case. While no specific amount was set for this prejudice, this Court has previously recognized expenses for this type of situation<sup>173</sup> and, in turn, notes that no evidence was supplied regarding what this involved in financial terms, for which reason the Court sets the amount in fairness at US\$2,000.00 (two thousand United States dollars), to be distributed in equal parts between Dominga Sánchez and Juan José Vijil Hernández.

167. Based on all the above, the Court sets the following amounts as compensation for pecuniary damage for the violations found:

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<sup>172</sup> Cf. *El Caracazo Case, Reparations*, supra note 4, para. 86; *Trujillo Oroza Case, Reparations*, supra note 22, para. 74.b; and *Bámaca Velásquez Case*, supra note 25, para. 54.b.

<sup>173</sup> *Cantoral Benavides Case, Reparations*, supra note 125, para. 51.c); and *Case of the "White Van" (Paniagua Morales et al.), Reparations*, supra note 125, para. 98.

Reparation for pecuniary damage				
	Lost income	Expenses during search	Medical and moving expenses	Total
Juan Humberto Sánchez	US\$25,000.00			US\$25,000.00
Donatila Argueta	US\$1,500.00	US\$1,500.00	US\$500.00	US\$3,500.00
Juan José Vijil and Dominga Sanchez		US\$200.00	US\$8,000.00	US\$8,200.00
Domitila Vijil Sánchez	US\$1,500.00			US\$1,500.00
Reina Isabel Sánchez	US\$1,500.00			US\$1,500.00
<b>TOTAL</b>	US\$39,700.00			

### B) NON-PECUNIARY DAMAGE

168. The Court will now consider those injurious effects of the facts of the case that are not financial or patrimonial in nature. Non-pecuniary damage can include both suffering and affliction caused to the direct victims and their relatives, detriment to the persons' very significant values, and non-pecuniary alterations to the conditions of life of the victim or his family. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, for purposes of comprehensive reparation to the victims it can only be compensated for in two ways. First, by means of the payment of an amount of money or the delivery of goods or services that are appraisable in monetary terms, determined by the Court applying judicial discretion in a reasonable manner and in terms of fairness. And second, by the performance of acts or works with a public scope or repercussion that attain effects such as remembrance of the victims, acknowledgment of their dignity, consolation of their relatives or transmitting a message of official reproof of the human rights violations involved and of commitment with efforts to avoid recidivism.<sup>174</sup> The first aspect of reparation for non-pecuniary damage will be analyzed in this section, and the second aspect will be addressed in the following one.

#### *Pleadings of the representatives of the victim*

169. The representatives of the victim alleged, regarding non-pecuniary damage, the following:

- a) it is part of human nature that any person subject to aggression and humiliation will experience moral suffering, for which reason it is unnecessary to prove this fact; therefore, the representatives asked the Inter-American Court to set an amount in fairness as compensation for the non-pecuniary damage suffered by Juan Humberto Sánchez and his next of kin; and
- b) the Sánchez family has had to suffer harassment and threats, especially within the community where they lived and also by the State;

<sup>174</sup> Cf. *El Caracazo Case, Reparations*, supra note 4, para. 94; *Trujillo Oroza Case, Reparations*, supra note 22, para. 77; and *Bámaca Velásquez Case, Reparations*, supra note 153, para. 56.

instead of receiving support in face of what happened, they were isolated and mistreated by many, forcing them to leave their village.

*Pleadings of the Commission*

170. With respect to non-pecuniary damage the Commission pointed out that:

- a) the loss of a next of kin causes emotional suffering and grief to all members of the immediate family;
- b) both Humberto Sánchez and the members of his immediate family have undergone moral suffering, feelings of insecurity, frustration and powerlessness as a consequence of the facts of the case, a situation that must be compensated for by the State; and
- c) elimination and “cutting short” of the life options of Juan Humberto Sánchez is an item neither of pecuniary nor of non-pecuniary damage. The determination of damages must be based on a comprehensive, and not only patrimonial perspective, and in this regard, the State must pay an amount in fairness for its responsibility in depriving the victim of his life project.

*Pleadings of the State*

171. As stated above (*supra* 160), the State argued that “it is not under the obligation to redress the ‘alleged violation’ to the next of kin of the ‘alleged victim,’ as it is not responsible” for the facts alleged.

