

Inter-American Court of Human Rights

Case of the "White Van" (Paniagua-Morales *et al.*) v. Guatemala

Judgment of May 25, 2001 (Reparations and Costs)

In the "White Van" case,

the Inter-American Court of Human Rights, composed of the following judges¹:

Antônio A. Cançado Trindade, President
Hernán Salgado Pesantes, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge and
Edgar E. Larraondo Salguero, Judge *ad hoc*;

also present,

Manuel E. Ventura Robles, Secretary, and
Renzo Pomi, Deputy Secretary,

in accordance with Articles 29, 55 and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and considering the provisions of the sixth, seventh and eighth operative paragraphs of the judgment of March 8, 1998, delivers this judgment on reparations.

I COMPETENCE

1. In accordance with the provisions of Articles 62 and 63(1) of the Convention, the Court is competent, to decide on reparations and costs and expenses in this case, since on May 25, 1978, the Republic of Guatemala (hereinafter "Guatemala" or "the State") ratified the American Convention and on March 9, 1987, it recognized the contentious jurisdiction of the Court.

¹ El Judge Máximo Pacheco Gómez informed the Court that, owing to circumstances beyond his control, he would be unable to attend the Fifty-first Regular Session of the Court; therefore, he did not take part in the deliberation and signature of this judgment.

II BACKGROUND

2. The instant case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") in an application of January 19, 1995, accompanied by Report No. 23/94 of September 28, 1994. It originated from petition No. 10,154 against Guatemala, received by the Secretariat of the Commission on February 10, 1988.

3. On March 8, 1998, the Court delivered the judgment on merits in the case, in which it, unanimously:

1. Rule[d] that the State of Guatemala violated Article 7 of the American Convention on Human Rights in relation to its Article 1(1) to the detriment of Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, Augusto Angárita Ramírez, Doris Torres Gil and Marco Antonio Montes Letona.

...

2. Rule[d] that the State of Guatemala violated Article 4(1) of the American Convention on Human Rights, in relation to its Article 1(1) to the detriment of Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos and Manuel de Jesús González López.

...

3. Rule[d] that the State of Guatemala violated Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to its Article 1(1), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, Augusto Angárita Ramírez and Oscar Vásquez.

...

4. Rule[d] that the State of Guatemala violated Article 8(1) of the American Convention on Human Rights, in relation to its Article 1(1) to the detriment of Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López and Erick Leonardo Chinchilla.

...

5. Rule[d] that the State of Guatemala violated Article 25 of the American Convention on Human Rights, in relation to its Article 1(1) to the detriment of Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos and Manuel de Jesús González López.

...

6. Rule[d] that the State of Guatemala must conduct a genuine and effective investigation to determine the persons responsible for the human rights violations referred to in this judgment and, where appropriate, punish them.

...

7. Rule[d] that the State of Guatemala [was] obliged to make reparation for the consequences of the declared violations and pay fair compensation to the victims and, where appropriate, to their next of kin.

...

8. Order[ed] the initiation of the reparations phase and entrust[ed] the pertinent actions to its President.

III PROCEEDINGS AT THE REPARATIONS STAGE

4. On May 21, 1998, the President of the Court (hereinafter "the President") decided:

1. To grant the Inter-American Commission on Human Rights until July 21, 1998, to submit a brief and any evidence it has for determining the reparations in this case.

2. To grant the victims and, when appropriate, their next of kin, until July 21, 1998, to submit a brief and any evidence they have for determining the reparations in this case.

3. To grant the State of Guatemala two calendar months to submit a brief and any evidence it has for determining the reparations in this case. This period {will] begin on the day that the State receives the briefs of the Inter-American Commission on Human Rights and of the victims or, when appropriate, their next of kin.

5. On May 25, 1998, the Secretariat of the Court (hereinafter "the Secretariat") requested the organizations indicated as petitioners in the application in this case, pursuant to the provisions of Article 23 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), to submit the powers of attorney authorizing them to represent the victims or the victims' next of kin, and also a single address where the communications of the Court should be notified. On August 21, 1998, the Secretariat reiterated this request to the representatives of the victims or the victims' next of kin. On September 8, 1998, the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas informed the Court that they would not represent any of the victims in this case during the reparations stage.

6. On July 16, 1998, German Giovanni Paniagua Morales, brother of Anna Elizabeth Paniagua Morales, sent a letter in which he requested information on the case. On July 20, 1998, on the instructions of the President, the Secretariat informed him that the reparations stage of the case was pending before the Court and notified him of the order to open this stage issued by the President (*supra* 4/*infra* 9), and also the letter addressed to the legal representatives of the petitioners on May 25, 1998.

7. On July 17, 1998, the Commission advised that it would be making a visit *in loco* to Guatemala from August 6 to 11, 1998, at which time it would try to re-establish contact with several of the victims' next of kin in the case *sub judice*. Owing to the foregoing, it requested the Court to extend the period for submitting its observations on reparations.

8. On July 20, 1998, Mark Martel, the representative of the next of kin of Oscar Vásquez, Anna Elizabeth Paniagua Morales and Manuel de Jesús González López, indicated that he was awaiting information on the claims for compensation of the Vásquez and Paniagua Morales families in order to forward a brief on reparations and therefore requested a one-month extension for the submission of this document.

9. On July 20, 1998, the President decided:

1. To extend until August 31, 1998, the period for the Inter-American Commission on Human Rights to submit a brief and any evidence it had for determining the reparations in this case.
 2. To extend until August 31, 1998, the period for the victims and, when appropriate, their next of kin to submit a brief and any evidence they had for determining the reparations.
 3. To grant the State of Guatemala two calendar months to submit a brief and any evidence it had for determining the reparations in this case. This period [would] begin on the day that the State receive[d] the briefs of the Inter-American Commission on Human Rights and of the victims or, when appropriate, the victims' next of kin.
10. On August 27, 1998, German Giovanni Paniagua Morales submitted a brief in which he referred to the effects that the facts of this case had had on him personally.
11. On August 31, 1998, the Commission submitted its observations on reparations, and also the evidence corresponding to this case.
12. On September 1, 1998, Mark Martel submitted his arguments on reparations and the respective evidence, on behalf of the persons he represented (*supra* 8). On September 24, 1998, Mr. Martel forwarded some corrections to the said brief.
13. On October 23, 1998, having observed that several of the victims or, when applicable, their next of kin had not appeared directly before the Court in this stage of the proceeding and in order to ensure the *effet util* of Article 23 of the Rules of Procedure of the Court and the effective protection of the interests of the victims, the President decided:
1. To call on the Inter-American Commission on Human Rights and the petitioners, including CEJIL, Human Rights Watch/Americas and Mark Martel, to submit all the information they had to ensure the location of Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Augusto Angárita Ramírez, Doris Torres Gil, Marco Antonio Montes Letona and Erick Leonardo Chinchilla or, when appropriate, their next of kin. Should they not have recent information, [the] President called on the Commission, CEJIL, Human Rights Watch/Americas and Mr. Martel to do their best to obtain it and submit it to the Secretariat of the Court within a period of 30 days, calculated as of the notification of [the] order.
 2. To call on the State to broadcast on one radio station and on one television channel and publish in one newspaper, all with national coverage, [an] announcement [relating to the location of some of the victims or, when appropriate, their next of kin,] within 30 days of notification of [the] order and, in each case, for at least three non-consecutive days. The recordings or, when applicable, copies of these announcements, together with the precise indication of the media and dates on which they were made, [should] be submitted to the Secretariat of the Court by December 15, 1998, at the latest, to be added to the file.
 3. To instruct the Secretariat of the Inter-American Court of Human Rights that, as soon as it receive[d] the addresses and information on the location of the victims or their next of kin in this case, it notify them of the judgment on merits and any other information necessary to comply with Articles 23 and 57 of the Rules of Procedure of the Court.
14. On November 16, 1998, Guatemala requested an extension of 30 days in order to comply with the orders of the President (*supra* 13). In this respect, on November 23, 1998, the President granted until January 15, 1999, for the State to submit the required documents and information.

15. On November 25, 1998, the Commission informed the Court that it had been able to communicate with the next of kin of the victims, Julián Salomón Gómez Ayala, William Otilio González Rivera and Pablo Corado Barrientos, and forwarded the corresponding information on their location.

16. On December 8, 1998, María Luisa Chinchilla Ruano, mother of Erick Leonardo Chinchilla, informed the Secretariat by telephone of her address and telephone number. The following day, Elizabeth Gómez Ayala, sister of Julián Salomón Gómez Ayala, also advised by telephone, her telephone number and that of the victim's mother, Blanca Esperanza Ayala de la Cruz.

17. On December 9, 1998, the Secretariat notified the judgment of March 8, 1998, to the next of kin of Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos and Erick Leonardo Chinchilla and gave them a brief explanation of the proceeding corresponding to the reparations stage. It also sent them other pertinent documents and informed them that "[t]he period for the victims or their next of kin to submit their briefs [would] be established by the President [...] in due course" (*infra* 20).

18. On December 16, 1998, the State provided information on the publication of the announcements in the press and the broadcast by television and radio, executed in compliance with the order of the President (*supra* 13). On January 7, 1999, it also forwarded publications in newspapers, an audiotape and a videotape containing these announcements.

19. On December 23, 1998, German Giovanni Paniagua Morales submitted his brief on reparations.

20. On January 29, 1999, the President ordered:

1. To grant the victims or, when appropriate, their next of kin until March 27, 1999, to submit a brief and any evidence they ha[d] for determining the compensations and expenses. In the case of those victims or next of kin who ha[d] already submitted their briefs to the Court, it w[ould] not be necessary for them to retransmit them, and those submitted would be considered valid.

2. To instruct the Secretariat of the Court to transmit all the briefs received to the Inter-American Commission on Human Rights, once the period mentioned in the previous paragraph ha[d] expired.

3. To grant the Inter-American Commission on Human Rights one month, calculated from the date on which it receives the briefs mentioned in the second operative paragraph of the [said] order, to submit any additional comments that it considers pertinent with regard to reparations.

4. To instruct the Secretariat of the Court to transmit all the brief that had been submitted to the State of Guatemala, once the period referred to in the previous operative paragraph ha[d] expired.

5. To grant the State of Guatemala two months, calculated from the date on which it receive[d] the briefs referred to in the previous operative paragraph, to submit its comments and any evidence it has for determining the reparations in this case.

21. On February 3, 1999, the Court requested Mark Martel to send the powers of attorney which were granted to him by the next of kin of Oscar Vásquez, Anna Elizabeth Paniagua Morales and Manuel de Jesús González López and, to this end,

granted him until March 27, 1999. On the following March 26, Mr. Martel sent the powers requested.

22. On March 18, 1999, in the name of several of the victims' next of kin, the Commission requested an extension until the following April 30 for the submission of the briefs on reparations. Since the parties raised no objections, the President decided to grant the requested extension on March 26, 1999.

23. On March 23, 1999, Salvador González Najarro, father of William Otilio González Rivera, submitted his brief on reparations and the corresponding evidence.

24. On March 26, 1999, María Luisa Chinchilla Ruano, mother of Erick Leonardo Chinchilla, advised that the *Coordinadora Jurídica Popular* (hereinafter "COJUPO"), through the lawyer, Antonio René Argueta Beltrán, would be responsible for providing her with legal assistance during the reparations stage.

25. On April 26 and 28, 1999, Blanca Esperanza Ayala de la Cruz and Bertha Violeta Flores Gómez, respectively mother and companion of Julián Salomón Gómez Ayala, submitted their arguments and evidence on reparations.

26. On April 30, 1999, María Luisa Chinchilla Ruano, mother of Erick Leonardo Chinchilla, transmitted her brief and evidence on reparations.

27. The same day and on the following May 28, the Commission, in the name of the Corado Barrientos family requested extensions of 10 and 15 days, respectively, for the submission of its arguments on reparations. These extensions were granted until June 14, 1999.

28. On June 3, 1999, Juana Barrientos Valenzuela and Tino Corado Barrientos, mother and brother of Pablo Corado Barrientos, informed that, for future communications, they would receive legal assistance from COJUPO, through the Director of this institution, Antonio René Argueta Beltrán, and indicated the corresponding mailing address. On the following June 11, they presented their reparations brief. Finally, on June 23, 1999, the evidence that accompanied this brief was received.

29. On July 16, 1999, the Commission requested a 14-day extension to submit its comments on reparations, "in order to obtain the necessary additional information and consult those affected in this regard." The President granted this extension until the following August 2. That day, the Commission remitted the supplementary brief with comments and also the corresponding evidence.

30. On September 28, 1999, the State requested the Court to grant "a period similar to that granted to the Inter-American Commission and the victims or their next of kin to submit its comments and the evidence for determining the reparations." Taking into account the complexity of the matters being examined and considering that it was "impossible to grant the State an extension of the length requested", the President decided to grant the State until January 2, 2000.

31. On October 14, 1999, the President of the organization, Rights International, submitted a brief as an *amicus curiae*.

32. On December 27, 1999, the State requested a further extension for submitting its comments on the briefs and the evidence on reparations. On January 5, 2000, the President granted this extension until May 2, 2000.

33. On February 25, 2000, the Secretariat requested the Commission and the next of kin of Pablo Corado Barrientos and Erick Leonardo Chinchilla to submit the list of the witnesses and experts who would give testimony at the public hearing on reparations. On May 24 that year, the Commission submitted a list with some of the names of the experts and witnesses that it proposed for the public hearing. This list was completed on the following June 12. On June 19, 2000, the President made some comments to the Commission and, in particular, that it had been verified that the Commission had included the name of a witness who had not been proposed in its brief on reparations. Consequently, he granted until the following June 26 for the victims or their next of kin and the State to forward their respective comments. Neither the victims nor, when appropriate, their next of kin, nor the State remitted any comment during this period. On June 27, 2000, the Commission sent a communication in which it emphasized that the witness who had been proposed for the first time in the list of witnesses and experts would not appear and, in her place, one of the persons included in the brief on reparations would testify. It also advised that two of the experts proposed could not attend the hearing and that it was seeking a replacement. On June 30, 2000, the Commission forwarded the names of the experts and their respective *curricula vitae*. On July 3, 2000, copies of the documents remitted by the Commission were forwarded to the parties and the State was given until the following July 5 to submit its observations. No document was remitted before the deadline had expired.

34. On March 8, 2000, the President informed the parties that a public hearing on reparations had been programmed for June that year. On April 7, 2000, the President informed the parties that, due to budget cuts ordered by the Committee on Administrative and Budgetary Affairs of the Organization of American State, "the Court [was] obliged to suspend [the forty-eighth] regular session."

35. On April 7, August 7 and November 13, 2000, the State appointed as agent in substitution of the acting agent, José Briz Gutiérrez, Enrique D. Barascout and Jorge Mario García Laguardia, respectively.

36. On April 28, 2000, Guatemala requested a further extension to submit its brief on reparations. Considering the Court's program of work, the President granted the State until June 9 that year.

37. On June 9, 2000, the State remitted its brief with comments on the reparations requested. The original and the annexes to this brief were received by the Secretariat on June 13, 2000.

38. On July 5, 2000, the President summoned the victims or, when appropriate, their next of kin or representatives, the Commission and the State to a public hearing on reparations to be held as of August 11, 2000, at the seat of the Court.

39. On July 10, 2000, the Commission requested the Court to expand the list of persons summoned to the public hearing on reparations in order to include Blanca Esperanza Ayala de la Cruz who, despite having been duly proposed in the brief on reparations, had not been included on the list of witnesses and experts (*supra* 33),

owing to circumstances beyond its control. On July 12, 2000, the President granted the State time to submit its comments. When the State's comments had not been received by July 20 that year, the President decided to summon Mrs. Ayala de la Cruz to appear and give testimony at the respective public hearing.

40. On July 24, 2000, German Giovanni Paniagua Morales submitted comments on the State's brief of June 9, 2000.

41. On August 11 and 12, 2000, the Court received the statements of the witnesses and experts proposed by the Commission at a public hearing.

There appeared before the Court:

For the victims' next of kin:

Mark Martel, lawyer
Avilio Carrillo Martínez, lawyer and
Antonio René Argueta Beltrán, lawyer

for the Inter-American Commission:

Claudio Grossman, delegate, and
Elizabeth Abi-Mershed, lawyer

for the State of Guatemala:

Enrique D. Barascout, agent
Osvaldo Enríquez, advisor
Cruz Munguía Sosa, advisor, and
Ricardo Efraín Alvarado Ortigoza, advisor

Witnesses proposed by the Commission:

Salvador González Najarro
Blanca Esperanza Ayala de la Cruz
Ingrid Elizabeth Gómez Ayala
Tino Corado Barrientos
Miriam Enoé Zelada Chinchilla
María Ildelfonsa Morales de Paniagua
María Elizabeth Chinchilla de González, and
Manuel Alberto González Chinchilla.

Experts proposed by the Commission:

Robin Eric Hahnel; and
Graciela Marisa Guilis.

Despite having been summonsed by the Court, Alberto Antonio Paniagua Morales did not appear to testify.

42. On February 22, 2001, on the instructions of the Court and in accordance with Article 44 of its Rules of Procedure, the Secretariat requested some of the victims' next of kin and the State to forward evidence that would be helpful. On March 21 and April 2, 2001, the lawyers, Avilio Carrillo Martínez and René Argueta Beltrán,

respectively, transmitted the documentation requested (*infra* 62 and 64). On March 23 and 30, 2001, the lawyer, Mark Martel, forwarded part of the documentation requested (*infra* 63). Finally, the State submitted part of the information requested on March 16 and 30 and April 6, 2001 (*infra* 61). On April 17, 2001, the Secretariat remitted the documentation obtained as helpful evidence to the parties.

IV PROVISIONAL MEASURES

43. On January 26, 2001, the Inter-American Commission informed the Court about an attack on the minor, Manuel Alberto González Chinchilla, perpetrated by unknown persons in December 2000, as a result of which "he was hit by two bullets and was [transferred] to a hospital where he received medical treatment." The minor, González Chinchilla, is the son of the victim, Manuel de Jesús González López, and appeared to testify at the public hearing on reparations held at the seat of the Court on August 11 and 12, 2000 (*supra* 41).

44. By an order of January 29, 2001, the Court decided:

1. To call on the State of Guatemala to adopt any necessary measure to protect the life and physical integrity of Manuel Alberto González Chinchilla.
2. To call on the State of Guatemala to investigate the facts indicated and provide information on the situation of the said person, and also about the measures adopted in compliance with the [said] order, by February 8, 2001, at the latest.
3. To call on the State of Guatemala to submit reports on the provisional measures in the instant case every two months, as of the date of notification of the [said] order, and on the Inter-American Commission on Human Rights to submit its comments on these reports within six weeks of receiving them.

45. On February 28, 2001, the State sent the Court the report requested (*supra* 44.2). In this document, the State declared that it had communicated to the minor, González Chinchilla, and to his representative that the State was willing to provide the necessary protection to safeguard his security and protect his life and physical integrity.

46. At the time this judgment was delivered, the State had not submitted its first report in compliance with the third operative paragraph of the order of the Court of January 29, 2001 (*supra* 44.3). These provisional measures will be maintained while it is shown that the circumstances of extreme gravity and urgency that justified their adoption persist.

V EVIDENCE RELATING TO REPARATIONS

47. Before examining the evidence received, the Court will define the general criteria for evaluating the evidence and will make some observations that are applicable to this specific case, most of which have been developed previously by the jurisprudence of the Court.

48. Article 43 of the Rules of Procedure establishes that:

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [...]. Should any of the

parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

49. Article 44 of the Rules of Procedure indicates that, at any stage of the proceeding, the Court may:

1. Obtain, on its own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant.
2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful.
3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.

[...]

50. According to the consistent practice of the Court, during the reparations stage, the parties must indicate the evidence that they will offer at the first occasion granted to them to make a written statement. Moreover, the exercise of the Court's discretionary powers, stipulated in Article 44 of its Rules of Procedure, allows it to request the parties to provide additional elements of evidence to help it make a more informed decision; however, this does not grant the parties another opportunity to expand or complete their arguments or offer new evidence on reparations, unless the Court so allows.

51. The Court has indicated previously that the proceedings before it are not subject to the same formalities as domestic proceedings and that, when incorporating determined elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the equality of the parties². International jurisprudence has upheld the power of the courts to evaluate the evidence within the

² Cf. *Ivcher Bronstein case*. Judgment of February 6, 2001. Series C. No. 74, para. 65; *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, paras. 49 and 51; *Baena Ricardo et al. case*. Judgment of February 2, 2001. Series C. No. 72, paras. 71 and 76; *The Constitutional Court case*. Judgment of January 31, 2001. Series C No. 71, para. 45; *Bámaca Velásquez case*. Judgment of November 25, 2000. Series C No. 70, para. 96; *Castillo Petruzzi et al. case*. Judgment of May 30, 1999. Series C No. 52, para. 61; *Castillo Páez case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 38; *Loayza Tamayo case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 38; Judgment of March 8, 1998. Series C No. 37, para. 70; *Certain Attributes of Inter-American Commission on Human Rights* (Articles 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights). Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 43; and *Cayara case, Preliminary Objections*. Judgment of February 3, 1993. Series C No. 14, para. 42.

limits of sound judicial discretion³; and has always avoided making a rigid determination of the amount of evidence required to support a judgment⁴.