*Considerations of the Court*

172. International case law has repeatedly pointed out that a condemnatory judgment is *per se* a form of reparation.<sup>175</sup> However, due to the grave circumstances of the instant case, the intensity of the suffering caused to the victim, Juan Humberto Sánchez, by the respective facts, and that they also caused suffering to his next of kin, alterations of the conditions of existence of his next of kin and the other non-pecuniary consequences caused to the latter, the Court deems that it must order a compensation for non-pecuniary damage, in fairness.<sup>176</sup>

173. In the *sub judice* case, the representatives of the victim and the Commission referred to various types of non-pecuniary damage caused to Juan Humberto

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<sup>175</sup> Cf. *Trujillo Oroza Case, Reparations, supra* note 22, para. 83; *Bámaca Velásquez Case, Reparations, supra* note 153, para. 60; *Cantoral Benavides Case, Reparations, supra* note 125, para. 57; *Case of the Mayagna (Sumo) Awas Tingni Community, supra* note 3, para. 166; *Caso Cesti Hurtado, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para. 51; “*Street Children*” *Case (Villagrán Morales et al.), Reparations, supra* note 125, para. 88; and *Case of the “White Van” (Paniagua Morales et al.), Reparations, supra* note 125, para. 105. Likewise, cf. *Eur. Court HR, Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, para. 33*; *Eur. Court HR, Boner v. the United Kingdom judgment of 28 October 1994, Series A no. 300-B, para. 46*; *Eur. Court HR, Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, para. 45*; *Eur Court H.R., Darby judgment of 23 October 1990, Series A no. 187, para. 40*; *Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185-A, para. 41*; *Eur. Court H.R., Koendjibharie, judgment of 25 October 1990, Series A no. 185-B, para. 34*; and *Eur. Court H.R., Mc Callum judgment of 30 August 1990, Series A no. 183, para. 37*.

<sup>176</sup> Cf. *El Caracazo Case, Reparations, supra* note 4, para. 99; *Trujillo Oroza Case, Reparations, supra* note 22, para. 83; and *Bámaca Velásquez Case, Reparations, supra* note 153, para. 60.

Sánchez and to his next of kin by the facts in this case: the physical and psychological suffering of the deceased victim as a consequence of the tortures and the extra-legal execution; burial of the mortal remains of Juan Humberto Sánchez at the place where he was found; arbitrary detention of the father and threats suffered by the next of kin as part of what happened to the victim, have caused various types of suffering to the members of his family: daughters, companions, parents and siblings of the victim.

174. As was proven, Juan Humberto Sánchez suffered, within the context of a practice of extra-legal executions (*supra* 70.1), an illegal and arbitrary detention, followed by torture (*supra* 70.5, 70.7) and 70.8). It is evidently part of human nature that any person subjected to torture, such as that committed against Juan Humberto Sánchez, will experience corporal pain and deep suffering.

175. As this Court has pointed out, said suffering also applies to the closest members of the family, especially those who had close emotional contact with the victim. The Court deems that no evidence is required to reach said conclusion.<sup>177</sup> As has been proven in this case, the aforementioned considerations also apply to the stepfather and the half-siblings of the victim, who as members of an integrated family maintained close ties with Juan Humberto Sánchez.

176. In addition, prevailing impunity (*supra* 143) in this case has caused and continues to cause suffering to the next of kin, making them feel vulnerable and in a state of constant defenselessness vis-à-vis the State, a situation that causes them deep anguish, as has furthermore been proven.

177. Taking into account the various aspects of the damage discussed above, the Court sets the value of compensations for non-pecuniary damage, in fairness, in favor of the victim or, as appropriate, of his next of kin (*infra* 178), as listed in the following table:

<b>Reparations for Non-Pecuniary Damage</b>	
<b>Victim and next of kin</b>	<b>Amount</b>
Juan Humberto Sánchez	US\$100,000.00
Juan José Vijil	US\$20,000.00
María Dominga Sánchez	US\$20,000.00
Donatila Argueta Sánchez	US\$20,000.00
Velvia Lastenia Argueta	US\$5,000.00
Breidy Maybeli Sánchez Argueta	US\$20,000.00
Norma Iveth Sánchez Argueta	US\$20,000.00
Reina Isabel Sánchez	US\$5,000.00
Julio Sánchez	US\$5,000.00
María Milagro Sánchez	US\$5,000.00

<sup>177</sup> Cf. *El Caracazo Case, Reparations*, *supra* note 4, para. 50 e); *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 88; and *Bámaca Velásquez Case, Reparations*, *supra* note 153, paras. 63 to 65.