52. This practice extends to the briefs in which the representatives of the victims or, when appropriate, their next of kin, and the Inter-American Commission formulate their claims for reparations and to the State's answering brief, which are the principal documents at this stage and, in general, entail the same formalities with regard to the submission of evidence as the application⁵. On this basis, the Court will proceed to examine and evaluate all the elements that make up the body of evidence in this case, according to the rule of sound judicial discretion, within the legal framework of the case *sub judice*.

a) DOCUMENTARY EVIDENCE

53. The next of kin of Anna Elizabeth Paniagua submitted one document⁶ with a brief of August 27, 1998.

54. The lawyer, Mark Martel, representing the next of kin of Mr. Vásquez, Mrs. Paniagua Morales and Mr. González López, submitted nine annexes⁷, with the brief of September 1, 1998.

55. The next of kin of William Otilio González Rivera attached a document to their brief of March 23, 1999⁸.

56. The next of kin of Julián Salomón Gómez Ayala remitted 11 annexes⁹ with notes dated April 28, 1999.

³ Cf. *Ivcher Bronstein case*, *supra* note 2, para. 69; *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 2, para. 54; *Baena Ricardo et al. case*, *supra* note 2, paras. 70 and 72; *The Constitutional Court case*, *supra* note 2, para. 49; *Bámaca Velásquez case*, *supra* note 2, para. 100; *Cantoral Benavides case*. Judgment of August 18, 2000. Series C No. 69, para. 52; *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68, paras. 53-56; *Villagrán Morales et al. (the "Street Children" case)*. Judgment of November 19, 1999. Series C No. 63, para. 71; *Castillo Páez case, Reparations*, *supra* note 2, para. 40; *Loayza Tamayo case, Reparations*, *supra* note 2, para. 57; and *Paniagua Morales et al. case*, *supra* note 2, para. 76.

⁴ Cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, para. 60.

⁵ Cf. *Loayza Tamayo case, Reparations*, *supra* note 2, para. 39.

⁶ Cf. Newspaper article, "Trading murder, torture for peace, freedom", *The Intelligencer*, March 15, 1988.

⁷ Cf. Affidavit by Alberto Paniagua of August 30, 1998, Annex A; statement by doctor Oscar Jorda of August 31, 1998, Annex B; affidavit by Elsa Carolina Paniagua de Polanco of August 31, 1998, Annex C; affidavit by Mauricio Peñalba of August 31, 1998, Annex D; statement by Erwin Díaz of August 28, 1998, Annex E; summary mortality tables for Guatemala 1990-1995, Annex F; certificate issued by Ramiro R. Velásquez of August 31, 1998, Annex G; affidavit by María Elizabeth Chinchilla of August 31, 1998, Annex H; report on the death of Manuel de Jesús González López, Annex I; and affidavit by Mark Martel of August 31, 1998, Annex J.

⁸ Cf. Copy of birth certificate of William Otilio González Rivera.

⁹ Cf. Copy of identity card of Bertha Violeta Flores Gómez; copy of birth certificate of Julio Salomón Gómez Flores; copy of identity card of Blanca Esperanza Ayala de la Cruz; copy of identity card of Petronilo Gómez Chávez; copy of identity card of Lidia Marisa Gómez Ayala; copy of identity card of Deifin Olivia Gómez Ayala; copy of identity card of Ingrid Elizabeth Gómez Ayala; copy of identity card of Danilo

57. The next of kin of Erick Leonardo Chinchilla attached a document¹⁰ to a brief of April 30, 1999.

58. The Corado Barrientos family forwarded four annexes¹¹ with communications of June 3 and 23, 1999.

59. With its comments on reparations of August 31, 1998, and August 2, 1999, the Commission submitted five documents¹².

60. The State included 13 annexes, with 25 documents¹³ with its brief of June 13, 2000, offering comments on the reparations requested.

Abraham Gómez Ayala; copy of identity card of Israel Gómez Ayala; copy of identity card of Jorge Isaías Gómez Ayala; and copy of birth certificate of Douglas Moises Gómez Ayala.

¹⁰ Cf. Copy of the commercial patent of the company "Panadería La Virgencita", Registration No. 141171 "A", page 85, book 109, file No. 17602-92.

¹¹ Cf. Copy of identity card of Tino Corado Barrientos; copy of identity card of Juana Barrientos Valenzuela; copy of the certificate of the birth registration of Corado Barrientos; and copy of birth certificate of Pablo Corado Barrientos.

¹² Cf. United Nation data on average life expectancy in Guatemala; data collected by the International Labor Organization (ILO) on salaries and consumption in Guatemala; calculation of the average increase in wages corresponding to the pertinent jobs, according to data collected by the ILO; calculation of loss of earnings in the case of Julián Salomón Gómez Ayala, William Otilio González Rivera and Pablo Corado Barrientos; and questionnaire prepared by the Commission and sent to the next of kin of the victims to help them with their arguments before the Court.

¹³ Cf. Official letter of June 1, 2000, issued by the Freddy A. Muñoz M., Administrator of the Tax Office of Guatemala, Superintendency of Tax Administration, Annex A; Copy of identity card of Anna Elizabeth Paniagua Morales, Annex B; copy of the registration of the birth certificate of Anna Elizabeth Paniagua Morales, Annex B; summary of a letter from ACAFADE of March 2, 1988, sent to Dr. Edmundo Vargas Carreño, Annex C; copy of the certification of May 11, 2000, of the Head of the Department of Registration and Statistics of the Universidad de San Carlos de Guatemala, Annex D; tables of minimum wages reported by the Ministry of Labor and Social Insurance for 1980-1995, Annex E; leaflet of the National Institute of Statistics "*Indicadores Sociales de Guatemala*" (Guatemalan Social Indicators), prepared by the Department for the Production and Dissemination of Statistics, January 1999, Annex F; copy of the certification by the Secretary of the Municipality of Comapa, in the Department of Jutiapa, dated June 5, 2000, Annex G; copy of the registration of the birth certificate of William Otilio González Rivera, Annex G; letter from the President of the Board of Directors of the Guatemalan Social Security Institute, regarding Manuel de Jesús González López, Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala and Pablo Corado Barrientos, Annex H; letter of May 18, 2000, from the Commercial Registry of the Ministry of Economy regarding William Otilio González Rivera, Annex H; official letter No. 100-2000 of May 22, 2000, from the Markets Department of Guatemala, regarding William Otilio González Rivera, Annex I; copy of the certificate issued by the Municipal Secretary of the town of El Adelanto, Department of Jutiapa of May 19, 2000, Annex J; copy of certification of the identity card of Manuel de Jesús González López, Annex K; copy of the certification of the birth certificate of Manuel de Jesús González López, Annex K; Copy of birth certificate of Julián Salomón Gómez Ayala, Annex L; copy of certification of the identity card of Julián Salomón Gómez Ayala, Annex L; document entitled "*Respuestas a consultas sobre salarios devengados*" (Answers to consultations on wages earned) with regard to Manuel de Jesús González López, Annex M; memorandum No. DPS-37-2000 dated May 9, 2000, regarding Julián Salomón Gómez Ayala, Annex M; document on funeral expenses provided by "*Capillas Señoriales*", Annex M; official letter No. SDE-27-2000 of May 16, 2000, from the Deputy Executive Director of COPREDEH, regarding William Otilio González Rivera, Annex M; official letter No. SDE-28-2000 of May 16, 2000, regarding Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, Pablo Corado Barrientos and Manuel de Jesús González López, Annex M; official letter No. P-149-2000 of May 18, 2000, from the President of COPREDEH regarding Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos and Manuel de Jesús González, Annex M; official letter No.

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61. In compliance with the Court's request of February 22, 2001 (*supra* 42), the State submitted 16 documents as helpful evidence on March 16 and 30 and April 6, 2001¹⁴.

62. On March 21, 2001, the next of kin of William Otilio González Rivera, represented by the lawyer, Avilio Carrillo Martínez, transmitted five documents¹⁵, in compliance with the Court's request of February 22, 2001 (*supra* 42).

63. On March 23 and 30, 2001, the lawyer, Mark Martel, representing the next of kin of Mr. Vásquez, Mrs. Paniagua Morales and Mr. González López, submitted 12 documents as helpful evidence¹⁶.

DPIS-40-2000 of May 18, 2000, from the Procurator Coordinator of COPREDEH regarding Julián Salomón Gómez Ayala, Annex M; official letter No. DPIS-48-2000 of June 1, 2000, regarding William Otilio González Rivera, Annex M; and official letter No. P-158-2000 of June 6, 2000, from the Advisor to the President of COPREDEH regarding Anna Elizabeth Paniagua Morales, Manuel de Jesús González López, Pablo Corado Barrientos, William Otilio González Rivera and Julián Salomón Gómez Ayala.

¹⁴ Cf. Table with statistics on the average monthly exchange rate from January 1985 to January 2001, prepared by the Department of Economic Studies of the *Banco de Guatemala*; table on the minimum monthly wage in Guatemala, for different activities, for 1964 to 1995; table of minimum wages prepared by the Ministry of Work and Social Insurance of Guatemala for 1994; communiqué on minimum wages for agricultural and non-agricultural activities, in accordance with Government agreement No. 667-95, published in the official gazette of Guatemala on December 18, 1995; communiqué on minimum wages in force, in accordance with Government agreement No. 841-97, published in the official gazette of Guatemala on December 17, 1997; notice on minimum wages for 1999 prepared by the National Department of Salaries of the Ministry of Labor and Social Insurance of Guatemala; copy of Government agreement No. 20-2000 on the establishment of minimum wages for agricultural and non-agricultural activities; notice of minimum wages for 2000 prepared by the National Department of Salaries of the Ministry of Labor and Social Insurance of Guatemala in accordance with Government agreement No. 20-2000; copy of the press communiqué of December 2000 on the entry into force of the new minimum wage; copy of Government agreement No. 838-2000 on the establishment of minimum wages for agricultural and non-agricultural activities, of November 29, 2000; notice of minimum wages for 2000 prepared by the National Department of Salaries of the Ministry of Labor and Social Insurance of Guatemala in accordance with Government agreement No. 838-2000; notice of minimum wages for 2001 prepared by the National Department of Salaries of the Ministry of Labor and Social Insurance of Guatemala; copy of decree No. 7-2000 of the Congress of the Republic of Guatemala of March 1, 2000; table on the cost of the basic food basket prepared by the National Institute of Statistics of Guatemala 1994-2000; copy of decree No. 78-82 issued on December 19, 1989; and copy of decree No. 42-92 issued on July 2, 1992.

¹⁵ Cf. Copy of birth certificate of Santos Hugo González Rivera; copy of birth certificate of José Alfredo González Rivera; copy of birth certificate of Julio Moises González Rivera; copy of birth certificate of Anatanahel González Rivera; and copy of birth certificate of Leydi Rosibel González Rivera.

¹⁶ Cf. Copy of the registration of the death of Manuel de Jesús González López; copy of the registration of the birth of Karen Paola González Chinchilla; copy of the registration of the birth of Silvia Argentina González Chinchilla; copy of the registration of the birth of Manuel Alberto González Chinchilla; copy of the birth certificate of María Ildelfonsa Morales Chávez; copy of the birth certificate of Mario Humberto Morales; copy of the birth certificate of Hugo Morani Paniagua Morales; copy of the birth certificate of Alberto Antonio Paniagua Morales; copy of the birth certificate of Elsa Carolina Paniagua Morales; copy of the birth certificate of German Giovanni Paniagua Morales; copy of the birth certificate of Blanca Beatriz Paniagua Morales; and copy of the registration of the death of Anna Elizabeth Paniagua Morales.

64. On April 2, 2001, the lawyer, René Argueta Beltrán, representing the next of kin of the Corado Barrientos family and the next of kin of Erick Leonardo Chinchilla, submitted seven documents as helpful evidence¹⁷, in compliance with the Court's request of February 22, 2001.

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b) TESTIMONIAL EVIDENCE

65. At the public hearing on August 11 and 12, 2000, the Court received the statements of the witnesses and experts offered by the Inter-American Commission. They are summarized below in the order in which they were presented:

a) Testimony of Salvador González Najarro, father of William Otilio González Rivera

He is married to María Rivera Velázquez, with whom he has had five children, including the victim. He lives in the village of Jocote, Department of Jutiapa, Guatemala.

His son acquired a sales kiosk in the bus terminal in Zone 4, Guatemala City, for Q5,000.00 (five thousand quetzales); this business generated a profit of about Q500.00 (five hundred quetzales) a month. However, as a result of his abduction and subsequent disappearance, all the existing merchandise, which was valued at Q5,000.00 (five thousand quetzales), was lost, together with the right to use the business premises.

The relationship between father and son and the whole family was "very extensive, respectful and considerate." The victim lived in Guatemala City and visited his family once every two weeks, and he brought them some of the Q500.00 (five hundred quetzales) that he earned to help them pay for their needs.

He realized that his son was dead on February 10, 1988, when he went to visit him. The following day, he found out that some bodies had appeared. The identification of his dead son caused him great sadness, because "it is distressing [...] to see so much cruelty" and it caused "tremendous grief to [him] and all [his] family."

He had to pay the expenses corresponding to the transfer of his son's body to his community, the wake and burial of his son, all of which cost about Q5,000.00 (five thousand quetzales).

Since his son's death, he has suffered many illnesses and the memories cause him resentment, sadness and pain. His wife's life "has deteriorated and will never be the same again." She suffers from heart ailments and, owing to the lack of financial resources, cannot be supervised by a doctor. This is very painful for the family "because they are all suffering." His son would have been "the head of the family,

¹⁷ Cf. Copy of the birth registration of Francisca Corado Barrientos; copy of the death certificate of Erick Leonardo Chinchilla; copy of the birth registration of Ingrid Aracely Zelada Chinchilla; Copy of the birth registration of Miriam Enoé Zelada Chinchilla; copy of the birth registration of Sandra del Carmen Chinchilla; copy of the birth registration of Hugo Alejandro Zelada Chinchilla; and copy of the birth certificate of María Luisa Chinchilla Ruano.

because once [the witness] was no longer there, he would have had to guide his siblings," and this possibility no longer exists.

He recognizes that although no financial resource will bring his son back to life, an indemnity "will help to provide some relief for what has happened to [him]."

He did not resort to the State institutions, because of his illness and his fear due to threats he had received.

b) Testimony of Blanca Esperanza Ayala de la Cruz, mother of Julián Salomón Gómez Ayala

She is married to Petronilo Gómez Chávez, has seven children and lives in Samayach, Guatemala.

The victim had completed sixth year and his obligatory military service and he worked as a mechanic. He had a companion named Bertha Violeta Flores Gómez and a son called Julio Salomón Gómez Flores and they lived in Guatemala City. The victim had an affectionate relationship with his other siblings and the household was very close. He visited the family every month or two and provided them with financial support of Q1,200.00 (one thousand two hundred quetzales) when he was able.

When she found out that her son had been abducted, they looked for him unsuccessfully for about 16 days, without any help from the judicial authorities; the day after they suspended the search, she heard on the radio that her son was dead and that he had been buried in a cemetery. They were able to exhume him in order to bury him in Samayach. They could hold a funeral, owing to the help of a neighbor who loaned them Q7,000.00 (seven thousand quetzales), because the family did not have enough money.

The victim's companion began to work to support herself and her son, so that he could study. She and her son went to live with the witness so that she did not have to pay rent and the witness helped her financially. The victim's son was three years of age when he died and continues to ask about his father and why he was assassinated. His life would have been different if his father had lived with him.

The most difficult aspect is "the sadness [because] the other children do not fill this empty space." Her husband has been ill since the death of his son, because he has had no peace and because the victim was the oldest son; he is receiving medical treatment. Moreover, he has not accepted fully that his son is dead. When anyone speaks of his son he becomes sad and cries.

She has not been summoned to testify before a Guatemalan court and has not received any financial assistance from the State. She was afraid for her safety as a result of these events, but now she is tranquil to be before the Court and wants "something to be done so that the same does not happen to others; otherwise, unjust acts will continue."

c) Testimony of Ingrid Elizabeth Gómez Ayala, sister of Julián Salomón Gómez Ayala

She lives in Samayach, Guatemala.

Her brother was a very good, friendly and honest person and she needed his advice because he was studying and helped her a great deal. She saw him about once a month.

When she and her siblings found out that her brother had been assassinated it was "horrible [and] painful." Neither she nor her siblings accompanied their parents in the procedures they had to undertake in the capital. It is something "that will remain with [them] always." Before her brother's death, the family was very close but, afterwards, it was not the same "owing to his memory, we missed him" and because their parents became ill and are still ill today.

She and her siblings try to console their mother a little, but they cannot take the victim's place in the family. When her father remembers him he feels "downhearted, sad." All the family visits the cemetery, with the exception of her mother because it is very difficult for her and "because it hurts her very much." She has two siblings who have been unable to speak since birth and they express their feelings in signs. She and her siblings have a close relationship and the family supports each other financially. The victim's son "misses [his father] in every way."

She would feel a little more tranquil to know that those responsible had been convicted "so that other families do not suffer what [they are] suffering." She is concerned about her family and herself, but she feels calmer appearing before the Court because she knows that, after so many years, justice is now being done. Compensation from the State for the death of the victim does not console her as the only consolation would be "if he was there."

d) Testimony of Tino Corado Barrientos, brother of Pablo Corado Barrientos

He lives in Guatemala and has a sister named Francisca Corado Barrientos. His father, Marco Antonio Corado Morales, died seven years before the death of his brother, and his mother's name is Juana Barrientos Valenzuela.

The victim worked in the capital, and had a kiosk where he sold bananas and plantains in the bus terminal; he earned about Q500.00 (five hundred quetzales). Every two weeks he visited his family and, every month, he helped them financially. His brother also gave him financial help to buy his school materials, and owing to this, he was able to go to school. He was able to complete sixth year of primary school, but then had to do his military service.

His brother was a hardworking, unassuming person who worked in the agricultural sector. He was very good to his mother and had no vices. The witness was 11 years of age when his brother died and was in third year of primary school and also worked in the agricultural sector. His sister did not live with them because she was married and it was the victim who supported the household.

They found out about his death through a friend of the victim who brought the information that appeared in the newspapers. That day he was in school and when he arrived home, he found his mother "very sad, grieving." When she told him what had happened to his brother and that the latter would never return, he felt sad and began to cry. They had a wake without the body of his brother, because to date no one knows where it is buried. They did not start any procedure or action to investigate as they did not have the necessary financial resources.

Following his brother's death, his mother and he remained in the same house. He continued to work and study and his mother had to work as a maid to maintain the home and support him while he completed his schooling. There was no one else to help. He now works to support his mother.

His brother's assassination has affected him considerably. He heard from the news or from the conversations of neighbors that his brother died tortured by agents of the State. He asks the State to see that justice is done and that those responsible are identified.

He feels "a little nervous and sad", appearing before the Court, because he is being reminded of something that happened a long time ago and because justice has not been done.

e) Testimony of Miriam Enoé Zelada Chinchilla, sister of Erick Leonardo Chinchilla

She lives in Guatemala City and works in a pharmaceutical company.

They were a very close family. At the time of Erick Leonardo's death, she, three siblings – Sandra del Carmen, Hugo Alejandro and Ingrid Aracely – and the victim lived in the house of her mother, María Luisa Chinchilla Ruano. Erick was the fifth child, the youngest, and within the family, they helped him and guided him "so that he would grow up and obtain better jobs than [they] had."

The victim went to school, but as his mother was left alone, he only finished basic primary education and, at 15 years of age, he started to work in her bakery. The family received approximately Q1,000.00 (one thousand quetzales) a month for the work they did in the business. From the moment her brother was no longer there, the business declined, because her mother lost her will to work and, due to her diabetes – resulting from the death of her son – she could not continue working.

They heard about what had happened through a police agent, and it was the witness, with another brother, who identified the body. Her mother fainted on receiving the news and then she became ill. Subsequently, no authority came to investigate the fact. When they wanted to file a claim they received telephone threats, telling them that if they continued to try and find out about the death of the victim, there would be reprisals against the family. Furthermore, the house was shot at on two occasions and they were told that it was a warning and that they could be killed, so they did not continue the investigation because they were afraid.

Her mother has to have medical treatment due to her diabetes and the medicines cost Q1,500.00 (one thousand five hundred quetzales) a month. Her mother visits her brother in the cemetery every day and sits by his grave talking to him for an hour.

She and her other siblings cannot fill the vacuum that her mother feels. Her mother continues to cry every day, does not want to continue to take her medicines and, recently, had two small heart attacks. She and her siblings have tried to make her think of other things, but for her mother "there can be no distraction, [...] she just asks to be taken to the cemetery."

When they discuss the cause of his death and her brother's assassins, her mother wants to know why they did it, when the victim did not have any enemies or any vices and worked in the bakery. He also liked mechanics and repaired cars. She heard that the persons responsible for his death were agents of the State, when she filed the claim with the police.

The family is still afraid that the authorities will take reprisals for their testifying before the Inter-American Court and "wanting to know the truth in order to recover the honor" of their family member. Her presence before the Court signifies at least "satisfying [her] mother, that [her] brother was not a drug-trafficker, drug addict or whatever people say." Reparation cannot mitigate the pain, because her brother's life "is priceless" and "it would not take away this illness that [her] mother has."

f) Testimony of María Ildelfonsa Morales de Paniagua, mother of Anna Elizabeth Paniagua Morales

She lives in Toronto, Canada.

At the time of Anna Elizabeth's death, the witness, her husband, her other children - German Giovanni and Carolina - her daughter-in-law, Blanca de Paniagua, her four grandchildren, the victim and her daughter, María Elisa, aged four at the time, lived in the house of one of her sons, Alberto Antonio.