Rosa Delia Sánchez	US\$5,000.00
Domitila Vijil Sánchez	US\$5,000.00
María Florinda Vijil Sánchez	US\$5,000.00
Juan Carlos Vijil Sánchez	US\$5,000.00
Celio Vijil Sánchez	US\$5,000.00
<b>TOTAL</b>	
US\$245,000.00	

178. The compensation for non-pecuniary damage to Juan Humberto Sánchez will be distributed in the same terms as set forth in paragraph 164.

### *C) OTHER FORMS OF REPARATION*

#### *Pleadings of the representatives of the victim*

179. The representatives of the victim asked the Court, as measures of satisfaction and non-recidivism, among others, to order the State:

- a) in the framework of modification of its domestic legislation, to adjust its rules and its practices with respect to processing of habeas corpus remedies to international standards, to define by law the crime of forced disappearance in the Honduran Criminal Code, and to sign and ratify the Inter-American Convention on Forced Disappearance of Persons;
- b) with respect to the daughters of Juan Humberto Sánchez, whose education was truncated by the facts, to establish a trust fund in their name and to grant them scholarships, ensuring completion of their studies through university level;
- c) to exhume the mortal remains of the victim for his next of kin to bury him in accordance with their traditions and at the place of their choice; the costs must be covered by the State;
- d) to conduct an effective investigation leading to a trial that is "immediate, independent, and impartial," in which those responsible for the facts are punished, and to investigate and punish "in a penal, disciplinary, or administrative manner" the violations of rights committed against the family of Juan Humberto Sánchez;
- e) as forms of public acknowledgment of State responsibility, they asked the Court to order the State to make a publication in the three largest-circulation dailies of the country with reference to the responsibility of the State and "to explicitly say that Juan Humberto Sánchez was unjustly detained twice, tortured, made to disappear, and executed by the 'Tucán' forces of the Honduran army, for his name to be vindicated and for him to finally be able to rest in peace." They also requested that a video be made on the facts of the case, containing an acknowledgment of international responsibility by the State; and
- f) the life of any person is priceless, it cannot be redressed nor restored in any way, and therefore it is important to attach a value to this right, in the

understanding that “this life cannot be part of the moral damage because it is independent of the feelings expressed by the victims.” Therefore, they asked the Court to include as one of the items for compensation the irreparable loss of the life of Juan Humberto Sánchez, providing recognition of its autonomous value and setting an amount in fairness.

*Pleadings of the Commission*

180. The Commission, in turn, asked the Court to order the State:

a) the main reparation sought is effective trial and punishment of the instigators and direct perpetrators of the killing of Juan Humberto Sánchez, that is, for the State to be required to adopt such necessary judicial steps as may be necessary to identify and effectively punish those responsible; and

b) in this regard, the judges, prosecutors, witnesses, legal operators and the next of kin of the victim in this case must be given sufficient security guarantees.

*Pleadings of the State*

181. With respect to the request for the Court to order the State to adopt measures of reparation that guarantee non-recidivism of the facts, the State affirmed that it has improved all aspects of the penitentiary system, it issued a new organizational law for the Police and a new Criminal Procedures Code. It has also strengthened the Public Prosecutor’s Office and has established Inter-Institutional Criminal Justice Committees, “strictly adhering to the fundamental rights of Man.”

182. As regards the request for the State to modify its domestic legislation, the State pointed out that “the applicants [did not prove] that due legal process does not exist in domestic legislation to protect the right or rights that were allegedly breached.”

183. The State also pointed out that “it [cannot] be forced in abstract to sign treaties or conventions, if the sovereign body, in this case the National Congress of the Republic of Honduras, does not deem it” pertinent.