Her daughter was 23 years of age when she died and had been married, but at the date of the facts, her husband was already dead.

Her daughter had obtained a diploma as an expert accountant from the Carlos Federico Mora School. Although she did not attend the Universidad de San Carlos, she had competed in athletic events for the institution, as a runner. She worked even on Saturdays and Sundays and was going to begin a new job just before she died. The victim was also studying to obtain her license as an auditor and thus help to support her family with her earnings.

The witness and her daughter had a good relationship. The latter "was very obedient, she helped [the witness] with expenses, [...] she obeyed her father" and she got on well with her siblings. When she heard about the abduction, she was furious and, as result, became ill. They looked for her daughter and, days later, they heard on the television that an unidentified body had been found and she felt that it was her daughter. She examined her daughter's body and saw that it had suffered "a terrible death." She feels sad remembering that image of her daughter, because of the torture that was inflicted on her.

Her family left Guatemala because they felt threatened. Since then, the witness lives in Toronto, Canada, with her husband. Some of her children live in Toronto; another daughter lives in British Columbia and two children live in New York. The victim's daughter stayed in Guatemala with her paternal grandmother. She is a sad girl of 17 years of age, who does not say much. When her daughter died, her granddaughter had failing grades at school for several years because "she misses her mother's love." Although the witness keeps in contact with her granddaughter, she would like her to live with her family.

Her relationship with her husband changed after the victim's death.

She had a stroke and she developed diabetes. She was ill due to the sadness and now she is getting a little better, but she cries when she remembers the victim. Owing to the stroke, she has to use a wheelchair and walks very little. On her daughter's birthday, they take flowers to her grave or they say a mass for her. She visits her grave each time she travels to Guatemala.

g) Testimony of María Elizabeth Chinchilla de González, widow of Manuel de Jesús González López

She has lived in Los Angeles, United States, since 1988.

Before the facts of this case, she lived with her husband and three children in a house in Guatemala City, which they were paying for. Her husband had a very good relationship with his children and was very affectionate; he also played and engaged in sporting activities with them. He worked as a mechanic and, before he died, he had been promoted to chief mechanic in a company that sold cars, where he earned approximately Q800.00 (eight hundred quetzales) a month. At the same time, he was studying human relations in order to improve his communication skills with his colleagues, because of his new position.

The sight of her husband's tortured body had made a considerable impact on her. After the events, she went to live with her brother because the house was taken away from her. Furthermore, all her belongings were stolen and it was then that she decided to go to the United States in order to make a living and enable her children to get ahead. When she left Guatemala, she had to spend about US\$3,000.00 (three thousand United States dollars) for travel expenses, food and to pay someone to get her across the border. She left her children in Guatemala with her mother at that time, and this caused her "a great deal of pain [...] because they needed to be with their mother, with their father." She had not seen her children from 1988, the year in which she went to the United States, until 1997, the year in which she appeared at the hearing before the Court on the merits of this case and, since then, she has not seen them again. This has caused her "a great deal of sorrow, a great deal of pain."

Her immigration papers are not in order in the United States; she works with a family and looks after the children; she earns about US\$900.00 (nine hundred United States dollars) a month and sends US\$400.00 (four hundred United States dollars) a month to her children..

Up until her husband's death she was living a normal life and they were very happy, but in the United States she lives alone and is always working, so that she has not had a holiday for the last 12 years. She has always been in contact with her children and has never abandoned them. Her oldest daughter, who is 22 years of age, desperate owing to the years of separation, traveled for 22 days to reach the United States and join her.

The absence of a father has caused a great deal of harm to her children. Her second daughter, 19 years of age, was the only one who was unable to get over it completely. When she was a child, the witness had to take her to a psychologist to seek professional help, but even today she is inattentive when she studies. Her daughter told her that "she would give anything to be with her mother and father." With regard to her oldest daughter, the witness indicated that, if the events had not occurred, they would have always been together and she would not have had to take

the decision to go to her mother; moreover, she would have completed her studies, because she was studying business administration in the university and she gave them up to be with her mother. The person who was most affected was her son of 15 years of age, who was studying basic secondary education. He said that he would have wanted to have his father at his side always, because the latter would have taught him many things that he cannot ask others, such as what to do when he has problems with his friends or when he is offered drugs.

Finally, she has also changed the way she behaves and how she is since her husband's death. Before that, she was his wife who looked after everything and this ended because, since his death "it is not the same, [...] [she now felt] like a robot that always has to do the same thing over and over again, working and working and nothing else, [she has] no time for [herself]." She thinks about her husband constantly, because if he were still here, she would not be enduring "this loneliness, working hard."

She hopes for justice from the proceeding, and "that they punish those who did this [...], because there was no reason [for doing it]".

h) Testimony of Manuel Alberto González Chinchilla, son of Manuel de Jesús González López

He lives in Guatemala. He is 15 years of age and lives with his grandmother, María Luisa de Chinchilla, his sister, Silvia Argentina, aged 19, and his brother-in-law. He is studying basic secondary education. In the morning he goes to school, then he does his homework and afterwards goes out to play on the street; he likes sports, because his father played sports.

He remembers the day they captured his father. Although he knows what happened to his father, he does not know the identity of the State agents who caused the latter's death. He does not remember when his mother left, but she has been providing financial support to him and his sisters.

In school, he was taught about human rights, the duty of citizens to obey the law and the obligation of the State to look after all citizens. However, owing to what happened to his father, this raised doubts, because "the book says one thing and the States does another."

He has not seen his mother for three years and he speaks to her by telephone every week or every two weeks. His oldest sister went to the United States because she wanted to be with their mother and he wants to go also, but cannot do anything about this.

He has missed his father very much since he was very young. He remembers his father a great deal and would like to have him near. He wants to be like his father, he sees him as his guide because he considered him a good father, and this has motivated him to be like his father, because, where he lives, "there are many delinquents, many bad [persons] and [he] is not involved in any of this." When taking a decision on a problem or a situation, he has felt the need to have his father near; for example, in his studies, because his father could have advised him about what profession he should study. He is now thinking about studying to be an architect or an airplane pilot. He senses "[his] father's presence within himself".

He would like them all to be together as before.

c) EXPERT EVIDENCE

66. At the public hearing of August 11 and 12, 2001, the Court received the reports of the experts proposed by the Inter-American Commission. These reports are summarized below:

a) Expert report of Graciela Marisa Guilis, Psychologist, specialist in mental health and human rights violations, official of the Center for Legal and Social Studies in Buenos Aires

A person who has been abducted and secretly detained, who has been exposed to an extremely stressful, traumatic experience and involved in events that represent a real danger to his life or physical integrity, or who witnesses unexpected or violent deaths, serious harm, threats against his life or grave injuries, suffers what is known as the "*post-trauma stress*" syndrome. A member of the family or a person who is close to the victim "who is told about such treatment by someone who has experienced it", may also suffer this syndrome, because the purpose of torture is not only "the physical and psychological breakdown of the victim, but also of his group."

The whole family group is affected when one of its members is affected by a severe traumatic situation. Those who are subjected to such circumstances suffer the effects of being in an unbearable situation of absolute abandonment, called "*encerrona trágica*" (tragic seclusion), in which the life of a person is exposed to the arbitrary decision of another person on whether they live or die. This occurs, above all, in cases when the victims are assassinated, since the family is invaded by a feeling of terror, because the events are usually caused by institutions that, in principle, are supposed to guarantee safety and protection.

Thus, "*post-trauma stress*" can be defined as "a severe reaction to situations of crisis such as wars, catastrophes, [and] crime [...], which has consequences that are not always apparent, capable of provoking severe problems of adaptability in the social, family, work and creative spheres, as well as disorders with different characteristics that, if they become chronic, can lead to total disability and even death."

Traumas endure over time and it is rare that they heal until there is some possibility that the mourning for the lost member of the family can be closed. In normal circumstances, mourning is a distressing and arduous psychological process; however, it can be closed with the acceptance of death as something that is "irreducible to every human being." Pathological bereavements are those that become chronic and do not end, because there is no information on the cause of death and, consequently, the member of the family feels that he is responsible for the death of the loved one.

Pathological bereavement also causes the subject to isolate himself, to withdraw from reality and to build his own world. Furthermore, pre-existing loving relationships can be destroyed, as in the case of the witness, María Ildelfonsa Paniagua, who blames the victim's father for not having protected him enough. When there is no guilty person or perpetrator, every effort must be made to find one. The human psyche is characterized by the need to have an explanation and a

response to its questions. When they do not exist, it creates them. These are imaginary constructions or truths.

Furthermore, in all families who are experiencing a pathological bereavement, there is a kind of atemporality; yesterday is today, the event is always present. The lack of explanations as to the cause of death and the lack of the ability to connect to other "love objects" after the loss of a loved person are also characteristic.

In all the families interviewed there was a before and after the traumatic situation they underwent, so that there was a radical change in their lives. When bereavement becomes chronic, the person loses interest in the external world and has a feeling of despair. In the case of the victims' parents, none of them has been able to take charge either of themselves or of their families as they did before. The bereavement is "absolutely unbearable and cannot be understood by the parents [and] generally the siblings are those that seek to heal their parent's grief in some way." The parents used to take care of, protect and support their children. This is inverted after a trauma and it is the children who then have to become responsible for their parents. This happened to Ingrid Elizabeth Gómez Ayala and limited her possibilities of developing and living the life of a young woman with all the potential that life offers.

It also produces self-absorption, a retraction in the affectivity of the victim's family, as if re-establishing loving ties put them at risk of new losses. However, it is important to emphasize that there are differences within the family, according to the kind of ties that united each member to the victim. "The effects on the parents, the children and the siblings are different."

In general, those affected do not want anything and often say that they want to die because the pain is so intense that death seems to be the only escape from it.

Another constant factor in the next of kin of the victims is the physical damage, because they suffer from multiple illnesses; particularly in the case of the parents, where ailments of a psychosomatic nature start from the time their children are assassinated.

1. Concerning the witness Salvador González Najarro

She stated that he has problems swallowing and with his digestive system. Often various days go by when he cannot eat and has intestinal problems, a burning sensation; this indicates that he may have an ulcer. According to Mr. González, these problems arose when he found out that his son had died and, since then, his health has not recovered. It is important to emphasize that the victim was his oldest child, because in his culture, the oldest son is very important and his loss cannot be substituted by another child.

2. Concerning the witness Blanca Esperanza Ayala de la Cruz

This witness also mentioned health problems to her, in particular a heart disease. She emphasized that the psychosomatic illnesses that exist are not invented by the patient and have a psychological origin. Blanca Esperanza told her that she has been unable to return to work since the event.

3. Concerning the witness Tino Corado Barrientos

She indicated that he belonged to a family where all the boys have died, for different reasons. Tino is the last male representative in his household and, as a result, he feels very responsible. She underlined the significance of his choice of occupation as a bodyguard and observed that this fact could be interpreted as a form of "controlling death," or also as a way of putting his life at risk, to continue the family genealogy, in what could be considered a pathological identification with the victim's strongest aspects.

4. Concerning the witness Miriam Enoé Zelada Chinchilla

Her situation is similar to that of Tino Corado Barrientos, because she is the sister of one of the victims. All her anxiety and concern relates to her mother's grief, because the latter has never been able to get over the death of her son. Her mother locked herself up in the victim's room for 15 days after his death and, according to Miriam, is unable to leave this space, as if it was a tomb. It appears that, as a psychosomatic result, her mother began to have symptoms of diabetes. She also visits the cemetery almost every day because she says that it is the only way to soothe her anxiety and calm herself down.

5. Concerning the witness María Ildelfonsa Morales de Paniagua

She has suffered serious health problems as a result of the death of her daughter, including, in particular, the immediate appearance of symptoms of diabetes and a stroke that made it impossible for her to walk. Also, the fact that she had to flee from her country seeking asylum is a dramatic situation that dispersed her household.

6. Concerning the witness María Elizabeth Chinchilla de González

When her husband was abducted, relationships were broken; there was a loss of trust among her neighbors and she was left alone in this situation, because people were afraid and did not offer her help. Also, there were many tragic factors: María Elizabeth's husband died, she lost her home, her belongings were stolen, she has been threatened, she has gone to live illegally in the United States to work on a temporary basis and, finally, she feels guilty for having abandoned her children. The latter may result in an inability to build new emotional relationships with other human beings. The contrast between a previous state of happiness and the current situation may produce phenomena of exaggeration that could intensify the sadness of being alone. Human beings tend to idealize lost situations, lost loves.

7. Concerning the witness Manuel Alberto González Chinchilla

The family gave the impression that he was a good father, and Manuel Alberto decided to identify with this. In his case, the existence of favorable conditions that allowed him a healthy development was positive. Also elements such as knowing the truth and justice being done would be positive for his psychological well-being.

With regard to the other members of the families of the victims who she did not interview directly, she stated that, since this case involves social traumas, such acts harm the whole household, so that if they affect one member of the family, it is certain that they have damaged the whole nuclear family. In the case of the next of

kin who were children when the events occurred, "*post-trauma stress*" generally affects their mental system differently from that of adults, because they are still growing and have developed fewer defense mechanisms. Moreover, the pathological bereavement suffered by a father or mother has an impact on their capacity to maintain loving ties with their children, and this has repercussions on the latter's normal development.

Finally, she stated that the denial of justice and impunity affect the psyche and enhance the fear of the next of kin, particularly, that the situation could be repeated within their family. So that "truth and justice always help to heal these wounds, [although] not to eradicate them."

b) Expert report of Robin Eric Hahnel, doctorate in Economics, Professor at the American University in Washington D.C., specialist in micro-economic theory and in the calculation of loss of earnings

The victims of the human rights violations and their next of kin lost the benefits, income and salary that they would have earned during their working life. It is therefore necessary to calculate what they would have earned and then calculate what should be paid to the victims' next of kin for loss of earnings, according to the payment system used.

To make this calculation, it is essential to have an estimate of the time that the victim would have worked, and this makes it necessary to establish his life expectancy, according to his age at the time of his death, and not with regard to the average lifespan of any member of the population. It is also necessary to use the most recent data to make this calculation, and not the tables published at the time of his birth.

The most appropriate way to calculate the loss of earnings of the victims is to establish two different dates, using as a basis the moment of the events of the case and the age at which the victim would have died from natural causes.

The first period would be calculated as of the moment of the events until the date on which payment would be made. During this first stage, the State would make payment in arrears, so this would entail the payment of interest. The second period would commence on the date of payment until the time when the victim would have died from natural causes, which would result in a pre-payment; therefore, it would be necessary to discount an amount in favor of the State. In the instant case, the next of kin would have had to take out loans, paying an active rate of interest to replace the State's payments in arrears and this is twice as high as the passive rate of interest. However, when the next of kin receive pre-payment for the future period they can invest this and it can be assumed that this investment would be at an interest rate equal to the rate received for a minimum-risk investment. Accordingly, in the case of the discount, it is necessary to use a different rate of interest to the rate of interest used to collect from the State for not having paid from the time of the abduction forwards. If it is decided to use 3% for the discount period, at least 6% should be used for the unpaid interest on the part owed from 1988 until the present.

Another reason for making the division into two periods is because no one knows what would have happened in the future with the earnings of these persons; however, based on the information available, it is possible to define the human

capital of the victim and find out from available data and information, the job development of persons similar to the victim from 1988 to the present. In other words, firm data exist for calculating the earnings of the victims from 1988 until today, but not for the future. In relation to the second period, it must be remembered that people receive salary increases. Every year the victims would have progressed in their position within the Guatemalan workforce, due to their age, personal experience and seniority. Also, in the long-term, the whole workforce of Guatemala increases its productivity and receives salary increases in real terms. Finally, it is likely that the victims would have received increases in nominal salaries due to inflation in the country. With regard to the first period in the case *sub judice*, the criteria applicable in order to make a reasonable calculation of such increases is determined from available data. If there is a lack of information on the earnings of similar persons in Guatemala, this can be obtained by consulting data produced by the International Labor Organization (ILO), which indicates that salaries increased by 24% between 1988 and 1998. Moreover, according to statistical data prepared by the *Banco Central de Guatemala* salary increases had risen slightly more than 50% per year in 1998 and 1999. It should be noted that this was mostly due to inflation, but also to real causes. For the second period, experience points to increases of 2%. We also have to observe the recent history of Guatemala with regard to the increase of the gross national product *per capita*, which is 1.5%, and World Bank documents could be consulted, as they give estimates about the Guatemalan economy as regards increases in productivity for the next five years, and these would be useful for the period extending from now until the future.

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The considerations of the Court

67. The body of evidence in the case constitutes an indivisible whole that is made up of the evidence submitted during the different stages of the proceeding. Thus, the statements made by María Elizabeth Chinchilla, María Ildelfonsa Morales de Paniagua, Alberto Antonio Paniagua Morales, Blanca Lidia Zamora de Paniagua, Oscar Humberto Vásquez and Raquel de Jesús Solórzano during the public hearing on the merits of the case held before this Court on September 22, 23 and 24, 1997, and the statement by Gilberto González Saquij contained in the police report of March 22, 1998, also form part of the body of evidence that will be considered during this stage.

68. The parties have contributed various tables to the file showing the life expectancy of the victims at the time of the events. These tables, which do not contradict each other, but represent different ways of making the calculation, are incorporated into the body of evidence. Owing to the discussion between the parties about this item, the Court makes some comments on these tables. The document entitled "*Guatemala: los contrastes del desarrollo humano*" (Guatemala: contrasts in human development), sponsored by the United Nations, measures life expectancy at birth by sex in the department of Guatemala. These calculations, which consider life expectancy at birth, cannot be used, because the victims had already lived a certain number of years; this factor improved their situation, so that the life expectancy applied to them, is greater. The 1990-1995 summary mortality table for Guatemala, prepared by the National Institute of Statistics corresponds to the general population by five-year period, age group and sex. Lastly, the leaflet of the National Institute of Statistics of Guatemala entitled "*Indicadores Sociales de Guatemala*" (Guatemalan

Social Indicators), prepared by the Department for Production and Dissemination of Statistics in January 1999, establishes life expectancy by five-year periods. The Court will take the data contained in the last two tables and will determine the life expectancy of the victims, understood as the number of additional years that each victim might have lived, taking into account data such as age, sex and geographical zone of residence (*supra* 66.b)

69. In this case, as in others, the Court accepts the evidentiary value of those documents submitted by the parties at the due procedural opportunity or as helpful evidence that were not contested or opposed and the authenticity of which was not questioned¹⁸.

70. Regarding the testimony given by the next of kin of the victims in this case, the Court admits it when it is consistent with the purpose of the line of questioning proposed by the Commission. In this respect, this Court considers that, as they are close relatives and have a direct interest in the case, their statements cannot be evaluated in isolation, but rather within the context of all the evidence in the proceedings. With regard to reparations, the testimony of the next of kin is useful, provided they can supply additional information about the consequences of the violations that were committed.

71. As for the expert reports by Graciela Marisa Guilis and Robin Eric Hahnel, this Court admits them, insofar as they are consistent with the purpose proposed by the Commission.

VI OBLIGATION TO MAKE REPARATION

72. In the seventh operative paragraph of the judgment of March 8, 1998, the Court decided that Guatemala “[was] obliged to make reparation for the consequences of the declared violations and to pay fair compensation to the victims and, where appropriate, to their next of kin” (*supra* 3.7). The Court will decide the disagreement on this issue in this judgment.

73. In the eighth operative paragraph of the same judgment, the Court decided to open the reparations stage and authorize the President to adopt the corresponding procedural measures.

74. Article 63(1) of the American Convention *in fine* applies to reparations; it establishes

[The Court] 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 (the original is not underlined).

¹⁸ Cf. *Caso Castillo Paéz, Reparations*, *supra* note 2, para. 39; *Loayza Tamayo case, Reparations*, *supra* note 2, para. 53; and *Suárez Rosero case, Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 29.

75. In its consistent jurisprudence, this Court has reiterated that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation¹⁹.

76. Reparation of the damage resulting from the violation of an international obligation requires, whenever possible, the full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international court must determine a series of measures, which, in addition to guaranteeing the rights that have been violated, make reparation for the consequences of the violations, and also must also order the payment of an indemnity as compensation for the damages caused²⁰.

77. The State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation to make reparation – all aspects of which (scope, nature, forms and determination of the beneficiaries) are regulated by international law²¹.

78. As the Court has indicated, Article 63(1) of the American Convention codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility²². When an unlawful act occurs that may be attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease.

79. As the word indicates, reparations consist in the measures that are intended to eliminate the effects of the violations that were committed. Their nature and

¹⁹ Cf. *Ivcher Bronstein case*, *supra* note 2, para. 177; *Baena Ricardo et al. case*, *supra* note 2, para. 201; *The Constitutional Court case*, *supra* note 2, para. 118; *Suárez Rosero case, Reparations*, *supra* note, para. 40; *Loayza Tamayo case, Reparations*, *supra* note 2, para. 84; *Caballero Delgado and Santana case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 29, 1997. Series C No. 31, para. 15; *Neira Alegría et al. case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 36; *El Amparo case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 14; and *Aloeboetoe et al. case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 43. Likewise, Cf. *Factory at Chorzów, Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; *Factory at Chorzów, Merits*, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; and *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 184.

²⁰ Cf. *Ivcher Bronstein case*, *supra* note 2, para. 178; *Baena Ricardo et al. case*, *supra* note 2, para. 202; *The Constitutional Court case*, *supra* note 2, para. 119; *Suárez Rosero case, Reparations*, *supra* note 19, para. 41; *Castillo Páez case, Reparations*, *supra* note 2, para. 48; and *Loayza Tamayo case, Reparations*, *supra* note 2, para. 85.

²¹ Cf. *Blake case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 32; *Suárez Rosero case, Reparations*, *supra* note 19, para. 42; *Castillo Páez case, Reparations*, *supra* note 2, para. 49; *Loayza Tamayo case, Reparations*, *supra* note 2, para. 86; *Caballero Delgado and Santana case, Reparations*, *supra* note 19, para. 16; *Neira Alegría et al. case. Reparations*, *supra* note 19, para. 37; *El Amparo case, Reparations*, *supra* note 19, para. 15; and *Aloeboetoe et al. case. Reparations*, *supra* note 19, para. 44.

²² Cf. *Blake case, Reparations*, *supra* note 21, para. 33; *Suárez Rosero case, Reparations*, *supra* note 19, para. 40; *Castillo Páez case, Reparations*, *supra* note 2, para. 50; *Loayza Tamayo case, Reparations*, *supra* note 2, para. 84; *Garrido and Baigorria case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 40; *Caballero Delgado and Santana case, Reparations*, *supra* note 19, para. 15; *Neira Alegría et al. case, Reparations*, *supra* note 19, para. 36; and *Aloeboetoe et al. case, Reparations*, *supra* note 19, para. 43; and Cf. *Factory at Chorzów, Jurisdiction*, Judgment, *supra* note 19; and *Factory at Chorzów, Merits*, *supra* note 19; and *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion*, *supra* note 19.

amount depend on the damage caused at both the pecuniary and the non-pecuniary level. Reparations are not supposed to enrich or impoverish the victim or his heirs²³.

80. Regarding violations of the right to life, as in the case of five of the victims in the instant case, in view of the nature of the asset affected and according to international jurisprudential practice, the reparation is usually in the form of a pecuniary indemnity or compensation to which should be added the guarantee that the harmful act will not be repeated²⁴.

81. The reparations established in this judgment must be consistent with the violations found in the judgment on merits delivered by the Court on March 8, 1998 (*supra* 3).

VII BENEFICIARIES

82. The Court now proceeds to determine the person or persons who, in the instant case, should be considered the "injured party" in the words of Article 63(1) of the American Convention. Since the violations of the American Convention that the Court established in its judgment of March 8, 1998, were committed with regard to Anna Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, Augusto Angárita Ramírez, Doris Torres Gil, Marco Antonio Montes Letona, Oscar Vásquez and Erick Leonardo Chinchilla, it should be considered that they are all included in this category and are eligible for the reparations that the Court establishes. In the case of the victims who died, it will also be necessary to determine which of the reparations that are established in their favor may be transmitted by succession to their next of kin, and to which of the latter.

83. No one disputes that Augusto Angárita Ramírez, Doris Torres Gil and Marco Antonio Montes Letona are beneficiaries. Nor is there any dispute about the daughter of Anna Elizabeth Paniagua Morales (María Elisa Meza Paniagua) and the González Chinchilla family (María Elizabeth Chinchilla, Silvia Argentina, Karen Paola and Manuel Alberto, all González Chinchilla). The Court considers that this designation is in keeping with its jurisprudence, because they are beneficiaries as successors of their dead family members (*infra* 96, 167, 187 and 193).

84. The Court considers that the right to reparation for the damages suffered by the victims until the time of their death is transmitted by succession to their heirs. As this Court has stated:

[i]t is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children. If there is no spouse or children, private common law recognizes the ascendants as heirs. It is the Court's opinion that these rules, generally accepted by the

²³ Cf. *Blake case, Reparations, supra* note 21, para. 34; *Castillo Páez case, Reparations, supra* note 2, para. 53; and *Garrido and Baigorria case, Reparations, supra* note 22, para. 43.

²⁴ Cf. *Castillo Páez case, Reparations, supra* note 2, para. 52; *Garrido and Baigorria case, Reparations, supra* note 22, para. 41; *Caballero Delgado and Santana case, Reparations, supra* note 19, para. 17; *Neira Alegría et al. case, Reparations, supra* note 19, para. 38; *El Amparo case, Reparations, supra* note 19, para. 16; and *Aloeboetoe et al. case, Reparations, supra* note 19, paras. 46 and 50.

community of nations should, be applied in the instant case, in order to determine the victims' successors for purposes of compensation²⁵.

85. Moreover, the next of kin or third parties may claim the damage that the death of the victim caused them in their own right²⁶. However this Court has indicated that certain conditions must be met; these include the existence of a relationship of regular and effective financial support between the victim and the claimant, the possibility of realistically presuming that this support would have continued if the victim had not died, and that the claimant would have had a financial need that was regularly satisfied by the support provided by the victim²⁷.

86. With regard to such claimants, the *onus probandi* corresponds to the next of kin of the victim²⁸, and the expression "next of kin of the victim" should be understood in an extensive form that covers all those persons closely related to him; in other words, his children, parents and siblings, who could be considered next of kin and have the right to receive a compensation, provided they fulfill the requirements established by the Court's jurisprudence²⁹. For the effects of the case *sub judice*, this type of reparation will be examined in the corresponding section (*infra* IX), according to the circumstances of each of the victims and the body of evidence that the next of kin have submitted to this Court.

VIII PROVEN FACTS

87. The Court will base itself on the facts admitted as proven in the judgment of March 8, 1998, in order to determine the measures of reparation that are in order in this case. Moreover, at this stage of the proceeding, the parties have also submitted new elements of evidence to the file to demonstrate the existence of complementary facts that are relevant for determining the measures of reparation.

1) Concerning the victims in the case

a) The exchange rate for the Guatemalan currency in relation to the United States dollar in February and March 1988 was Q2.55 (two quetzales and fifty-five cents), applicable to all except Julián Salomón Gómez Ayala, who died on June 1, 1987 (*infra* 87.3.b).

²⁵ *Aloeboetoe et al. case, Reparations, supra* note 19, para. 62 and *Cf. Castillo Páez case, Reparations, supra* note 2, para. 86; *Neira Alegría et al. case, Reparations, supra* note 19, para. 60; and *El Amparo case, Reparations, supra* note 19, para. 40.

²⁶ *Cf. Castillo Páez case, Reparations, supra* note 2, para. 59; *Garrido and Baigorria case, Reparations, supra* note 22, para. 50; and *Aloeboetoe et al. case, Reparations, supra* note 19, para. 54.

²⁷ *Cf. Aloeboetoe et al. case, Reparations, supra* note 19, paras. 67 and 68.

²⁸ *Cf. Aloeboetoe et al. case, Reparations, supra* note 19, para. 71.

²⁹ *Cf. Loayza Tamayo case, Reparations, supra* note 2, para. 92.

Cf. Table of statistics of the average monthly exchange rate from January 1985 to January 2001, prepared by the Department of Economic Studies of the Banco de Guatemala.

- b) In Guatemala there are legal provisions in favor of workers in the private and public sectors.

Cf. Decree No. 78-89 "Bonificación-Incentivo Sector Privado" (Private Sector Incentive-Bonus) adopted on December 7, 1989, and ratified on December 19, 1989; decree No. 42-92 adopted and ratified on June 2, 1992; and decree No. 7-2000 adopted on March 1, 2000, and ratified on March 6, 2000.

2) Concerning Anna Elizabeth Paniagua Morales

- a) She was 25.6 years of age at the time of her detention and subsequent execution.

Cf. Copy of the certification of the birth certificate of Anna Elizabeth Paniagua Morales; copy of the identity card of Anna Elizabeth Paniagua Morales; copy of the registration of the death of Anna Elizabeth Paniagua Morales; Affidavit by Alberto Paniagua Morales; and testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on August 11, 2000.

- b) At the time of the facts, she lived with her daughter, María Elisa Meza Paniagua, her parents, Alberto Antonio Paniagua and María Ildelfonsa Morales Chavez, her brother, Alberto Antonio Paniagua Morales, her sister-in-law, Blanca Lidia Zamora Martínez, and her nieces.

Cf. Testimony of Blanca Lidia Zamora de Paniagua before the Inter-American Court on September 22, 1997; testimony of María Ildelfonsa Morales before the Inter-American Court on September 22, 1997; testimony of Alberto Antonio Paniagua Morales before the Inter-American Court on September 22, 1997; testimony of María Ildelfonsa Morales before the Inter-American Court on August 11, 2000; and copy of the birth certificate of Alberto Antonio Paniagua Morales.

- c) She worked as a bookkeeper.

Cf. Affidavit by Elsa Carolina Paniagua Morales; Affidavit by Alberto Antonio Paniagua Morales; and testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on August 11, 2000.

- d) The life expectancy of a woman of 25.6 years of age in Guatemala in 1988 was 48.33 additional years (*supra* 68).

Cf. Summary mortality tables for Guatemala of the National Institute of Statistics (period 1990-1995); and leaflet prepared by the National Institute of Statistics "Indicadores Sociales de Guatemala" (Guatemalan Social Indicators).

2.1) Concerning the next of kin of Anna Elizabeth Paniagua Morales

- a) Her daughter is María Elisa Meza Paniagua, her parents are María Ildelfonsa Morales de Paniagua and Alberto Antonio Paniagua, and her siblings, Blanca Beatriz, Alberto Antonio, Hugo Morani, Elsa Carolina and German Giovanni, all of them Paniagua Morales.

Cf. Copy of the birth certificate of María Ildelfonsa Morales Chávez; copy of the birth certificate of Hugo Morani Paniagua Morales; copy of the birth certificate of Alberto Antonio Paniagua Morales; copy of the birth certificate of Elsa Carolina Paniagua Morales; copy of the birth certificate of German Giovanni Paniagua Morales; copy of the birth certificate of Blanca Beatriz Paniagua Morales; copy of the certification of the birth record of Anna Elizabeth Paniagua Morales; testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on September 22, 1997; and testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on August 11, 2000.

- b) The members of the family with whom she lived, suffered pecuniary and non-pecuniary damages owing to the detention and execution of Anna Elizabeth Paniagua Morales.

Cf. Newspaper article "Trading murder, torture for peace, freedom". The Intelligence. Tuesday, March 15, 1988, p. 13; affidavit by Alberto Paniagua; testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on September 22, 1997; testimony of Alberto Antonio Paniagua Morales before the Inter-American Court on September 22, 1997; testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

- c) The victim's mother and sister-in-law (Blanca Lidia Zamora de Paniagua) began the search for her in various police premises and took pertinent measures under domestic law in order to try and find her, all of which generated certain expenses.

Cf. Testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on September 22, 1997; testimony of Blanca Lidia Zamora de Paniagua before the Inter-American Court on September 22, 1997; and testimony of María Ildelfonsa de Paniagua before the Inter-American Court on August 11, 2000.

- d) As a result of the threats they received after the death of Anna Elizabeth Paniagua Morales, members of the Paniagua Morales family left Guatemala for the United States and Canada.

Cf. Testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on September 22, 1997; testimony of Alberto Antonio Paniagua Morales before the Inter-American Court on September 22, 1997; testimony of María Ildelfonsa Morales de Paniagua before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

2.2) Concerning the next of kin's representation and related expenses

The lawyer, Mark Martel, represented the next of kin of Anna Elizabeth Paniagua Morales in the measures they took before the Inter-American Court and Commission, and assumed certain expenses related to these measures.

Cf. Affidavit by Mark Martel; and power of attorney granted by Alberto Paniagua to Mark Martel.

3) Concerning Julián Salomón Gómez Ayala

- a) He was 24.2 years of age at the time of his detention and subsequent execution.

Cf. Copy of the birth certificate of Julián Salomón Gómez Ayala; and copy of the identity card of Julián Salomón Gómez Ayala.

- b) The exchange rate of the Guatemala currency in relation to the United States dollar on June 1, 1987, was Q2.75 (two quetzales and seventy-five cents).

Cf. Table of statistics of the average monthly exchange rate from January 1985 to January 2001, prepared by the Department of Economic Studies of the Banco de Guatemala.

- c) At the time of the facts, he lived with him companion, Bertha Violeta Flores Gómez, and his son, Julio Salomón Gómez Flores, in Guatemala City.

Cf. Testimony of Blanca Esperanza Ayala de la Cruz before the Inter-American Court on August 11, 2000.

- d) The life expectancy of a man of 24.2 years of age in Guatemala in 1988 was 43.98 additional years (*supra* 68).

Cf. Summary mortality tables for Guatemala of the National Institute of Statistics (period 1990-1995); and leaflet prepared by the National Institute of Statistics "Indicadores Sociales de Guatemala"

- e) His parents are Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, his companion is Bertha Violeta Flores Gómez, his son is Julio Salomón Gómez Flores and he had seven siblings: Danilo Abraham, Deifin Olivia, Ingrid Elizabeth, Israel, Jorge Isaías, Douglas Moises and Lidia Marisa, all Gómez Ayala.

Cf. Copy of the identity card of Bertha Violeta Flores Gómez; copy of the certification of the birth certificate of Julio Salomón Gómez Flores; copy of the identity card of Blanca Esperanza Ayala de la Cruz; copy of the identity card of Petronilo Gómez Chávez; copy of the identity card of Lidia Marisa Gómez Ayala; copy of the identity card of Deifin Olivia Gómez Ayala; copy of the identity card of Ingrid Elizabeth Gómez Ayala; copy of the identity card of Danilo Abraham Gómez Ayala; copy of the identity card of Israel Gómez Ayala; copy of the identity card of Jorge Isaías Gómez Ayala; copy of the certification of the birth certificate of Douglas Moises Gómez Ayala; and testimony of Blanca Esperanza Ayala de la Cruz before the Inter-American Court on August 11, 2000.

3.1 Concerning the next of kin of Julián Salomón Gómez Ayala

- a) His parents, his companion and his son suffered pecuniary and non-pecuniary damages owing to the detention and execution of Julián Salomón Gómez Ayala.

Cf. Testimony of Blanca Esperanza Ayala de la Cruz before the Inter-American Court on August 11, 2000; testimony of Ingrid Elizabeth Gómez Ayala before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

- b) His companion and his parents began searching for him in various police premises, took pertinent measures under domestic law in order to find him and, subsequently, resorted to the inter-American system, all of which generated various expenses.

Cf. Testimony of Blanca Esperanza Ayala de la Cruz before the Inter-American Court on August 11, 2000; and testimony of Ingrid Elizabeth Gómez Ayala before the Inter-American Court on August 11, 2000.

3.2) Concerning the next of kin's representation and their respective expenses

The lawyers, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez and José Miguel Vivanco, represented the next of kin of Julián Salomón Gómez Ayala in the measures they took before the Commission. At the reparations stage before the Court, the next of kin assumed their own defense and did not establish that these measures generated expenses.

Cf. The Commission's briefs of August 31, 1998, and August 2, 1999 (supra 11 and 29); and the briefs of the next of kin of April 28, 1999, submitted directly, without the assistance of a lawyer (supra 25).

4) Concerning William Otilio González Rivera

a) He was 26.7 years of age at the time of his detention and subsequent execution.

Cf. Copy of the certification of the birth certificate of William Otilio González Rivera; and copy of the certificate issued by the Secretary of the Municipality of Comapa, in the Department of Jutiapa, dated June 5, 2000, regarding the identity card of William Otilio González Rivera.

b) He had an informal sales kiosk in one of the markets in Guatemala City.

Cf. Statement by Gilberto González Saquij contained in a police report dated March 22, 1988; testimony of Salvador González Najarro before the Inter-American Court on August 11, 2000; and official letter No. 100-2000 of May 22, 2000, from Mercados de Guatemala, the municipality's public services.

c) The life expectancy of a man of 26.7 years of age in Guatemala in 1988 was 42.37 additional years (*supra* 68).

Cf. Summary mortality tables for Guatemala of the National Institute of Statistics (period 1990-1995); and leaflet prepared by the National Institute of Statistics "Indicadores Sociales de Guatemala"

4.1) Concerning the next of kin of William Otilio González Rivera

a) His parents are Salvador González Najarro and María Asunción Rivera Velásquez and he had five siblings: Santos Hugo, José Alfredo, Julio Moises, Anatanahel and Leydi Rosibel, all of them González Rivera.

Cf. Birth certificate of William Otilio González Rivera; birth certificate of Santos Hugo González Rivera; birth certificate of José Alfredo González Rivera; birth certificate of Julio Moises González Rivera; birth certificate of Anatanahel González Rivera; birth certificate of Leydi Rosibel González Rivera; and testimony of Salvador González Najarro before the Inter-American Court on August 11, 2000.

b) His next of kin suffered pecuniary and non-pecuniary damages owing to the detention and execution of William Otilio González Rivera.

Cf. Testimony of Salvador González Najarro before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

4.2) Concerning the representation of the next of kin and the respective expenses

The lawyers, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez and José Miguel Vivanco, represented the next of kin of William Otilio González Rivera before the Inter-American Commission and the lawyer, Avilio Carrillo Martínez, represented them before the Inter-American Court at the reparations stage. These measures generated certain expenses.

Cf. The briefs of the next of kin of the victim of March 23, 1999, and March 21, 2001 (supra 23), and the Commission's briefs of August 31, 1998, and August 2, 1999 (supra 11 and 29).

5) Concerning Pablo Corado Barrientos

a) He was 24.9 years of age at the time of his detention and subsequent execution.

Cf. Copy of the certification of the birth certificate of Pablo Corado Barrientos; and certificate issued by the Municipal Secretary of the Public Registry of the town of El Adelanto, Department of Jutiapa on May 19, 2000, concerning the identity card of Pablo Corado Barrientos.

b) He had an informal stall in one of the markets in Guatemala City.

Cf. Statement by Gilberto González Saquij contained in police report dated March 22, 1988; testimony of Tino Corado Barrientos before the Inter-American Court on August 11, 2000; and official letter No. 100-2000 of May 22, 2000, from Mercados de Guatemala, the municipality's public services.

c) The life expectancy of a man of 24.9 years of age in Guatemala in 1988 was 43.98 additional years (*supra* 68).

Cf. Summary mortality tables for Guatemala of the National Institute of Statistics (period 1990-1995); and leaflet prepared by the National Institute of Statistics "Indicadores Sociales de Guatemala".

5.1) Concerning the next of kin of Pablo Corado Barrientos

His mother is Juana Barrientos Valenzuela and his siblings, Tino and Francisca Corado Barrientos;

Cf. Copy of the identity card of Tino Corado Barrientos; copy of the identity card of Juana Barrientos Valenzuela; copy of the certification of the birth certificate of Tino Corado Barrientos; copy of the certification of the birth certificate of Pablo Corado Barrientos; testimony of Tino Corado Barrientos before the Inter-American Court on August 11, 2000; and copy of the birth certificate of Francisca Corado Barrientos.

5.2) Concerning the next of kin's representatives and the respective expenses

The lawyers, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez and José Miguel Vivanco, represented the next of kin of Pablo Corado Barrientos before the Inter-American Commission, and the lawyer, Antonio René Argueta Beltrán,

represented them before the Inter-American Court at the reparations stage. These measures generated certain expenses.

Cf. The briefs of the next of kin of the victim of June 3 and 23, 1999 (supra 28); the Commission's briefs of August 31, 1998, and August 2, 1999 (supra 11 and 29); and power of attorney granted by Tino Corado Barrientos and Juana Barrientos Valenzuela to COJUPO, through its lawyer, Antonio René Argueta Beltrán, received by the Secretariat on June 3, 1999.

6) Concerning Manuel de Jesús González López

a) He was 29.1 years of age at the time of his detention and subsequent execution.

Cf. Identity card of Manuel de Jesús González López; birth certificate of Manuel de Jesús González López; and copy of the registration of the death of Manuel de Jesús González López.

b) At the time of the facts, he lived with his wife, María Elizabeth Chinchilla, and his three children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla.

Cf. Copy of the registration of the death of Manuel de Jesús González López; copy of the registration of the birth of Karen Paola González Chinchilla; copy of the registration of the birth of Silvia Argentina González Chinchilla; copy of the registration of the birth of Manuel Alberto González Chinchilla; testimony of María Elizabeth Chinchilla before the Inter-American Court on September 22, 1997; and testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000.

c) He was a mechanic by trade and earned a salary of Q598.82 (five hundred and ninety-eight quetzales and eighty-two cents) a month.

Cf. Affidavit by María Chinchilla dated August 31, 1998; certificate issued by Ramiro R. Velásquez dated August 31, 1998; copy of the registration of the death of Manuel de Jesús González López; copy of the registration of the birth of Karen Paola González Chinchilla; copy of the registration of the birth of Silvia Argentina González Chinchilla; copy of the registration of the birth of Manuel Alberto González Chinchilla; testimony of María Elizabeth Chinchilla before the Inter-American Court on September 22, 1997; and testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000.

d) The life expectancy of a man of 29.1 years of age in Guatemala in 1988 was 40.05 additional years (*supra* 68).

Cf. Summary mortality tables for Guatemala of the National Institute of Statistics (period 1990-1995); and leaflet of the National Institute of Statistics "Indicadores Sociales de Guatemala".

6.1 Concerning the next of kin of Manuel de Jesús González López

a) His family comprises his wife, María Elizabeth Chinchilla, and his three children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla.

Cf. Copy of the birth certificate of Manuel de Jesús González López; copy of the registration of the death of Manuel de Jesús González López; copy of the registration of the birth of Karen Paola González Chinchilla; copy of the registration of the birth of Silvia Argentina González Chinchilla; copy of the registration of the birth of Manuel Alberto González Chinchilla; testimony of María Elizabeth Chinchilla before the Inter-American

Court on September 22, 1997; and testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000.