*Considerations of the Court*

184. States Party to the American Convention have the duty to investigate human rights violations and to punish their perpetrators and those who cover up said violations. Furthermore, every person who considers him or herself to be a victim of said violations and his or her next of kin have the right to resort to the judiciary to attain fulfillment of this duty of the State, for their benefit and that of society as a whole.<sup>178</sup>

185. At the time of the instant Judgment, after more than ten years, those responsible for the detention, torture, and extra-legal execution of Juan Humberto Sánchez have not yet been identified and punished, for which reason there is a situation of grave impunity regarding the respective facts. This situation constitutes

<sup>178</sup> Cf. *Las Palmeras Case, Reparations*, supra note 4, para. 66; *Trujillo Oroza Case, Reparations*, supra note 22, para. 99; *Bámaca Velásquez Case, Reparations*, supra note 153, paras. 76 and 77; and *Cantoral Benavides Case, Reparations*, supra note 125, paras. 69 and 70.

a violation of the aforementioned duty of the State, it is injurious to the victim, to his next of kin and to society as a whole, and it fosters chronic recidivism of those human rights violations.<sup>179</sup>

186. It is therefore necessary, as the Court has set forth both in this Judgment (*supra* 127, 128, 133 and 134) and in previous cases,<sup>180</sup> for the State to conduct an effective investigation of the facts of this case, to identify those responsible for them, both the direct perpetrators and those who instigated them, as well as possible accessories after the fact, and to punish them administratively and criminally as appropriate. The domestic proceedings involved must address the violations of the right to life and of the right to humane treatment to which this Judgment refers. The next of kin of the victim must have full access and the capacity to act, at all stages and levels of said investigations, in accordance with domestic laws and the provisions of the American Convention. The results of those investigations must be made known to the public, for Honduran society to know the truth.

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187. In connection with the above, this Court has repeatedly pointed out that the next of kin have the right to know where the remains of their beloved one are, and it has established that this "constitutes a just expectation that the State must satisfy with all the means available to it."<sup>181</sup> The Court has also stated recently that "delivery of the mortal remains is in itself an act of reparation as it leads to restore the dignity of the victims, to honor the value of their memory to those who were their beloved ones, and to allow them to adequately bury them."<sup>182</sup> For the aforementioned reasons, this Court deems that the State must provide the conditions required to transfer the mortal remains of the victim to the place chosen by his next of kin, at no cost to them.

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188. As a consequence of the facts in this case, the Court deems that the State must carry out a public act of acknowledgment of its responsibility in connection with the facts in this case and of amends to the victims.<sup>183</sup> The Court also deems that as

<sup>179</sup> Cf. *Las Palmeras Case, Reparations*, *supra* note 4, para. 53.a); *El Caracazo Case, Reparations*, *supra* note 4, para. 117; and *Trujillo Oroza Case, Reparations*, *supra* note 22, paras. 97, 101 and 112.

<sup>180</sup> Cf. *Las Palmeras Case, Reparations*, *supra* note 4, para. 66; *El Caracazo Case, Reparations*, *supra* note 4, para. 118; and *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 99.

<sup>181</sup> Cf. *El Caracazo Case, Reparations*, *supra* note 4, para. 122; *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 113; *Bámaca Velásquez Case, Reparations*, *supra* note 153, paras. 76 and 81; *Case of the "White Van" (Paniagua Morales et al.), Reparations*, *supra* note 125, para. 204; *Neira Alegría et al. Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 69; and *Aloeboetoe et al. Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 11, 1993. Series C No. 15, para. 109.

<sup>182</sup> *Las Palmeras Case, Reparations*, *supra* note 4, para. 77; *El Caracazo Case, Reparations*, *supra* note 4, para. 123; *Trujillo Oroza Case. Reparations*, *supra* note 22, paras. 114 and 115; and *Bámaca Velásquez Case. Reparations*, *supra* note 153, paras. 76 and 81.

<sup>183</sup> *Las Palmeras Case, Reparations*, *supra* note 4, para. 74; *El Caracazo Case, Reparations*, *supra* note 4, para. 128; *Trujillo Oroza Case, Reparations*, *supra* note 22, para. 118; and *Bámaca Velásquez Case, Reparations*, *supra* note 153, para. 84.

a measure of satisfaction, the State must publish in the official gazette *Diario Oficial* and in another national-circulation daily, once only, the operative part of this Judgment and the chapter on proven facts in this same Judgment, without the respective footnotes.<sup>184</sup>

189. This Court deems that Honduras, in the framework of the general obligation set forth in Article 2 of the Convention, must implement, if it does not yet exist, a record of detainees to enable control of legality of the detentions, which must therefore include identification of the detainees, the reason for their detention, the competent authority, the day and time of admission and of release, and information on the arrest warrant.