- b) These family members suffered pecuniary and non-pecuniary damages owing to the detention and subsequent execution of Manuel de Jesús González López.

Cf. Affidavit by María Elizabeth Chinchilla dated August 31, 1998; testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000; testimony of Manuel Alberto González Chinchilla before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

- c) His wife started searching for him in various State premises, all of which generated certain expenses.

Cf. Testimony of María Elizabeth Chinchilla before the Inter-American Court on September 22, 1997; and testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000.

- d) The members of the González Chinchilla family are currently supported by the earnings of their mother, who had to go and work in Los Angeles, United States.

Cf. Testimony of María Elizabeth Chinchilla before the Inter-American Court on September 22, 1997; testimony of María Elizabeth Chinchilla before the Inter-American Court on August 11, 2000; testimony of Manuel Alberto González Chinchilla before the Inter-American Court on August 11, 2000; and expert report of Graciela Marisa Guillis before the Inter-American Court on August 11, 2000.

6.2) Concerning the next of kin's representatives and the respective expenses

The lawyer, Mark Martel, represented the next of kin of Manuel de Jesús González López in the measures they took before the Inter-American Commission and Court and assumed certain expenses related to these measures.

Cf. Affidavit by Mark Martel dated August 31, 1998; and power of attorney granted to Mark Martel by María Elizabeth Chinchilla on March 25, 1999.

7) Concerning Oscar Vásquez

The lawyer, Mark Martel, represented the next of kin of Oscar Vásquez in the measures they took before the Inter-American Commission and Court and assumed certain expenses related to these measures.

Cf. Affidavit by Mark Martel dated August 31, 1998; and power of attorney granted to Mark Martel by Oscar Vásquez.

8) Concerning Erick Leonardo Chinchilla

- a) His mother is María Luisa Chinchilla Ruano.

Cf. Testimony of Miriam Enoé Zelada Chinchilla before the Inter-American Court on August 11, 2000; and copy of the birth certificate of María Luisa Chinchilla Ruano.

- b) The next of kin of Erick Leonardo Chinchilla took pertinent judicial measures under domestic law, which generated various expenses.

Cf. Testimony of Miriam Enoé Zelada Chinchilla before the Inter-American Court on August 11, 2000.

c) The lawyers, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez and José Miguel Vivanco, represented the next of kin of Erick Leonardo Chinchilla before the Inter-American Commission and the lawyer, Antonio René Argueta Beltrán, represented them before the Inter-American Court at the reparations stage. These measures generated various expenses.

Cf. The briefs of the next of kin of the victim of April 30, 1999 (supra 26); the Commission's briefs of August 31, 1998, and August 2, 1999 (supra 11 and 29); and power of attorney granted by María Luisa Chinchilla Ruano to the Coordinadora Jurídica Popular, headed by the lawyer, Antonio René Argueta, received by the Secretariat on March 26, 1999.

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No evidence was submitted with regard to las reparations corresponding to Doris Torres Gil, Augusto Angárta Ramírez and Marco Antonio Montes Letona.

IX REPARACIONES

ANNA ELIZABETH PANIAGUA MORALES

Pecuniary damage

The arguments of the next of kin

88. Under the general heading of pecuniary damage, the next of kin of Anna Elizabeth Paniagua Morales included two items in their brief of September 1, 1998:

a) the loss of earnings of the victim, who had been working as an accountant for four years and would have obtained her licentiate in economics in 1990. Therefore, from 1988 to 1990 she would have received a salary of US\$10,000.00 (ten thousand United States dollars); after receiving her degree in economics she would have earned the equivalent of US\$16,650.00 (sixteen thousand six hundred and fifty United States dollars) – the average salary for an auditor – during the following 10 years and then a salary of US\$20,000.00 (twenty thousand United States dollars) a year for the rest of her working life, which would have been 47 more years, considering her life expectancy. As an average, they requested an approximate monthly salary of US\$1,600.00 (one thousand six hundred United States dollars); and

b) The expenses that the next of kin incurred, including the funeral expenses for the victim and the transfer of 12 members of the Paniagua Morales family to the United States and Canada, for a total of US\$17,000.00 (seventeen thousand United States dollars); also, concerning certain patrimonial losses suffered by the victim's brother, German Giovanni Paniagua Morales, as a result of what happened to her, including the expenses of the transfer to Canada, his loss of earning for two years in Guatemala as a primary school teacher and, then, what he would have

received as a lawyer and notary for nine years, for a total of US\$708,000.00 (seven hundred and eight thousand United States dollars).

The Commission's arguments

89. Under the general heading of "pecuniary damage", the Commission indicated the following in its briefs of August 31, 1998, and August 2, 1999:

a) with regard to the loss of earnings of Anna Elizabeth Paniagua Morales, it endorsed the calculations submitted by the victim's next of kin and underlined that the life expectancy of a woman in Guatemala was 46.53 additional years and that the victim had a daughter of five years of age. It also established that the victim would have earned US\$1,600.00 a month, for the remaining years of her life expectancy, less 25% for personal use, and plus interest;

b) with regard to the other expenses, the Commission also endorsed the information submitted by the victim's next of kin.

The State's arguments

90. The State objected to the claims and calculations made by the next of kin of Anna Elizabeth Paniagua Morales and the Commission, making the following observations:

a) with regard to the victim's loss of earnings, it claimed that she was not registered as an expert accountant in the Ministry of Public Finance, which was an essential requirement for the exercise of that profession in Guatemala and that, according to information from the Identity Card Registry of the Municipality of Guatemala, the victim had stated that her profession was "office assistant", so that the calculation of loss of earning should be based on that activity. In the absence of salary records, the minimum salary reported by the Ministry of Labor and Social Insurance for 1988 should be used and this was Q150.00 (one hundred and fifty quetzales) a month for an administrative employee. It also indicated that the victim was not studying economics at the Universidad de San Carlos at the time of the facts and that the life expectancy for women who were born during the period 1960 to 1965 was 47.90 years, according to the National Institute of Statistics of Guatemala; and

b) with regard to the other expenses incurred by the victim's next of kin, it claimed that the alleged expenditure to learn the whereabouts of the victim had not been adequately proven and that the expenses for the funeral were excessive. With regard to the expenses defrayed by the Paniagua Morales family, it had not been shown that these were the immediate consequence of the principal fact. Lastly, with regard to the expenses of German Giovanni Paniagua Morales, it stated that they were unreal in Guatemala.

The considerations of the Court

91. Identity card No. 661077 establishes that the victim was born on July 25, 1962; in other words, she was 25.6 years of age at the date of her death.

92. On this identity card, it is stated that her profession was office assistant, but on her death certificate she appears as a housewife. Yet, in their statements, her next of kin claim that she was an expert accountant and worked as such. However, there is no document that certifies in which institution she trained as an expert accountant. The State does not accept the claim of the victim's next of kin because Mrs. Paniagua Morales did not appear as an expert accountant in the Ministry of Public Finance, which is a requirement to exercise the profession, and there are no tax declarations to prove this point.

93. The Court cannot accept that the victim had studied economics at the university, as there are divergencies in the testimony with regard to the indication that she studied at the Universidad de San Carlos de Guatemala. Her own mother declared before the Court that this was not true and this higher education establishment certified that Anna Elizabeth Paniagua Morales had not been a student in any of its academic units.

94. In these circumstances and owing to the lack of evidence, it is difficult to foresee that the victim would have been able to study at the university eventually and complete the program of studies in economics. The Court is inclined to accept that the victim worked as a bookkeeper and, consequently, the pecuniary damage corresponding to the loss of earnings suffered by the victim should be based on the salary that she earned as a bookkeeper.

95. The Court observes that the minimum salary for an administrative employee was Q150.00 (one hundred and fifty quetzales) at the time the victim died. From the preceding information, the Court grants the amount of five minimum salaries for this type of activity in favor of the victim; that is, the sum of Q750.00 (seven hundred and fifty quetzales), which is equivalent to US\$294.00 (two hundred and ninety-four United States dollars) as the monthly salary of a bookkeeper. The calculation will be made on the basis of 12 salaries a year, plus the corresponding annual bonuses, in accordance with Guatemalan norms (*supra* 87.1.b.). These are the earnings that the victim would presumably have enjoyed during her life expectancy of 48.33 years, the period from the victim's age at the time of the facts until the end of the life expectancy of a woman in Guatemala in 1988 (*supra* 87.2.d.). 25% must be deducted from this amount for personal expenses. The resulting amount must then be brought to its value at the date of the judgment. Consequently, the amount for this item is US\$108.759.00 (one hundred and eight thousand seven hundred and fifty-nine United States dollars).

96. According to the criteria established by this Court, the fact that the victim had formed a household and that, as a result, her daughter, María Elisa Meza Paniagua, was born, makes the latter the primary successor of any benefit corresponding to Anna Elizabeth Paniagua Morales (*supra* 83). Owing to the foregoing, this Court considers that it is appropriate to grant María Elisa Meza Paniagua, the amount recognized in the previous paragraph.

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97. In her testimony during both the merits and the reparation stages, María Ildefonsa Morales de Paniagua indicated that she suffered from various ailments as a result of the death of her daughter, which required medical treatment; however, she submitted no evidence.

98. The next of kin of Anna Elizabeth Paniagua Morales have also asked to be reimbursed for the expenses incurred for transport and visits to public institutions to search for the victim, the funeral and the expenses corresponding to the transfer of the next of kin to the United States and Canada. Also, the loss of earnings and education suffered by the victim's brother, German Giovanni Paniagua Morales, owing to his relocation to Canada. On previous occasions, this Court has granted expenses corresponding to the search for the victim and relocation outside the country³⁰.

99. The Court considers that it is not possible to establish a relationship of cause and effect between the fact and the alleged consequences suffered by the brother, German Giovanni, with regard to his occupation and academic preparation. However, the Court considers that, in real terms, there was a general damage to the patrimony of the family group owing to what happened to the victim for reasons that may be attributed to the State, which caused the family financial, health and other types of problems for which, in fairness, reparation must be made³¹.

100. The Court bears in mind that, as the State indicated, the evidence submitted to support the calculation of the damage caused to the victim's family is neither sufficient nor conclusive, since it is based on various testimonies given by the members of the family themselves (*supra* 100). Considering this, the Court, in fairness, establishes the amount of US\$10,000.00 (ten thousand United States dollars) for this concept, which will be delivered to María Ildefonsa Morales Chávez, as the victim's mother, so that she may distribute it in accordance with the different expenses that the family incurred.

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Non-pecuniary damage

The arguments of the next of kin

101. The victim's next of kin requested the sum of US\$125,000.00 (one hundred and twenty-five thousand United States dollars) for non-pecuniary damage and indicated that the following factors had been taken into account when calculating this:

- a) the physical pain and emotional suffering of the victim, caused by the torture to which she was submitted;

³⁰ *Blake case, Reparations, supra* note 21, paras. 48 and 49; and *Castillo Páez case, Reparations, supra* note 2, para. 77.

³¹ *Cf. Castillo Páez case, Reparations, supra* note 2, para. 76.

- b) the emotional suffering of the next of kin for the disappearance and subsequent discovery of the mutilated body of the victim and, in particular, the trauma that the parents suffered because of the death of their daughter;
- c) the dispersion of the family, since some members have had to flee their country, seeking asylum in countries such as the United States and Canada;
- d) the trauma suffered by the victim's daughter, who was four years old at the time of the facts and, today, is a very introverted person; and
- e) the loss of the son with whom the victim was pregnant when she was killed.

The Commission's arguments

102. In its briefs of August 31, 1998, and August 2, 1999, the Commission argued that the Paniagua Morales family should receive an indemnity of US\$125,000.00 (one hundred and twenty-five thousand United States dollars), based on the following factors:

- a) that the clandestine detention, the isolation, the deliberate ill-treatment and the intention of inflicting grave physical and mental pain, which could be inferred from the condition in which the victim's body was found, caused her physical and mental suffering; and
- b) the psychological suffering and distress that her next of kin experienced, owing to the fruitless search for the victim, the abandonment of her body on a path and its identification, during which they could see the severe injuries suffered by the victim; also, the anguish due to the impunity, and the threats and attacks suffered by the next of kin and the consequent need for some of them to leave the country.

The State's arguments

103. The State indicated that it considered the sum of US\$10,000.00 (ten thousand United States dollars) to be appropriate for this item; to be delivered to the "victim's legal heirs."

The considerations of the Court

104. The Court considers that jurisprudence can serve as a guide to establish principles in this matter, although it cannot be invoked as an absolute criterion, since the particularities of each case must be examined³².

105. Regarding non-pecuniary damage, international courts have indicated on many occasions that a judgment of condemnation constitutes, *per se*, a form of

³² *Blake case, Reparations, supra* note 21, para. 54; *Castillo Páez case, Reparations, supra* note 2, para. 83; *Neira Alegría et al. case, Reparations, supra* note 19, para. 55; and *El Amparo case, Reparations, supra* note 19, para. 34.

reparation³³. However, the Court considers that it is insufficient, bearing in mind the physical and mental suffering caused to the victim and her next of kin in a case such as this, and that reparation for this suffering must be made in an alternative form, by pecuniary compensation, which must be established in fairness, since non-pecuniary damage cannot be calculated precisely³⁴.

106. In the case *sub judice*, the non-pecuniary damage inflicted on the victim is evident, because it is only human nature that any person subjected to the aggression and abuse that she endured (unlawful detention, torture and death) experiences profound physical and mental suffering, which extends to the closest members of the family, particularly those who had a close affective relationship with the victim. The Court considers that no evidence is required to reach this conclusion³⁵.

107. The representatives of the victim's next of kin and the Commission requested the Court to establish compensatory amounts for the non-pecuniary damage in favor of the victim's next of kin. The statements made before this Court by the next of kin: Blanca Lidia Zamora (sister-in-law), Alberto Antonio Paniagua Morales (brother) and María Ildefonsa Morales de Paniagua (mother) on the merits of the case and by the latter together with the report of Graciela Marisa Guilis at this stage (*supra* 66.a), reveal the different forms of suffering that the abduction, torture and death of Anna Elizabeth Paniagua Morales caused the family. These statements emphasize the grief caused by the loss of a member of their family, the transfer of the siblings to Canada and the United States and the disintegration of the family.

108. In the case of the victim's parents, it is not necessary to demonstrate the non-pecuniary damage, because this is presumed³⁶. Similarly, the physical and mental suffering of the victim's daughter can be presumed.

109. With regard to her siblings, it is necessary to take into account the degree of relationship and affection that existed between them. In the case *sub judice*, it can be seen that there were close ties between the victim and her brother, Alberto Antonio Paniagua Morales, and her sister-in-law, Blanca Lidia Zamora de Paniagua, who lived in the same house. Moreover, with regard to the latter, the Court has

³³ Cf. *Eur Court HR, Ruiz Torrija 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., Koendjiharie, judgment of 25 October 1990, Series A no. 185-B, para. 34; Eur Court H.R., Wassink, judgment of 27 September 1990, Series A no. 185-A, para. 41; and Eur Court H.R., McCallum judgment of 30 August 1990, Series A no. 183, para. 37.*

³⁴ *Castillo Páez case, Reparations, supra note 2, para. 84. and likewise, Eur. Court H.R., Wiesinger judgment of 30 October 1991, series A no. 213, para. 85; Eur. Court H.R., Kenmmache v. France (Article 50) judgment of 2 November 1993, Series A no. 270-B, para. 11; Eur. Court H.R., Mats Jacobsson judgment of 28 June 1990, Series A no. 180-A, para. 44; and Eur. Court H.R., Ferraro judgment of 19 February 1991, Series A no. 197-A, para. 21.*

³⁵ Cf. *Castillo Páez case, Reparations, supra note 2, para. 86; Loayza Tamayo case, Reparations, supra note 2, para. 138; Neira Alegría et al. case, Reparations, supra note 19, para. 57; El Amparo case, Reparations, supra note 19, para. 36; and Aloeboetoe et al. case, Reparations, supra note 19, para. 52.*

³⁶ Cf. *Castillo Páez case, Reparations, supra note 2, para. 88; Loayza Tamayo case, Reparations, supra note 2, para. 142; Garrido and Baigorria case, Reparations, supra note 22, para. 62; and Aloeboetoe et al. case, Reparations, supra note 19, para. 76.*

taken into consideration that she participated intensively in the search for and identification of the mutilated body of her sister-in-law; this is recorded in the judgment of March 8, 1998, and is an important element of proof for various family matters.

110. With regard to the victim's other siblings, it is evident that they form part of the family³⁷ and even when they do not appear to have participated directly in the measures taken in the situation by the mother and by the sister-in-law, this does not mean that they were indifferent to the suffering caused by the loss of their sister, particularly when the circumstances of death were so singularly traumatic. Therefore, considering that they should be beneficiaries of compensation, the Court must determine the amount according to the principle of fairness and, consequently, establishes compensatory reparation for non-pecuniary damage of US\$4,000.00 (four thousand United States dollars) for the Paniagua Morales siblings³⁸.

111. In view of the foregoing, this Court considers that it is fair to establish a global amount of US\$54,000.00 (fifty-four thousand United States dollars) for the non-pecuniary damage caused to the victim and her next of kin. This amount to be distributed as follows: US\$20,000.00 (twenty thousand United States dollars) for María Elisa Meza Paniagua (the victim's daughter), US\$15,000.00 (fifteen thousand United States dollars) for María Ildelfonsa Morales Chávez (mother), US\$5,000.00 (five thousand United States dollars) for Antonio Paniagua (father), US\$5,000.00 (five thousand United States dollars) for Blanca Lidia Zamora (the victim's sister-in-law), US\$5,000.00 (five thousand United States dollars) for Alberto Antonio Paniagua Morales (brother), and the sum of US\$1,000.00 (one thousand United States dollars) each, to Blanca Beatriz, Hugo Morani, Elsa Carolina and German Giovanni, all Paniagua Morales.

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JULIÁN SALOMÓN GÓMEZ AYALA

Pecuniary damage

The arguments of the next of kin

112. Under the general heading pecuniary damage, the next of kin of Julián Salomón Gómez Ayala included two items in their brief of April 26, 1999:

a) the loss of earnings of the victim as a car mechanic with a monthly wage of Q1,400.00 (one thousand four hundred quetzales) and an annual income, including periodic or seasonable income, of Q17,400.00 (seventeen thousand four hundred quetzales), with an annual increase of Q305.00 (three hundred and five quetzales); and

b) the expenses that the next of kin incurred, including: Q5,800.00 (five thousand eight hundred quetzales) for the search for the victim (daily

³⁷ Cf. *Garrido and Baigorria case, Reparations, supra* note 22, paras. 63 and 64.

³⁸ With regard to Mario Humberto Morales Chávez, no supporting evidence that demonstrated the alleged relationship was submitted. Cf. *Garrido and Baigorria case, Reparations, supra* note 22, paras. 63 and 64.

transport to Guatemala City and food during about 20 days in the city); Q7,500.00 (seven thousand five hundred quetzales) for funeral expenses and transport to the capital city to this end, and Q800.00 (eight hundred quetzales) for medical consultations for two members of the family, for a total of Q14,100.00 (fourteen thousand one hundred quetzales). They also included the patrimonial damage to the household that affected his parents and also his wife and son, because the victim was responsible for supporting the latter financially and from time to time sent money to the former. Finally, they added the loss of the victim's documents and personal effects such as a gold medal and clothes.

The Commission's arguments

113. In its briefs of August 31, 1998, and August 2, 1999, the Commission indicated the following under the general heading of "pecuniary damage":

a) regarding the loss of earnings of Julián Salomón Gómez Ayala, that the life expectancy for a man in Guatemala was 45.59 additional years; that the victim was working as a mechanic at the time of the facts and that his companion, his son "of two and half years of age" and his mother, to whom he provided financial assistance, depended on his income. In its first brief, the Commission indicated that, according to International Labor Organization data, a worker in the transport sector would have had a monthly wage of Q266.66 (two hundred and sixty-six quetzales with sixty-six cents) in 1987, and, therefore, requested compensation of US\$30,528.74 (thirty thousand five hundred and twenty-eight United States dollars and seventy-four cents). However, in its second brief, the Commission endorsed the calculation of earnings claimed by the victim's next of kin and adjusted them to the criteria established by this Court; for example, deduction of 25% for personal use, calculation of interest and of the current value of the corresponding amounts; and

b) with regard to the other expenses, in its first brief, the Commission indicated that the victim's mother and companion searched for him for 12 days, and on the following day the body appeared and was buried in Guatemala City, so that his mother had to obtain a judicial order to exhume the body and transfer the remains to "Suchitepéquez", which involved expenses of Q4,000.00 (four thousand quetzales); the next of kin also incurred expenditures of Q7,000.00 (seven thousand quetzales) for various funeral expenses. Lastly, the Commission claimed that the victim was wearing a gold medal at the time of the facts, and the value of this should be reimbursed. In its second brief, the Commission endorsed the calculations and figures submitted by the victim's next of kin.