## **XVI LEGAL COSTS AND EXPENSES**

### *Pleadings of the representatives of the victim*

190. The representatives of the victim requested reimbursement of legal costs and expenses amounting to US\$28,190.58 (twenty-eight thousand one hundred and ninety United States dollars and fifty-eight cents), for expenses incurred in their search for justice in the instant case, both domestically and internationally. They specifically requested the following amounts: US\$19,597.72 (nineteen thousand five hundred and ninety-seven United States dollars and seventy-two cents) for legal costs and expenses incurred by COFADEH; US\$8,592.86 (eight thousand five hundred and ninety-two United States dollars and eighty-six cents) as reimbursement for expenses incurred by CEJIL; and to set an amount in fairness for CODEHUCA.

### *Pleadings of the Commission*

191. The Commission argued that the Court must recognize reasonable costs incurred by the legal representatives in the domestic ambit and before the bodies of the inter-American system for the protection of human rights, and the Commission stated that it “endorse[d] the claims made by the representatives of [the next of kin of the victim regarding reparations].”

### *Pleadings of the State*

192. The State pointed out that payment of “compensations” to the attorneys who intervened is not in order, such as those of the Inter-American Commission or those of the Center for Justice and International Law, CEJIL, since they “perform a function for a remuneration set for them by the [body] to which they belong.”

### *Considerations of the Court*

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<sup>184</sup> *Las Palmeras Case, Reparations, supra* note 4, para. 75; *El Caracazo Case, Reparations, supra* note 4, para. 128; and *Trujillo Oroza Case, Reparations, supra* note 22, para. 118.

193. As this Court has pointed out before,<sup>185</sup> legal costs and expenses are included under the concept of reparations embodied in Article 63(1) of the American Convention, because the activities carried out by the next of kin of the victim to establish his whereabouts and, subsequently, to attain justice both at the domestic and the international levels entail expenses which must be compensated for when the State is found to be internationally responsible, by means of a condemnatory judgment. With respect to their reimbursement, the Court must judiciously assess their scope, which encompasses the expenses incurred before the authorities of the domestic jurisdiction as well as those incurred in the proceedings before the inter-American system, bearing in mind the circumstances of the specific case, the nature of international jurisdiction for protection of human rights.<sup>186</sup> This assessment must be based on the principle of fairness and take into account the expenses stated by the parties, insofar as their *quantum* is reasonable.<sup>187</sup>

194. To this end, the Court deems it equitable to order payment of total sum of US\$16,000.00 (sixteen thousand United States dollars) for legal costs and expenses incurred by the representatives of the victim in the domestic proceedings and in the international proceedings before the inter-American system for protection of human rights. The respective payment must be distributed as follows: a) US\$14,000.00 (fourteen thousand United States dollars) to COFADEH; and b) US\$2,000.00 (two thousand United States dollars) to CEJIL.

195. As a consequence of the existing impunity in the instant case and of the reparation ordered by this Court to further the judicial investigations to establish the truth regarding what happened to Juan Humberto Sánchez and to punish those responsible, it will be necessary for the next of kin of the victim to incur expenses in the domestic system, for which reason the Court, in fairness, grants the sum of US\$3,000.00 (three thousand United States dollars) to be distributed in equal parts between María Dominga Sánchez and Juan José Vijil Hernández.

## XVII METHOD OF COMPLIANCE

196. To comply with the instant Judgment, the State must pay the compensations and the reimbursement of costs and expenses within six months of the date of notification of the instant Judgment.

197. The State can comply with its pecuniary obligations by payment in United States dollars or an equivalent amount in Honduran lempiras, using for this calculation the exchange rate between the two currencies at the New York exchange in the United States of America, the day before the payment.

198. Payment of the amount for pecuniary and non-pecuniary damage as well as for legal costs and expenses set forth in the instant Judgment can be subject neither

<sup>185</sup> *Las Palmeras Case, Reparations, supra* note 4, para. 82; *El Caracazo Case, Reparations, supra* note 4, para. 130; and *Trujillo Oroza Case, Reparations, supra* note 22, para. 126.

<sup>186</sup> *"Five Pensioners" Case, supra* note 3, para. 181, *Cantos Case, supra* note 5, para. 72; and *Las Palmeras Case, Reparations, supra* note 4, para. 83.

<sup>187</sup> *"Five Pensioners" Case, supra* note 3, para. 181, *Cantos Case, supra* note 5, para. 72; and *El Caracazo Case, Reparations, supra* note 4, para. 131.

to currently existing taxes or levies nor to any decreed in the future. Furthermore, if the State were to be in arrears it must pay interest on the amount owed, which will be the banking interest rate on loan arrears in Honduras. Finally, if for any reason it were not possible for the beneficiaries to receive the respective payments within twelve months, the State must deposit the respective amounts owed to said beneficiaries in a deposit certificate or account, at a solid financial institution, in United States dollars or Honduran lempiras, under the most favorable financial conditions allowed by banking practice and legislation. If after ten years the payment has not been collected, the sum will be returned to the State together with the interest accrued.

199. In the case of the compensation ordered for the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez Argueta, the State must deposit the amounts owed to them in a banking investment while they are minors, at a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency, within six months time, and under the most favorable conditions allowed by banking practice and legislation. If after five years from the date the aforementioned persons become of age the compensation has not been claimed, the capital and interest earned will be distributed proportionally among the other beneficiaries.

200. With respect to its inherent powers, the Court reserves the authority to monitor comprehensive compliance with the instant Judgment. The proceeding will be closed once the State has fully applied the provisions of the instant ruling.

### **XVIII OPERATIVE PARAGRAPHS**

201. Now therefore,

**THE COURT,**

unanimously,

**DECIDES:**

1. to dismiss the preliminary objection filed by the State.

**AND DECLARES THAT:**

2. the State violated the right to personal liberty protected by Article 7(1) , Article 7(2) , Article 7(3) , Article 7(4) , Article 7(5) , Article 7(6) and the latter in combination with Article 25 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, and the right to personal liberty protected by Article 7 of the American Convention on Human Rights to the detriment of Juan José Vijil Hernández.

3. the State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, María Dominga Sánchez, Juan José Vijil Hernández, Reina Isabel Sánchez, María

Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Julio Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

4. the State violated the right to life enshrined in Article 4(1) of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez.

5. the State violated the rights to fair trial and to judicial protection protected by Articles 8 and 25, respectively, of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez and of his next of kin María Dominga Sánchez, Juan José Vijil Hernández, Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Julio Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

6. the State did not fulfill its obligation to respect rights, set forth in Article 1(1) in combination with Articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez. The State also failed to fulfill its obligation to respect rights, embodied in Article 1(1) in combination with Articles 5, 7, 8 and 25 of the American Convention on Human Rights to the detriment of Juan José Vijil Hernández; and the State did not fulfill its obligation to respect rights, enshrined in Article 1(1) in combination with Articles 5, 8 and 25 of the American Convention on Human Rights to the detriment of María Dominga Sánchez, Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Julio Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

7. the instant Judgment constitutes *per se* a form of reparation to the victims in accordance with the explanation in paragraph 172 of the instant Judgment.

**AND IT DECIDES THAT:**

8. the State must pay the total sum of US\$39,700.00 (thirty-nine thousand seven hundred United States dollars) or their equivalent in Honduran currency, as compensation for pecuniary damage, distributed as follows:

a) US\$25,000.00 (twenty-five thousand United States dollars) or their equivalent in Honduran currency, to be distributed among his daughters, Breidy Maybeli Sánchez Argueta and Norma Iveth Sánchez Argueta; his companions, Donatila Argueta Sánchez and Velvia Lastenia Argueta Pereira, and his parents, María Dominga Sánchez and Juan José Vijil Hernández, as successors to Juan Humberto Sánchez, under the terms set forth in paragraphs 164 and 167, 196 to 199 of the instant Judgment.

b) to Donatila Argueta Sánchez, US\$3,500.00 (three thousand five hundred United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 167, 196 to 198 of the instant Judgment.