The State's arguments

114. The State contested the claims and calculations made by the next of kin of Julián Salomón Gómez Ayala and the Commission, observing the following, among other matters:

a) with regard to the loss of earnings of the victim, it claimed that, according to his identity card, he worked as a farm laborer and, owing to the inexistence of information on the income earned by the victim, the minimum

wage for this activity established by the Ministry of Labor in the respective decree should be used; for 1988, this was set at the sum of Q135.00 (one hundred and thirty-five quetzales). It expressed its agreement with the items used by the Commission to calculate this amount, except for the deduction of 25% a year for personal expenses, which should be higher, and it rejected the payment of 3% interest since 1987; and

b) regarding the other expenses incurred by the victim's family, it stated that there was no proof for the calculation of the expenditures made by the next of kin. It also declared that the expenses for investigating the facts and obtaining the remains of the victim were excessive; that, regarding the funeral expenses, there is a contradiction between the information submitted by the Commission and that presented by the victim's next of kin. Lastly, with regard to the gold medal, it maintained that "this item cannot be proved and, therefore, cannot be relevant for the Court."

The considerations of the Court

115. According to identity card No. 649865, the victim was born on March 30, 1963; in other words, he was 24.2 years of age at the date of his death.

116. This identification document records his occupation as a farm laborer. However, it is also true that this document was issued on April 10, 1981, so that the Court considers it possible that the victim had changed his occupation in the following six years and that the change was not recorded. On the other hand, the brief submitted by the next of kin states that he was a mechanic and that, as such, he earned a monthly wage of Q1,400.00 (one thousand four hundred quetzales). The Court considers that these declarations are not supported by any document that would allow the Court to establish effectively that this was the victim's occupation; consequently, as it is not possible to determine the real wage, owing to lack of precise information, the minimum salary in force in the country must be used³⁹.

117. According to the documentation in the body of evidence in the case *sub judice*, at the time of the facts, the minimum salary for the basic basket, which the victim would have received, was Q153.00 (one hundred and fifty-three quetzales), equal to US\$60.00 (sixty United States dollars) a month. The calculation will be made on the basis of 12 salaries a year, plus the corresponding annual bonuses, in accordance with Guatemalan norms (*supra* 87.1.b). These are the earnings that the victim would presumably have enjoyed during his life expectancy of 43.98 years, the period between the victim's age at the time of the facts and the end of the life expectancy of a man of 24.2 years of age in Guatemala in 1987 (*supra* 87.3.d). 25% should be deducted from this amount for personal expenses. The resulting amount should be brought to the current value at the date of the judgment. Consequently, the amount for this item is US\$25,855.00 (twenty-five thousand eight hundred and fifty-five United States dollars).

118. According to the criteria it has established, this Court considers that the fact that the victim had formed his own household with Bertha Violeta Flores Gómez and that, as a result, a son, Julio Salomón Gómez Flores, had been born, makes these two persons beneficiaries of any compensation granted to the victim. Consequently,

³⁹ Cf. *Castillo Páez case, Reparations, supra* note 2, para. 75; and *Neira Alegría et al. case, Reparations, supra* note 19, para. 49.

the amount of US\$25,855.00 (twenty-five thousand eight hundred and fifty-five United States dollars) must be shared in equal parts by the victim's son, Julio Salomón Gómez Flores, and his companion, Bertha Violeta Flores Gómez.

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119. Reimbursement has also been requested for the expenses defrayed by the next of kin of Julián Salomón Gómez Ayala, for his exhumation; the corresponding transfer of his remains to "Samayach"; the funeral expenses; the loss of his personal effects, such as a gold medal, and the medical expenses incurred by his parents, as a result of what happened to the victim. The Court considers that, in real terms, there was general damage to the patrimony of the family group owing to what happened to the victim, for reasons that may be attributed to the State, which caused the family financial and other problems for which reparation must be made. In the case *sub judice*, the Court observes that the family's requests concerning expenses lack documentary support; however, taking into account the circumstances of the case, it would seem reasonable that sufficient evidence does not exist. Therefore, in fairness, the Court establishes the amount of US\$3,000.00 (three thousand United States dollars).

120. Owing to the special circumstances of this case, the Court considers it pertinent to distribute this amount in equal parts between the victim's parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, and his companion, Bertha Violeta Flores Gómez.

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Non-pecuniary damage

The arguments of the next of kin

121. On April 26, 2000, the victim's next of kin indicated that they had suffered various "emotional and biological problems" that prevented them from "carrying out [their] daily tasks and [...] having a normal life", as a result of what happened to Julián Salomón Gómez Ayala; however, they did not request any amount in compensation.

The Commission's arguments

122. In its briefs of August 31, 1998, and August 2, 1999, the Commission considered that the Gómez Ayala family should receive compensation of US\$125,000.00 (one hundred and twenty-five thousand United States dollars), based on the following factors:

- a) the clandestine detention, the isolation, the deliberate ill-treatment and the intention of inflicting grave physical and mental pain that was evident from the state in which the victim's body was found, caused the family acute physical and mental suffering; and

b) the psychological suffering and distress that his next of kin experienced, owing to the fruitless search for the victim, the abandonment of his body on a path and its identification, during which they could see the severe injuries suffered by the victim; also, the anguish due to the impunity and the need of the victim's companion and child to leave Guatemala City for safety reasons.

The State's arguments

123. The State indicated that it considered US\$10,000.00 (ten thousand United States dollars) to be an appropriate amount, to be delivered to the "victim's legal heirs."

The considerations of the Court

124. This Court has indicated the general criteria that regulate the reparation of non-pecuniary damage, which should also be considered in the case of Julián Salomón Gómez Ayala (*supra* 104 and 105). The non-pecuniary damage inflicted on the victim is evident, because it is only human nature that any person subjected to aggression and abuse, such as those he endured (unlawful detention, torture and death), experiences profound physical and mental suffering, which extends to the closest members of the family, particularly those who had a close affective relationship with the victim. The Court considers that no evidence is required to reach this conclusion

125. The parents, companion and son of the victim, also experienced the situation mentioned in the previous paragraph and the Court must presume that the grave violations against Gómez Ayala had repercussions on them. This presumption has not been disproved by the State, and therefore it is in order to grant compensatory damages for non-pecuniary damage to these next of kin.

126. In the case of the victim's siblings, as members of the family, it must be considered that they were not indifferent to the suffering of Julián Salomón Gómez Ayala, despite the objection posed by the State (*supra* 110). Consequently, the victim's siblings will also be beneficiaries of non-pecuniary damage, and, in fairness, the Court establishes this in the sum of US\$7,000.00 (seven thousand United States dollars) to be distributed between the Gómez Ayala siblings.

127. In view of the foregoing and in fairness, the Court establishes the global amount of US\$27,000.00 (twenty-seven thousand United States dollars) for non-pecuniary damage caused to the victim and his next of kin. This amount must be distributed as follows: US\$20,000.00 (twenty thousand United States dollars), divided in equal parts between Bertha Violeta Flores Gómez, the victim's companion, Julio Salomón Gómez Flores, his son, and his parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz. And also US\$1,000.00 (one thousand United States dollars) each for Danilo Abraham, Deifin Olivia, Ingrid Elizabeth, Israel, Jorge Isaías, Douglas Moises and Lidia Marisa, all Gómez Ayala.

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WILLIAM OTILIO GONZÁLEZ RIVERA

*Pecuniary damage**The arguments of the next of kin*

128. Under the general heading of pecuniary damage, the next of kin of William Otilio González Rivera included two items in their brief of March 23, 1999:

- a) the victim's loss of earnings as a vegetable seller with a monthly income of about Q6,000.00 (six thousand quetzales) from his business; calculated from the time of the facts, this would amount to Q792,000.00 (seven hundred and ninety-two thousand quetzales). According to his father's statement at the public hearing, his monthly income was Q500.00 (five hundred quetzales). In addition, the damage caused to the family patrimony, because the victim provided financial support to his parents; and
- b) other expenses that the next of kin incurred, in particular, the transfer of the victim's body, the funeral expenses and the loss of the victim's business and, consequently, the inventory, for a total of Q120,000.00 (one hundred and twenty thousand quetzales).

The Commission's arguments

129. Under the general heading of "pecuniary damage", the Commission indicated the following in its briefs of August 31, 1998, and August 2, 1999:

- a) regarding the loss of earnings of William Otilio González Rivera, it underlined that the life expectancy of a man in Guatemala was 46.53 additional years, that the victim worked in his own business selling vegetables at the time of the facts and that his companion, his sons and his parents, to whom he provided financial assistance, depended on his income. In its first brief, the Commission indicated that, according to the International Labor Organization data, in 1988 a worker in the retail/wholesale sector would have had a monthly wage of Q434.82 (four hundred and thirty-four quetzales and eighty-two cents). However, as he owned his vegetable stall, it calculated his income at Q500.00 (five hundred quetzales) and requested an indemnity of US\$51,679.55 (fifty-one thousand six hundred and seventy-nine United States dollars and fifty-five cents). In its second brief, the Commission endorsed the arguments of the next of kin and added that the victim's monthly income, adjusted to its current value was Q6,000.00 (six thousand quetzales). From the amount resulting from the previous calculation, 25% should be deducted for personal use and the corresponding interest should be added; and
- b) with regard to other expenses, the Commission indicated that the victim's father went to Guatemala City to search for his son, to lodge a complaint about the abduction, to claim the remains of the victim and to transfer the body to Jutiapa; that he defrayed the funeral expenses which amounted to Q1,000.00 (one thousand quetzales); and that the victim lost his vegetable stall and also the money that he was carrying, for a total of Q7,000.00 (seven thousand quetzales). In its brief with additional comments, the Commission endorsed the arguments of the next of kin and supported the amount that they had indicated, that is a total of Q120,000.00 (one hundred and twenty thousand quetzales).

The State's arguments

130. The State contested the claims and calculations made by the next of kin of William Otilio González Rivera and the Commission, observing the following, among other matters:

- a) regarding the victim's loss of earnings, it stated that he worked as a farm laborer, because he did not appear as a tradesman in the Mercantile Registry of the Ministry of Economy, there were no tax declarations in the Ministry of Public Finance and no record of his tax identification number, nor was it possible to establish whether the victim effectively owned a stall for selling vegetables. Therefore, his occupation as a farm laborer should apply with the minimum salary of Q199.00 (one hundred and ninety-nine quetzales) during 20.20 years as the life expectancy (from 26 to 46.20 years of age); it rejected the amount stated by the next of kin, as there was no supporting evidence; and
- b) with regard to the other expenses that the victim's family incurred, it stated that there was no evidence to support the calculation of the expenses that the victim's next of kin had made under this heading. As for the funeral expenses, it stated that there was a contradiction between the data provided by the next of kin and the Commission, and considered that the amount indicated by the Commission should apply, which was Q1,000.00 (one thousand quetzales).

The considerations of the Court

131. William Otilio González Rivera was born on June 12, 1961, according to identity card No. 15077; therefore he was 26.7 years of age at the time of his death (*supra* 87.4.a). This document, which was issued on February 22, 1980, states that his occupation was farm laborer; however, this Court considers that it is reasonable that, over eight years, the victim could have changed his occupation and that there was no record of this situation. In his testimony, his father, Salvador González Najarro, stated that the victim had a vegetable stall in the capital, and worked in this business. The State objects to recognizing that the victim was a retail salesman by occupation. It should be added that he carried out his activity informally, and for this reason it was not registered.

132. The judgment of March 8, 1998, established that he was detained (together with Pablo Corado Barrientos) (*supra* 87.4.a) at a market stall in Guatemala City. In view of these antecedents, the Court accepts the minimum salary for an informal salesman for the victim, which amounts to Q211.20 (two hundred and eleven quetzales and twenty cents), which equals US\$82.82 (eighty-two United States dollars and eighty-two cents). The calculation will be made on the basis of 12 salaries a year, plus the corresponding annual bonuses, in accordance with Guatemalan norms (*supra* 87.1.b). These are the earnings that the victim would presumably have enjoyed during his life expectancy of 42.37 years, the period between his age at the time of the facts and the end of the life expectancy of a man in Guatemala in 1988 (*supra* 87.4.c). 25% must be deducted from this amount for personal expenses. The resulting amount must be brought to its value at the date of the judgment. Consequently, the amount under this heading is US\$32,545.00 (thirty-two thousand five hundred and forty-five United States dollars).

133. In this case, there are contradictions about who should be considered the beneficiaries of the amounts corresponding to the damage suffered by the victim. On the one hand, based on information provided by the victim's next of kin, the Commission indicated that William Otilio González Rivera had a son. On the other hand, in their brief on reparations the next of kin refer to pecuniary and non-pecuniary damages suffered by the parents and, in general, by the next of kin, without mentioning the existence of a descendant. Lastly, during his statement at the public hearing on reparations, the victim's father mentioned the victim's parents and siblings, without identifying the latter, as beneficiaries. Accordingly, this Court considered it appropriate to request the next of kin to provide proof of the relationship of the siblings, son or next of kin who lived with the victim at the time of the facts, and, as a result, the next of kin submitted five birth certificates of the siblings of William Otilio González Rivera (*supra* 62), and indicated that they were "the only documents that they possess[ed]."

134. In view of the foregoing and in accordance with its criteria, this Court considers that, although the existence of an alleged son of the victim has not been confirmed, should this son exist, he should be awarded the totality of the indemnity to compensate the victim's loss of income.

135. In view of the findings of the previous paragraph, the victim's next of kin and the Commission must provide the State with any information they have, in order to identify the son of William Otilio González Rivera, so that the State may, in turn, verify his existence. If, within one year from the date of notification of this judgment, the son has not been identified, the victim's parents will be the beneficiaries of the compensation indicated in the previous paragraph.

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136. In his testimony during this reparations stage, Salvador González Najarro indicated that, as a result of the death of his son, he and his wife, María Asunción Rivera Velásquez, suffered a series of illnesses that required medical treatment; however, there is no supporting evidence on this point.

137. Reimbursement of the expenses defrayed by the next of kin of William Otilio González Rivera in their search for the victim, the exhumation, transfer of his remains to Jutiapa, funeral expenses and the loss of the victim's business and the merchandise in it at the time has also been requested. In the case *sub judice*, the Court considers that it is not possible to establish a relation of cause and effect between the event that occurred to the victim and the alleged loss of the stall and merchandise.

138. With regard to the other expenses, the Court considers that, in real terms, a general patrimonial damage was caused to the family group owing to what happened to the victim, for reasons that may be attributed to the State. These generated financial, health and other types of problems to the family for which, based on the principle of fairness, reparation should be made, even though the evidence submitted to support the calculation of the damage caused is insufficient and there are contradictions in the amounts indicated. Therefore, the Court proceeds to establish a fair amount of US\$2,000.00 (two thousand United States dollars), to be handed to Salvador González Najarro, as the victim's father, so that he may proceed to distribute this amount in accordance with the expenses that the family incurred.

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Non-pecuniary damage

The arguments of the next of kin

139. In their brief of March 23, 1999, and during the public hearing (*supra* 23 and 41), the victim's next of kin indicated that they had been affected by the treatment that he received and by his death. They therefore requested the amount of Q4,000,000.00 (four million quetzales) as compensation under this heading.

The Commission's arguments

140. In its initial brief, the Commission requested US\$100,000.00 (one hundred thousand United States dollars) for the non-pecuniary damage suffered by both the victim and his next of kin. However, in its supplementary brief, the Commission asked that a fair amount should be established, which took into account the information presented by the victim's next of kin and the evidence submitted by the Commission and that the amount of US\$100,000.00 (one hundred thousand United States dollars) requested "should be considered a minimum". This request was based on the following factors:

- a) the damage produced by the physical and mental trauma suffered by the victim owing to the abduction, signs of beating, cuts and burns that were present on different parts of his body, including the face, and his subsequent assassination; and
- b) the psychological suffering and distress that his next of kin experienced owing, on the one hand, to the unsuccessful search for the victim, the abandonment of his body on a path and the subsequent identification, at which time they could observe the severe injuries suffered by the victim and, on the other, to the impunity that followed the events.

The State's arguments

141. The State indicated that, under this heading, it considered the amount of US\$10,000.00 (ten thousand United States dollars) to be appropriate; to be given to the "victim's legal heirs."

The considerations of the Court

142. This Court has already indicated the general criteria that regulate reparation for non-pecuniary damage (*supra* 104 and 105), and these must taken into consideration also in the case of William Otilio González Rivera. Since he was subjected to aggression and abuse (unlawful detention, torture and death), it is natural that he experienced profound physical and mental suffering, which extends to the closest members of his family, particularly those who had a close affective relationship with the victim. The Court considers that no evidence is required to reach this conclusion

143. The victim's parents and alleged son experienced the situation mentioned in the previous paragraph and the Court must presume the repercussions that the grave violations committed against González Rivera had on them. This presumption has not been disproved by the State and, therefore, it is in order to grant compensatory damages for non-pecuniary damage to the said next of kin. However, the identity of the son of William Otilio González Rivera has not been proved during this proceeding; consequently his existence must be authenticated before the State, so that the reparations ordered may be made effective (*supra* 134 and 135).

144. Regarding the victim's siblings, as members of the family, it must be considered that they were not be indifferent to the suffering of William Otilio González Rivera, despite the objection posed by the State (*supra* 110). Therefore, based on the principle of fairness, the Court establishes a compensation for non-pecuniary damage of US\$5,000.00 (five thousand United States dollars) for the González Rivera siblings.

145. In view of the foregoing, the Court considers that the total amount of US\$25,000.00 (twenty-five thousand United States dollars) is fair reparation for the non-pecuniary damage suffered by the victim and his next of kin. This amount must be distributed as follows: US\$20,000.00 (twenty thousand United States dollars) divided equally between the parents and alleged son of William Otilio González Rivera, taking into account the considerations in paragraphs 133 to 135; in other words, should it be impossible to determine the existence of and identify the said son within one year, the amount that corresponds to him will proportionately increase the compensation of the victim's parents; and the amount of US\$1,000.00 (one thousand United States dollars) to each of the siblings, Santos Hugo, José Alfredo, Julio Moises, Anatanahel and Leydi Rosibel, all González Rivera.

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PABLO CORADO BARRIENTOS

Pecuniary damage

The arguments of the next of kin

146. Regarding "pecuniary damage", the next of kin of Pablo Corado Barrientos endorsed the arguments of the Commission and then included two items in their communication of June 11, 1999:

- a) the victim's loss of earnings as a vegetable seller in Guatemala City. Lacking evidence about the victim's income, they stated that they endorsed the calculation of the amount made by the Commission; and
- b) with regard to other losses incurred by the next of kin, they indicated the financial support that his mother and his brother received from the victim and that, as a direct consequence of the facts, his mother had to work as a maid to provide the income that the victim had given them. They also indicated that what happened to Pablo Corado Barrientos led to his brother abandoning school and also to the abandonment of the project to build a house and expand the vegetable selling business. Owing to the foregoing, they considered that 50% should be added to the amount claimed by the

Commission for the victim's loss of earnings, giving a total of US\$24,895.25 (twenty-four thousand eight hundred and ninety-five United States dollars and twenty-five cents).

The Commission's arguments

147. In its briefs of August 31, 1998, and August 2, 1999, the Commission indicated that two items should be included under the general heading of "pecuniary damage":

a) regarding the loss of earnings of Pablo Corado Barrientos, it underlined that the life expectancy of a man in Guatemala was 45.59 years, that the victim worked in his own business selling vegetables at the time of the facts and that his mother and one brother, to whom he provided financial assistance, depended on his income. In its first brief, the Commission indicated that, according to the International Labor Organization data, in 1988, a worker in the retail/wholesale sector would have had a monthly wage of Q434.82 (four hundred and thirty-four quetzales and eighty-two cents), and requested a compensation totaling US\$49,791.85 (forty-nine thousand seven hundred and ninety-one United States dollars and eighty-five cents). In its supplementary brief, the Commission indicated that this calculation represented a "minimum threshold, because it did not have more specific information at this time"; and

b) with regard to other losses suffered by the next of kin, the Commission indicated that it had very little information.

The State's arguments

148. The State contested the claims and the calculations made by the next of kin of Pablo Corado Barrientos and the Commission, observing the following, among other matters:

a) with regard to the victim's loss of earnings, it was not possible to confirm that his activity was that of a retailer, because this is not recorded in any public register, and he appears as a farm worker on his identity card, which is the only existing document. Therefore, it considers that the salary established by the Ministry of Labor and Social Insurance for the latter activity should be applied: this is Q199.80 (one hundred and ninety-nine quetzales and eighty cents); also, according to the National Institute of Statistics of Guatemala, the life expectancy for men born between 1960 and 1965 was 46.20 years; and

b) regarding the household's other losses, the State declared that the alleged income of the next of kin was not duly proved; that a relation of cause and effect had not been established between the facts and the household's loss of support; and that this item was not included in the reparations brief.

The considerations of the Court

149. According to the birth certificate of Pablo Corado Barrientos and the certification of his identity card issued by the Municipal Secretary of the Public Registry of the town of El Adelanto, Department of Jutiapa, on May 19, 2000, the victim was born on March 10, 1963; since the victim died on February 10, 1988, according to the judgment on merits delivered by this Court, he was 24.9 years of age at the time of the facts.

150. This Court considers that although the identity document, issued in 1982, shows his occupation as farm laborer, it is reasonable that, over six years, the victim could have changed his occupation and that there was no record of this situation. Added to this, his activity was of an informal nature, so that it was not registered.