- c) US\$8,200.00 (eight thousand two hundred United States dollars) or their equivalent in Honduran currency, to be distributed equally between Juan José Vijil Hernández and María Dominga Sánchez, under the terms set forth in paragraphs 167, 196 to 198 of the instant Judgment.
- d) to Domitila Vijil Sánchez, US\$1,500.00 (one thousand five hundred United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 167, 196 to 198 of the instant Judgment.
- e) to Reina Isabel Sánchez, US\$1,500.00 (one thousand five hundred United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 167, 196 to 198 of the instant Judgment.
9. the State must pay the total sum of US\$245,000.00 (two hundred forty-five thousand United States dollars) or their equivalent in Honduran currency, as compensation for non-pecuniary damage, distributed as follows:
- a) US\$100,000.00 (one hundred thousand United States dollars) or their equivalent in Honduran currency, to be distributed among his daughters, Breidy Maybeli Sánchez Argueta and Norma Iveth Sánchez Argueta; his companions, Donatila Argueta Sánchez and Velvia Lastenia Argueta Pereira, and his parents, María Dominga Sánchez and Juan José Vijil Hernández, as successors of Juan Humberto Sánchez, under the terms set forth in paragraphs 164, 165, 177, 196 to 199 of the instant Judgment.
- b) to Juan José Vijil Hernández, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 198 of the instant Judgment.
- c) to María Dominga Sánchez, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 198 of the instant Judgment.
- d) to Donatila Argueta Sánchez, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 198 of the instant Judgment.
- e) to Velvia Lastenia Argueta Pereira, US\$5,000.00 (five thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 198 of the instant Judgment.
- f) to Breidy Maybeli Sánchez Argueta, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 199 of the instant Judgment.
- g) to Norma Iveth Sánchez Argueta, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency, under the terms set forth in paragraphs 177, 196 to 199 of the instant Judgment.
- h) to each of the following: Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez and Julio Sánchez, US\$5,000.00 (five thousand United States dollars) or their equivalent in Honduran currency,

under the terms set forth in paragraphs 177, 196 to 198 of the instant Judgment.

10. the State must continue to effectively investigate the facts in the instant case under the terms set forth in paragraph 186 of the instant Judgment, to identify those responsible, both the direct perpetrators and the instigators, as well as possible accessories after the fact, and to punish them administratively and criminally as appropriate; the next of kin of the victim must have full access and capacity to act, at all stages and levels of said investigations, in accordance with domestic laws and the provisions of the American Convention on Human Rights; and the results of said investigations must be made known to the public.

11. the State must provide the conditions required to transfer the mortal remains of Juan Humberto Sánchez to the place chosen by his next of kin, at no cost to them, as set forth in paragraph 187 of the instant Judgment.

12. the State must implement a record of detainees that enables control of legality of detentions, under the terms set forth in paragraph 189 of the instant Judgment.

13. the State must publicly acknowledge its responsibility regarding the facts in this case, and as amends to the victims it must publish in the official gazette *Diario Oficial* and in another national-circulation daily, once only, the operative part of this Judgment and the chapter pertaining to proven facts in this Judgment, under the terms set forth in paragraph 188 of the instant Judgment.

14. the State must pay the total sum of US\$19,000.00 (nineteen thousand United States dollars) or their equivalent in Honduran currency for legal costs and expenses, under the terms set forth in paragraphs 194, 195, 196 to 198 of the instant Judgment.

15. compensation for pecuniary damage, non-pecuniary damage, and legal costs and expenses established in the instant Judgment may not be subject to currently existing or future taxes, levies or charges.

16. the State must comply with the measures of reparation ordered in the instant Judgment within six months of the date it is notified.

17. if the State were in arrears, it must pay interest on the amount owed, which will be the banking interest for arrears in Honduras.

18. the compensation ordered in favor of the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez, must be deposited by the State in their name in an investment at a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency, within six months time, and under the most favorable financial conditions allowed by banking practice and legislation, as set forth in paragraph 199 of this Judgment.

19. it will monitor compliance with this judgment and will close the instant case once the State has fully applied the provisions of the instant judgment. Within six months of the date when this Judgment is notified, the State must submit to the Court a report on the measures adopted to comply with this Judgment, as set forth in paragraph 200 of this Judgment.

Drafted in Spanish and English, the Spanish text being authentic, in Santiago, Chile, on June 7, 2003.

Antônio A. Caçado Trindade  
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Manuel E. Ventura-Robles  
Secretary

So ordered,

Antônio A. Caçado Trindade  
President

Manuel E. Ventura-Robles  
Secretary