151. The judgment of March 8, 1998, established that he was detained (together with William Otilio González Rivera) (*supra* 87.5.a) at a vegetable stall in a market in Guatemala City. In these circumstances, the Court considers that, in view of the victim's occupation, an amount of Q211.20 (two hundred and eleven quetzales and twenty cents), equal to US\$82.82 (eight-two United States dollars and eight-two cents) should be accepted; this amount corresponds to the minimum wage of an informal salesman. The calculation will be made on the basis of 12 salaries a year, plus the corresponding annual bonuses, in accordance with Guatemalan norms (*supra* 87.1.b). These are the earnings that the victim would presumably have enjoyed during his life expectancy of 43.98 years, the period from his age at the time of the facts until the end of the life expectancy of a man in Guatemala in 1988 (*supra* 87.5.c). 25% must be deducted from this amount for personal expenses. The resulting amount must be brought to its value at the date of the judgment. Consequently, the amount under this heading is US\$32,814.00 (thirty-two thousand eight hundred and fourteen United States dollars).

152. In view of the foregoing, and since it is impossible to grant the victim himself compensation for the damage he suffered, it is in keeping with the criteria of this Court (*supra* 84) to grant the amount of US\$32,814.00 (thirty-two thousand eight hundred and fourteen United States dollars) to the mother of Pablo Corado Barrientos (*supra* 87.5.1) as the beneficiary of the victim's loss of earnings.

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153. Compensation has also been requested for the various injuries suffered by the next of kin of Pablo Corado Barrientos (*supra* 146.b), although no specific item of expenditure has been established or proven in relation to the facts that occurred to the victim. In fairness, this Court proceeds to establish an amount of US\$2,000.00 (dos thousand United States dollars) for expenses, to be given to Juana Barrientos Valenzuela, as the victim's mother.

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Non-pecuniary damage

The arguments of the next of kin

154. In their brief of June 11, 1999, the victim's next of kin claimed that it was difficult to estimate the non-pecuniary damage caused by a crime such as that

suffered by the victim, which has remained in the most complete impunity. However, they asked that the circumstances of the facts should be considered, together with the gravity of the violations and the suffering caused to the victim. Considering this, and also that the next of kin do not know the whereabouts of the victim's remains, they requested a total of US\$200,000.00 (two hundred thousand United States dollars).

The Commission's arguments

155. The Commission requested US\$100,000.00 (one hundred thousand United States dollars) for the non-pecuniary damage suffered by both the victim and his next of kin, owing to the following factors:

- a) the damage produced by the physical and mental trauma that the victim suffered owing to the abduction, beating, cuts and burns that he presented in different parts of his body, and his subsequent assassination; and
- b) the psychological suffering and distress suffered by the next of kin, due to the unsuccessful search for the victim and not knowing who had perpetrated this harm and why, a situation that continues to this day.

The State's arguments

156. The State indicated that it considered the amount of US\$10,000.00 (ten thousand United States dollars) to be appropriate; to be delivered to the "victim's legal heirs."

The considerations of the Court

157. This Court has indicated the general criteria that regulate reparation of non-pecuniary damage, which should also be considered in this particular case (*supra* 104 and 105). The non-pecuniary damage inflicted on the victim is evident, because it is only human nature that any person subjected to acts of aggression and abuse, such as those he endured (unlawful detention, torture and death), experiences profound physical and mental suffering, which extends to the closest members of the family, particularly those who had a close, affective relationship with the victim. The Court considers that no evidence is required to reach this conclusion.

158. The victim's mother experienced the situation mentioned in the previous paragraph, and the Court must presume that the grave violations committed against Pablo Corado Barrientos had repercussion on her. This presumption has not been disproved by the State, so that it is in order to establish compensatory damages for non-pecuniary damage for his mother and the Court considers that US\$20,000.00 (twenty thousand United States dollars) is a fair amount. As it is impossible to grant the victim himself this compensation, this amount must be delivered to his mother, Juana Barrientos Valenzuela.

159. With regard to the victim's siblings, the Court observes that they did not participate in the search for the victim's body, or obtaining it, or in his subsequent burial, according to evidence in the proceeding on merits before this Court. However, based on the principle of fairness, the Court establishes reparation for non-pecuniary damage of US\$2,000.00 (two thousand United States dollars) for the Corado Barrientos siblings (*supra* 110).

160. In view of the foregoing, this Court, in fairness, establishes a total amount of US\$22,000.00 (twenty-two thousand United States dollars) for the non-pecuniary damage caused to the victim and his next of kin. This amount must be distributed as follows: US\$20,000.00 (twenty thousand United States dollars) to his mother, Juana Barrientos Valenzuela, and US\$1,000.00 (one thousand United States dollars) to each of his siblings, Francisca and Tino Corado Barrientos.

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MANUEL DE JESÚS GONZÁLEZ LÓPEZ

Pecuniary damage

The arguments of the next of kin

161. Under the general heading of pecuniary damage, the next of kin included two items in their brief of September 1, 1998:

a) the loss of earnings of Manuel de Jesús González López during 41.57 years (from 29 to 70.57 years of age) as a car mechanic, with a monthly income of approximately Q598.82 (five hundred and ninety-eight quetzales and eight-two cents) plus two annual bonuses equal to two months wages, which would add up to an annual salary at the time of the facts of Q8,400.00 (eight thousand four hundred quetzales) "or its equivalent of US\$5,500.00" (five thousand five hundred United States dollars) in 1998. In this respect, it indicated that the figure requested was very conservative, because he had just received an increase in salary at work and was studying human relations which would have further improved his income; and

b) the expenses that the next of kin incurred, including travel expenses for the victim's wife to travel from Guatemala to Los Angeles, United States, amounting to US\$1,620.00 (one thousand six hundred and twenty United States dollars). In a subsequent brief and during the public hearing, the representative of the next of kin explained that the amount was US\$1,720.00 (one thousand seven hundred and twenty dollars) and not US\$1,620.00 (one thousand six hundred and twenty United States dollars) as had been reported in the initial brief.

The Commission's arguments

162. In its briefs of August 31, 1998, and August 2, 1999, the Commission indicated the following under the general heading of pecuniary damage:

a) regarding the loss of earnings of Manuel de Jesús González López, it underlined that the life expectancy of a man in Guatemala at the time of the facts was 46.53 additional years, and that the victim worked as a mechanic at the time of the facts. In its second brief, the Commission endorsed the income claimed by the next of kin and adjusted it to the criteria established by this Court, in particular, with regard to the deduction of 25% for personal use and the addition of interest; and

b) with regard to the other expenses, the Commission indicated in its first brief that, on the day following the victim's abduction, his wife took steps to lodge a complaint about the fact before the State institutions, she started the search, identified the body when it appeared, and made the burial arrangements. The Commission also claimed that some time later she was robbed and then decided to leave Guatemala. The Commission endorsed the amounts indicated by the victim's next of kin under this heading.

The State's arguments

163. The State contested the claims and the calculations made by the next of kin of Manuel de Jesús González López and the Commission, observing the following, among other matters:

a) regarding the victim's loss of earnings, it indicated that no evidence had been submitted to prove that the victim was an experienced mechanic and that, to the contrary, his identity card established his occupation as that of a laborer; accordingly, it requested that the minimum salary for the construction and repair industry should be applied, which corresponded to Q180.00 (one hundred and eighty quetzales) a month in 1988 for 14.6 years as the life expectancy (from 29.1 to 43.70 years of age); and

b) regarding the other expenses that the victim's family had incurred, it rejected the connection made by the Commission between the robbery suffered by his surviving wife and the violations suffered by the victim, since they were unrelated events. It also declared that the Court should apply the principle of prudence, because it did not have sufficient documents or evidence about the funeral expenses and the need for the victim's wife to move to the United States.

The considerations of the Court

164. Identity card No. 590279 of Manuel de Jesús González López establishes December 29, 1958, as his date of birth and, according to evidence submitted to this Court in the judgment on merits, he was detained by agents of the State on February 11, 1988, and found dead on February 13 that year, which suggests that the victim was 29.1 years of age at the time of the facts (*supra* 87.6.d).

165. The Court observes that although his identity card gives his profession as a laborer, the victim's death certificate and the birth certificates of his three children, documents that are also issued by State institutions, state his occupation to be a mechanic. This information concurs with the declarations of his wife, at both the hearing on merits and the hearing on reparations. Lastly, this status is supported by a certificate issued by Ramiro R. Velásquez on August 31, 1998, which establishes that the victim worked for the company *Gustavo Molina & Cía. Ltda.* and that for the month before his death, January 1988, he had earned a salary of Q598.82 (five hundred ninety-eight quetzales and eight-two cents).

166. Based on these antecedents, the Court recognizes the amount of Q598.82 (five hundred ninety-eight quetzales and eight-two cents), equal to US\$234.75 (two hundred and thirty-four United States dollars and seventy-five cents), as the monthly salary of a mechanic. The calculation will be made on the basis of 12 salaries a year, plus the corresponding annual bonuses, in accordance with

Guatemalan norms (*supra* 87.1.b). These are the earnings that the victim would presumably have enjoyed during his life expectancy of 40.05 years, the period from his age at the time of the facts until the end of the life expectancy of a man in Guatemala in 1988 (*supra* 87.G.d). 25% of this amount must be deducted for personal expenses. The resulting amount must be brought to its value at the date of the judgment. Consequently, the amount under this heading is US\$78,372.00 (seventy-eight thousand three hundred and seventy-two United States dollars).

167. The compensatory amount established in the previous paragraph shall be delivered to be distributed as follows (*supra* 83): half the amount to his wife, María Elizabeth Chinchilla, equal to US\$39,186.00 (thirty-nine thousand one hundred and eight-six United States dollars) and the other half, that is, US\$39,186.00 (thirty-nine thousand one hundred and eight-six United States dollars) to be shared equally between the victim's three children: Karen Paola, Silvia Argentina and Manuel Alberto, all Gonzalez Chinchilla; in other words, US\$13,062.00 (thirteen thousand and sixty-two United States dollars) each.

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168. With regard to the expenses incurred by the victim's next of kin as a result of the complaint lodged before the State institutions, the search for the victim and the corresponding burial, the Court, in fairness, will consider a compensatory amount for this effect, since the Commission did not calculate a determined amount and there is insufficient evidence on this point.

169. As for the robbery of the González Chinchilla family's belongings, it is noted that Mrs. Chinchilla herself, when giving testimony before this Court, doubted that there was a connection between this event and what happened to her husband, so that this claim is no longer valid. Regarding the wife of the victim's move to the United States, this Corte considers that there is a relation of cause and effect between what happened to the victim and this fact.

170. In view of the foregoing, the Court establishes the fair amount of US\$3,000.00 (three thousand United States dollars) for María Elizabeth Chinchilla.

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Non-pecuniary damage

Arguments of the victim's next of kin and the Commission

171. The victim's next of kin and the Commission requested the amount of US\$110,000.00 (one hundred and ten thousand United States dollars) for non-pecuniary damage, based on the following factors:

- a) the clandestine detention, isolation, deliberate ill-treatment and intention of causing grave physical and mental pain, which was reflected in the state in which the victim's body was found (signs of hanging, cigarette

burns on all parts of the body and profound wounds in the face), caused him acute physical and mental suffering; and

b) the psychological suffering and distress that the next of kin suffered because the victim was unlawfully detained in front of his wife; the search for Mr. González López was unsuccessful; the body of the victim showed signs of abuse; the children have suffered a great deal owing to the loss of their father; and the continuing impunity in this case. All this, added to the mother's move to the United States and, recently, that of one of her daughters also, led to emotional damage to both his wife and his three children.

The State's arguments

172. The State indicated that it considered US\$10,000.00 (ten thousand United States dollars) to be an appropriate amount; to be delivered to the "victim's legal heirs."

The considerations of the Court

173. The general criteria established by this Court for the reparation of non-pecuniary damage (*supra* 104 and 105) will be applied in the case *sub judice*. The non-pecuniary damage inflicted on the victim is evident, since he was unlawfully detained, tortured and assassinated. The Court considers that no evidence is required to reach the conclusion that a human being in this situation experiences intense physical and mental suffering and it recognizes that this suffering extends to the closest members of his family, particularly those who were in close, affective contact with the victim.

174. The victim's wife and children experienced such circumstances; in the judgment on merits, it was established that the victim was detained and abused in front of his wife (*supra* 70); that she carried out an intensive search and then found the victim's mutilated body; subsequently and owing to what had happened to her husband, she was forced to abandon her country, leaving her three minor children in the care of their grandmother, so that they not only lost their father, but were also deprived of their mother (*supra* 87.6.1.b and 65.g), who, during all these years and at great personal cost, has continued to support her children, even though she has been unable to see them for a long time.

175. In view of the foregoing, the Court establishes, in fairness, a total amount of US\$40,000.00 (forty thousand United States dollars) for non-pecuniary damage, to be delivered in equal parts to María Elizabeth Chinchilla, the victim's wife and to his children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla; in other words, US\$10,000.00 (ten thousand United States dollars) each.

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ERICK LEONARDO CHINCHILLA

The arguments of the next of kin

176. In their brief of April 30, 1999, the next of kin indicated that, as a result of the facts, the victim's mother had suffered physical and mental damage that prevented her from continuing with the bakery that supported the family and of which the victim was the administrator. Owing to this, they requested an amount of US\$35,000.00 (thirty- five thousand United States dollars). Also, the lack of investigation into the victim's disappearance has seriously affected the physical and mental health of the next of kin in general, and they therefore requested US\$15,000.00 (fifteen thousand United States dollars) for the mother and US\$10,000.00 (ten thousand United States dollars) for each of the victim's four siblings.

The Commission's arguments

177. In its briefs of August 31, 1998, and August 2, 1999, the Commission indicated that, owing to the violation declared by the Court with regard to this victim, that is, for not initiating the corresponding judicial proceeding and obtaining an effective official investigation into the victim's assassination, a general compensatory amount of US\$15,000.00 (fifteen thousand United States dollars) should be granted.

The State's arguments

178. In its communication of June 13, 2000, the State declared that it did not share the Commission's opinion, because the State's obligation did not entail a specific positive result to an investigation into the death of the victim, but to "provide legal methods to prosecute the crime." However, the State would agree to establishing the amount of the compensation at US\$5,000.00 (five thousand United States dollars).

The considerations of the Court

179. In its judgment on merits, this Court considered that there was insufficient evidence to attribute responsibility for the death of Erick Leonardo Chinchilla to the State⁴⁰. Therefore, with regard to this victim, the Court is unable to condemn the State to pay compensations for facts that do not relate to the declared violation of Article 8(1) of the Convention, which is the case of the next of kin's request for reimbursement for the loss of the family business.

180. Owing to the nature of the declared violation in this case, the Court considers, in fairness, that it is appropriate to establish a compensation in the sum of US\$8,000.00 (eight thousand United States dollars), an amount to be delivered to the mother of Erick Leonardo Chinchilla, María Luisa Chinchilla Ruano.

181. As for the dispute between the parties about the investigation in the judicial sphere, this Court will refer to that point in the section corresponding to other forms of reparation (*infra X*).

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OSCAR VÁSQUEZ AND AUGUSTO ANGÁRITA RAMÍREZ

⁴⁰ Cf. *Paniagua Morales et al. case*, *supra* note 2, para. 121.

The victim's arguments

182. The next of kin of Oscar Vásquez agreed with the facts set out by the Commission (*infra* 183), and added that the victim's son, who gave testimony before the Inter-American Court, was unlawfully detained and severely beaten by a group of armed men, which caused him to flee the country. Also, "other members of the family abandoned their home" for safety reasons. Consequently, the family requested a compensation of US\$25,000.00 (twenty-five thousand United States dollars).

The Commission's arguments

183. The Commission requested a general compensation of US\$25,000.00 (twenty-five thousand United States dollars) and US\$20,000.00 (twenty thousand United States dollars), respectively, for the victims, Oscar Vásquez and Augusto Angárita Ramírez, owing to their unlawful detention and the inhuman treatment that "they suffered at the hands of agents of the Treasury Police." It also underlined the threats and attacks suffered by both Oscar Vásquez and his family, and "the fact that [Vásquez] was assassinated just before the final hearing [before the Commission] prior to the preparation of the report under Article 50" of the American Convention.

The State's arguments

184. The State indicated that it considered US\$10,000.00 (ten thousand United States dollars) to be an appropriate amount "in both cases" to reimburse the damage that the State might have caused the victims.

The considerations of the Court

185. With regard to Augusto Angárita Ramírez, in the judgment on merits of March 8, 1998, the Court considered that his right to personal freedom had been violated (Article 7 of the Convention) owing to his detention, and also his right to humane treatment (Article 5(1) and 5(2) of the Convention), since he had been subjected to cruel, inhuman and degrading treatment.

186. Regarding Oscar Vásquez, the Court did not consider that there had been a violation of his personal liberty (Article 7 of the Convention); in the said judgment, it established that the State violated his right to humane treatment (Article 5(1) and 5(2) of the Convention). Furthermore, from the body of evidence concerning Oscar Vásquez which appears in the file, there is no indication that there is a relation of cause and effect between the violation declared by the Court and the damage claimed by the victim's next of kin, such as the detention of his son and the latter's move.

187. In view of the foregoing, the Court considers that in the cases of Augusto Angárita Ramírez and Oscar Vásquez, a compensation should be determined for the damage that the victims suffered owing to the violations of their rights by agents of the State. This Court considers that it is fair to establish a compensatory amount of US\$8,000.00 (eight thousand United States dollars) for each of them (*supra* 83). This compensation shall be given directly to the victims, or their heirs, if applicable.

188. The Court observes that Augusto Angárita Ramírez did not appear before the Court in person to submit his claims, despite the measures taken to locate the victims in the case *sub judice* in Guatemala (*supra* 13).

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DORIS TORRES GIL AND MARCO ANTONIO MONTES LETONA

The Commission's arguments

189. The Commission requested US\$15,000.00 (fifteen thousand United States dollars) as compensation for each of them, based on the fact that they had been arbitrarily detained, so that they had the right to their lost salaries and compensation for damage to their reputation and for the emotional effects of the violations.

The State's arguments

190. The State indicated that the fact that these persons were acquitted in the domestic sphere constitutes the principal reparation that they could obtain. However, it established that, in view of the financial losses and damage that were caused, it considered it appropriate to grant a compensatory amount of US\$5,000.00 (five thousand United States dollars).

The considerations of the Court

191. Although measures were taken to locate the victims in this case, Doris Torres Gil and Marco Antonio Montes Letona, in Guatemala (*supra* 13), these persons did not appear personally and neither did they submit their claims to the Court.

192. With regard to Doris Torres Gil and Marco Antonio Montes Letona, in the judgment on merits of March 8, 1998, the Court considered that their right to personal liberty (Article 7 of the Convention) had been violated owing to their detention. And although they were later acquitted in the proceeding before Guatemalan justice, this does not eliminate the violation of the said right.

193. In view of the foregoing, the Court considers that it is fair to establish the amount of US\$3,000.00 (three thousand United States dollars) for Doris Torres Gil and Marco Antonio Montes Letona as compensation for the damage caused to each of them (*supra* 83). The victims or their heirs, if applicable, shall receive this compensation directly.

X OTHER FORMS OF REPARATION

The arguments of the next of kin and the Commission

194. Both the Commission and the next of kin of Erick Leonardo Chinchilla and Julián Salomón Gómez Ayala requested, as an essential part of the reparation, that the State should conduct a real and effective investigation to identify the persons responsible for the violations and, eventually, punish them. During the public

hearing, the Commission added that “a central and essential component of [the] reparation is that justice should be done, that there should be investigation and punishment” and, with regard to the *caso sub judice*, it is important that the State take some action against the 27 persons accused in the domestic sphere. Lastly, the Commission observed that the State had taken no action with regard to the assassinations of the witnesses related to the case.

195. The Commission also indicated that the State should establish and guarantee the operation of a register of detentions. This register should include: identification of those detained, reason for the detention, competent authority, hour of entry and of liberation, and information on the arrest warrant.

196. Moreover, the Commission requested the State to provide the necessary resources to locate, exhume and transfer the remains of Pablo Corado Barrientos to the village where his family lives in the Department of Jutiapa.

The State's arguments

197. Guatemala recognized that State officials “failed to conduct an exhaustive and impartial investigation”; however, it indicated that it is holding discussions with the petitioners with a view “to undertaking actions in order to reopen the pertinent judicial proceedings, in those cases where there are no antecedents and/or rechannel those that have already been opened when the State of Guatemala has omitted an adequate judicial investigation.” It also expressed its agreement to providing reparations of a “pecuniary or other nature in those cases that merit this,” such as “a public declaration of reprobation for practices that violate human rights, the recovery of the memory of the victims, the investigation into the facts that led to the human rights violations and the prosecution of those who are found responsible for these regrettable facts.”

The considerations of the Court

198. The American Convention guarantees access to justice to all persons in order to protect their rights and it is the obligation of the States Parties to prevent, investigate, identify and punish the authors of human rights violations and their accomplices⁴¹.

199. In accordance with the sixth operative paragraph of the judgment on merits delivered on March 8, 1998, the State of Guatemala must conduct an effective investigation to identify the persons responsible for the human rights violations declared in this judgment and punish them, when appropriate. The Court has stated that the obligation concerning the guarantee and effectiveness of the rights and freedoms established in the Convention is autonomous and differs from the obligation to repair. This is because, while the State is obliged to investigate the facts and punish those responsible, the victim or, in his absence, his next of kin may waive the measures available to them to repair the damage caused⁴². In brief, the State that leaves human rights violations unpunished violates its obligation to

⁴¹ Cf. *Blake case, Reparations*, *supra* note 21, para. 61; and *Loayza Tamayo case, Reparations*, *supra* note 2, para. 168.

⁴² Cf. *Garrido and Baigorria case, Reparations*, *supra* note 22, para. 72.

guarantee the free and full exercise of the rights of the persons subject to its jurisdiction⁴³.

200. On repeated opportunities, this Court has insisted on the right of the victims' next of kin to know what happened⁴⁴, and the identity of the State agents responsible for the facts⁴⁵. As this Court has indicated, "the investigation of the facts and the punishment of those responsible, [...] is an obligation that corresponds to the State whenever a human rights violation has occurred and this obligation must be complied with seriously and not as a mere formality"⁴⁶.

201. As the Court stated in the merits stage of this case, impunity signifies "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violating the rights protected by the American Convention". The State

[...] is obliged to combat this situation by all available legal means, because impunity leads to the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin⁴⁷.

202. Consequently, the State is obliged to investigate the facts that generated the violations of the American Convention in this case, identify those responsible and punish them.

203. Although, in its judgment on merits, the Court did not decide that Guatemala had violated Article 2 of the Convention – the provision establishing that, among the general obligations, the State must adopt "the legislative or other measures that are necessary to make effective" the rights recognized in the Convention – this is an obligation that the State must fulfill because it has ratified this normative instrument. Accordingly, this Court considers that, in accordance with Article 2 of the Convention, Guatemala must implement in its domestic law, the legislative, administrative and any other kind of measures that are necessary in order to adapt Guatemalan legislation to the provisions of the Convention on the rights to personal liberty, to a fair trial and to judicial guarantees, in order to avoid cases such as this one in the future⁴⁸. This Court considers that, should it not exist already, a register of detainees should be established, such as the one proposed by the Commission.

⁴³ Cf. *Bámaca Velásquez case*, *supra* note 2, para. 129; *Blake case, Reparations*, *supra* note 21, para. 121 and third operative paragraph; *Suárez Rosero case, Reparations*, *supra* note 19, para. 107 and sixth operative paragraph; *Castillo Páez case, Reparations*, *supra* note 2, para. 90; *Garrido and Baigorria case, Reparations*, *supra* note 22, para. 73; *Paniagua Morales et al. case*, *supra* note 2, para. 178 and sixth operative paragraph; *Neira Alegría et al. case, Reparations*, *supra* note 19, para. 69 and fourth operative paragraph; *El Amparo case, Reparations*, *supra* note 19, para. 61 and fourth operative paragraph; *Caballero Delgado and Santana case*. Judgment of December 8, 1995. Series C No. 22, paras. 58, 69 and fifth operative paragraph; *Godínez Cruz case*. Judgment of January 20, 1989. Series C No. 5, para. 184; and *Velásquez Rodríguez case*. Judgment of July 29, 1988. Series C No. 4, para. 174.

⁴⁴ Cf. *Aloeboetoe et al. case, Reparations*, *supra* note 19, para. 109; *Godínez Cruz case*, *supra* note 43, para. 191; and *Velásquez Rodríguez case*, *supra* note 43, para. 181.

⁴⁵ Cf. *Paniagua Morales et al. case*, *supra* note 2, para. 173.

⁴⁶ *Suárez Rosero case, Reparations*, *supra* note 19, para. 79; and *El Amparo case, Reparations*, *supra* note 19, para. 61.

⁴⁷ *Paniagua Morales et al. case*, *supra* note 2, para. 173. Likewise, see *Loayza Tamayo case, Reparations*, *supra* note 2, para. 170; *Blake case, Reparations*, *supra* note 21, para. 64.

⁴⁸ Cf. *Paniagua Morales et al. case*, *supra* note 2, para. 173.

204. With regard to the request for the transfer of the body of Pablo Corado Barrientos, on many occasions this Court has indicated that the next of kin have the right to know the whereabouts of the remains of a loved one and has established that this "represents a fair expectation that the State must satisfy insofar as possible"⁴⁹. Accordingly, this Court considers that Guatemala must provide the necessary conditions to transfer the mortal remains of the victim to the place chosen by his next of kin, at no cost to them.

XI COSTS AND EXPENSES

The arguments of the victims

205. In the instant case, some of the next of kin of the victims were represented or received legal assistance from private lawyers during their participation in the reparations stage before the Court (*supra* 87.2.2, 87.4.2, 87.5.2, 87.6.2, 87.7 and 87.8.c).

206. In this respect, the next of kin of Anna Elizabeth Paniagua Morales, Oscar Vásquez and Manuel de Jesús González López were represented in the inter-American jurisdiction by the lawyer, Mark Martel, who requested payment of US\$30,000.00 (thirty thousand United States dollars) as compensation for legal expenses and fees resulting from this case.

207. Also, the next of kin of Erick Leonardo Chinchilla and Pablo Corado Barrientos had the legal assistance of the lawyer, René Argueta Beltrán, during part of this stage and estimated at US\$15,000.00 (fifteen thousand United States dollars) the amount corresponding to the advice received by each family.

208. Mr. González Najarro, father of William Otilio González Rivera, also received legal assistance from the lawyer, Avilio Carrillo Martínez, during part of this stage; however, he does not mention this item in his brief on reparations.

209. The next of kin of Julián Salomón Gómez Ayala indicated in their brief that they had not received the professional services of a lawyer and did not refer to any other type of legal expenses.

The Commission's arguments

210. In its application, the Commission requested the Court to order the State to pay any reasonable costs and expenses that the victims and their next of kin had incurred in order to process this case before the domestic jurisdiction and before the organs of the regional system, and also lawyer's fees for their legal representation. This petition was repeated in its briefs on reparations, in which the Commission endorsed the calculations indicated by the next of kin of the victims and considered that the victims, their next of kin and lawyers should not have to absorb expenses to "make justice effective when this has been denied by the State."

⁴⁹ Cf. *Neira Alegría et al. case, Reparations*, *supra* note 19, para. 69; and *Aloboetoe et al. case, Reparations*, *supra* note 19, para. 109.

The State's arguments

211. The State expressed its agreement to recognizing payment “to the person(s) who have effectively provided legal assistance, directed and sponsored this case,” in an amount equal to a tenth of the total compensation received in this judgment on reparations.

The considerations of the Court

212. It should be understood that costs and expenses are included within the concept of reparation established in Article 63(1) of the American Convention, because the measures taken by the victim or victims, their successors or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated when the judgment of condemnation is delivered. This Court therefore considers that the costs referred to in Article 55(1) of the Rules of Procedure also include the various necessary and reasonable expenses that the victim or victims incur to have access to the inter-American system for the protection of human rights. The fees of those who provide legal assistance are included among the expenses. Consequently, the Court must assess prudently the scope of the costs and expenses, bearing in mind the particular circumstances of the case, the nature of the international jurisdiction for the protection of human rights and the characteristics of the respective proceedings, which are unique and differ from those of other national or international proceedings⁵⁰.

213. As in previous cases, the *quantum* for this item may be established on the basis of the principle of fairness⁵¹, even in the absence of evidence concerning the precise amount of the expenses that the parties have incurred⁵², provided that the amounts respond to the criteria of reasonableness and proportionality.

214. As for the State’s position that the costs should be determined in proportion to the amount of the compensation obtained by the victims or their next of kin, the Court considers that this procedure is inadequate, since there are other elements that allow the quality and pertinence of the measures taken to be assessed, such as the contribution of evidence to support the facts set forth by the parties, the legal advice provided to those they represent, the diligence in executing the various procedural measures before the Court and the degree of knowledge of international jurisprudence⁵³.

⁵⁰ Cf. *Suárez Rosero case, Reparations, supra* note 19, para. 97; *Loayza Tamayo case, Reparations, supra* note 2, paras. 176 and 177; and *Garrido and Baigorria case, Reparations, supra* note 22, paras. 79, 80 and 81.

⁵¹ Cf. *“The Last Temptation of Christ” case (Olmedo Bustos et al.), supra* note 2, para. 100; *Baena Ricardo et al. case, supra* note 2, para. 208; *The Constitutional Court case, supra* note 2, para. 125; *Suárez Rosero case, Reparations, supra* note 19, paras. 92 and 97; *Castillo Páez case, Reparations, supra* note 2, para. 112; and *Garrido and Baigorria case, Reparations, supra* note 22, para. 82.

⁵² Cf. *Suárez Rosero case, Reparations, supra* note 19, paras. 92 and 99.

⁵³ Cf. *Garrido and Baigorria case, Reparations, supra* note 22, para. 83.

215. When determining costs and expenses, the Court will not make a decision with regard to the next of kin of Julián Salomón Gómez Ayala, the Center for Justice and International Law and Human Rights Watch/Americas, as they did not submit any requests in this respect (*supra* 5).

216. Based on the foregoing, the Court considers that, in order to determine the fees of the lawyer, Mark Martel, it is necessary to take into consideration his participation as the legal representative of the next of kin of Anna Elizabeth Paniagua Morales, Oscar Vásquez and Manuel de Jesús González López from the first stages of the case before the Commission, and also during all its processing before the Court. With regard to the lawyers, René Argueta Beltrán and Avilio Carrillo Martínez, the amount should correspond to their subsequent involvement in the case, once this reparations stage had been initiated. Also, with regard to the lawyer, René Argueta, his representation of the Corado Barrientos and González Chinchilla families must be taken into account.

217. In view of the foregoing, the Court establishes the costs and expenses corresponding to the lawyer, Mark Martel, representative of the next of kin of Anna Elizabeth Paniagua Morales, Oscar Vásquez and Manuel de Jesús González López, in the amount of US\$20,000.00 (twenty thousand United States dollars); for the lawyer, René Argueta Beltrán, representative of the next of kin of Erick Leonardo Chinchilla and Pablo Corado Barrientos, the Court considers that it is fair to grant him US\$2,000.00 (two thousand United States dollars) for this item; and for the lawyer, Avilio Carrillo Martínez, representative of the next of kin of William Otilio González Rivera, it establishes the amount of US\$1,000.00 (one thousand United States dollars).

XII FORM OF COMPLIANCE

The Commission's arguments

218. The Commission requested the Court to order that:

- a) Guatemala be obliged to pay the compensatory amounts that are established within four months of the delivery of the respective judgment;
- b) the compensation be paid in United States dollars or the equivalent amount in quetzales, the Guatemalan national currency, and also that the need to maintain the purchasing power of the compensation be considered, in view of the devaluation and depreciation of that currency;
- c) the compensation be free of all current and future taxes; and
- d) in its judgment, it establish that it will maintain its competence in this case until it has been certified that all the measures of reparation ordered have been complied with.

219. The State and the representatives of the next of kin of the victims made no reference to this point.

The considerations of the Court

220. In order to comply with this judgment, the State must pay the compensatory damages, reimburse the costs and expenses and adopt the other measures that have been ordered within six months of notification of this judgment.

221. The payment of the compensatory damages established for the adult next of kin of the victims, or for the victims, as is the case, shall be made directly to them. Should any of them have died or die, the payment shall be made to their heirs.

222. The expenses generated by the measures taken by the next of kin of the victims and their representatives and the costs resulting from the internal proceedings and the international proceeding before the inter-American protection system shall be paid to Mark Martel, René Argueta Beltrán and Avilio Carrillo Martínez, as previously determined (*supra* 217).

223. Regarding the compensation for the under age beneficiaries, the State shall set up an account or a deposit certificate in a solvent Guatemalan banking institution in United States dollars or the equivalent in Guatemalan currency, within six months and in the most favorable conditions that legislation and banking practice allow. The benefits deriving from the interest shall increase the capital owed, which shall be delivered to the minors, María Elisa Meza Paniagua, Julio Salomón Gómez Flores, Manuel Alberto González Chinchilla and the alleged son of William Otilio González Rivera, in its totality, when they reach their majority. In case of death, the right shall be transmitted to the corresponding heirs. With regard to the alleged son of William Otilio González Rivera, the prior procedure to establish his identity set forth in paragraphs 133, 134, 135 and 145 of this judgment must be taken into account.

224. If, for any reason, it should not be possible for the adult beneficiaries of the compensatory payments to receive them within the indicated period of six months, the State must deposit the amounts in their favor in an account or a deposit certificate in a solvent financial institution, in United States dollars or the equivalent in Guatemalan currency, in the most favorable financial conditions. If after ten years, the compensation has not been claimed, the amount will be returned to the State of Guatemala, with the interest earned.

225. The State may comply with its obligations by making the payments in United States dollars or the equivalent in Guatemalan currency, using the exchange rate between these two currencies in force in the New York, United States, market on the day before the payment, to make the calculation.

226. The payments ordered in this judgment shall be exempt of any current or future tax.

227. Should the State fail to pay the amounts on time, it shall pay interest on the amount owed corresponding to the banking interest on overdue payments in Guatemala.

228. In accordance with its consistent practice, this Court reserves the right to monitor full compliance with this judgment. The case shall be closed once the State has fully complied with all its provisions.

**XIII
OPERATIVE PARAGRAPHS**

229. Therefore,

THE COURT,

DECIDES:

unanimously,

1. To order the State of Guatemala to pay:

A. For Anna Elizabeth Paniagua Morales

a. US\$108,759.00 (one hundred and eight thousand seven hundred and fifty-nine United States dollars)⁵⁴, as compensation for the loss of earnings of Anna Elizabeth Paniagua Morales, and this amount shall be given to her daughter, María Elisa Meza Paniagua;

b. US\$10,000.00 (ten thousand United States dollars)⁵⁵, for the expenses incurred by the family of Anna Elizabeth Paniagua Morales, and this amount shall be given to María Idefonsa Morales Chávez, as the victim's mother so that she may distribute it in accordance with the expenses that the family incurred; and

c. US\$54,000.00 (fifty-four thousand United States dollars)⁵⁶, for non-pecuniary damage caused to Anna Elizabeth Paniagua Morales and to her next of kin, this global amount to be distributed as follows: US\$20,000.00 (twenty thousand United States dollars) for María Elisa Meza Paniagua (the victim's daughter), US\$15,000.00 (fifteen thousand United States dollars) for María Idefonsa Morales Chávez (mother), US\$5,000.00 (five thousand United States dollars) for Antonio Paniagua (father), US\$5,000.00 (five thousand United States dollars) for Blanca Lidia Zamora (the victim's sister-in-law), US\$5,000.00 (five thousand United States dollars) for Alberto Antonio Paniagua Morales (brother) and US\$4,000.00 (four thousand United States dollars), to be distributed equally between the siblings: Blanca Beatriz, Hugo Morani, Elsa Carolina and German Giovanni, all Paniagua Morales.

B. For Julián Salomón Gómez Ayala:

a. US\$25,855.00 (twenty-five thousand eight hundred and fifty-five United States dollars)⁵⁷, as compensation for the loss of earnings of Julián Salomón Gómez Ayala, and this amount shall be divided equally and given to

⁵⁴ Or the equivalent in Guatemalan currency, in accordance with paragraph 225 of this judgment.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

the victim's son, Julio Salomón Gómez Flores, and to his companion, Bertha Violeta Flores Gómez;

b. US\$3,000.00 (three thousand United States dollars)⁵⁸, for the expenses incurred by the next of kin of Julián Salomón Gómez Ayala, and this amount shall be divided equally and given to the victim's parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, and his companion, Bertha Violeta Flores Gómez; and

c. US\$27,000.00 (twenty-seven thousand United States dollars)⁵⁹ as compensation for the non-pecuniary damage caused to Julián Salomón Gómez Ayala and to his next of kin, this global amount to be distributed as follows: US\$20,000.00 (twenty thousand United States dollars), distributed in equal parts to Bertha Violeta Flores Gómez, the victim's companion, Julio Salomón Gómez Flores, his son, and his parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, and the amount of US\$7,000.00 (seven thousand United States dollars) to be distributed in equal parts to the siblings: Danilo Abraham, Deifin Olivia, Ingrid Elizabeth, Israel, Jorge Isaías, Douglas Moises and Lidia Marisa, all Gómez Ayala.

C. For William Otilio González Rivera:

a. US\$32,545.00 (thirty-two thousand five hundred and forty-five United States dollars)⁶⁰ as compensation for the loss of earnings of William Otilio González Rivera, and this amount shall be given to his alleged son, as established in paragraphs 133 to 135 of this judgment;

b. US\$2,000.00 (two thousand United States dollars)⁶¹ for the expenses incurred by the next of kin of William Otilio González Rivera, and this amount shall be given to Salvador González Najarro, as the victim's father, so that he may distribute this amount in accordance with the expenses that the family incurred; and

c. US\$25,000.00 (twenty-five thousand United States dollars)⁶² for the non-pecuniary damage caused to William Otilio González Rivera and his next of kin, this global amount to be distributed as follows: US\$20,000.00 (twenty thousand United States dollars), allocated in equal parts to Salvador González Najarro and María Asunción Rivera Velásquez, the victim's parents and to his alleged son, as established in paragraph 145 of this judgment; and the amount of US\$5,000.00 (five thousand United States dollars), to be distributed in equal parts between the siblings Santos Hugo, José Alfredo, Julio Moises, Anatanahel and Leidy Rosibel, all González Rivera.

D. For Pablo Corado Barrientos:

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

- a. US\$32,814.00 (thirty-two thousand eight hundred and fourteen United States dollars)⁶³ as compensation for the loss of earnings of Pablo Corado Barrientos, and this amount shall be given to Juana Barrientos Valenzuela, the victim's mother.
- b. US\$2,000.00 (dos thousand United States dollars)⁶⁴ for the expenses incurred by the next of kin of Pablo Corado Barrientos, and this amount shall be given to Juana Barrientos Valenzuela, as the victim's mother.
- c. US\$22,000.00 (twenty-two thousand United States dollars)⁶⁵ for the non-pecuniary damage caused to Pablo Corado Barrientos and his next of kin, this global amount to be distributed as follows: US\$20,000.00 (twenty thousand United States dollars), allocated to his mother, Juana Barrientos Valenzuela; and the sum of US\$2,000.00 (dos thousand United States dollars) to be distributed equally between the siblings, Francisca and Tino Corado Barrientos.
- E. For Manuel de Jesús González López:
- a. US\$78,372.00 (seventy-eight thousand three hundred and seventy-two United States dollars)⁶⁶ as compensation for the loss of earnings of Manuel de Jesús González López, to be distributed as follows: US\$39,186.00 (thirty-nine thousand one hundred and eighty-six United States dollars) shall be given to his wife, María Elizabeth Chinchilla, and US\$39,186.00 (thirty-nine thousand one hundred and eighty-six United States dollars) shall be distributed in equal parts between the victim's three children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla; in other words, US\$13,062.00 (thirteen thousand and sixty-two United States dollars) each.
- b. US\$3,000.00 (three thousand United States dollars)⁶⁷ for the expenses incurred by the next of kin of Manuel de Jesús González López, and this amount shall be given to María Elizabeth Chinchilla.
- c. US\$40,000.00 (forty thousand United States dollars)⁶⁸ for the non-pecuniary damage caused to Manuel de Jesús González López and to his next of kin; this global amount shall be given, in equal parts to María Elizabeth Chinchilla, the victim's wife and to his children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla; in other words, US\$10,000.00 (ten thousand United States dollars) each.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

F. For Erick Leonardo Chinchilla, a reparation in the amount of US\$8,000.00 (eight thousand United States dollars)⁶⁹, as established in paragraph 180 of this judgment, to be given to his mother, María Luisa Chinchilla Ruano.

G. For Oscar Vásquez and Augusto Angárita Ramírez, a reparation in the amount of US\$8,000.00 (eight thousand United States dollars)⁷⁰, as established in paragraph 187 of this judgment, to be given to each of the victims or, if applicable, to their heirs.

H. For Doris Torres Gil and Marco Antonio Montes Letona, a reparation in the amount of US\$3,000.00 (three thousand United States dollars)⁷¹, as established in paragraph 193 of this judgment, to be given to each of the victims or, if applicable, to their heirs.

unanimously,

2. That the State of Guatemala must investigate the facts that generated the violations of the American Convention on Human Rights in this case, and identify and punish those responsible.

unanimously,

3. That the State of Guatemala must provide the resources and adopt the other necessary measures for the transfer of the mortal remains of Pablo Corado Barrientos and his subsequent burial in the place chosen by his next of kin, as established in paragraph 204 of this judgment.

unanimously,

4. That, in accordance with Article 2 of the American Convention on Human Rights, the State of Guatemala must adopt, in its internal legislation, the legislative, administrative and any other kind of measures necessary to set up the register of detainees established in paragraphs 195 and 203 of this judgment, guarantee its reliability and publicize it.

unanimously,

5. That the State of Guatemala must, in fairness, pay, in reimbursement of the expenses and costs generated in the inter-American jurisdiction, the amount of US\$20,000.00 (twenty thousand United States dollars) to the lawyer, Mark Martel, representative of the next of kin of the victims, Anna Elizabeth Paniagua Morales, Oscar Vásquez and Manuel de Jesús González López; the amount of US\$2,000.00 (dos thousand United States dollars) to the lawyer, René Argueta Beltrán, representative of the next of kin of Erick Leonardo Chinchilla and Pablo Corado Barrientos; and the amount of US\$1,000.00 (one thousand United States dollars) to

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

the lawyer, Avilio Carrillo Martínez, representative of the next of kin of William Otilio González Rivera.

unanimously,

6. That the State of Guatemala must comply with the measures of reparation ordered in this judgment within six months of its notification.

unanimously,

7. That the payments ordered in this judgment must be exempt of any current or future charge or tax.

unanimously,

8. That it shall monitor compliance with this judgment and shall close this case once the State of Guatemala has fully complied with all its provisions.

Judge Carlos Vicente de Roux Rengifo informed the Court of his concurring opinion, which accompanies this judgment.

Done, at San José, Costa Rica, on May 25, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Edgar E. Larraondo-Salguero
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE DE ROUX RENGIFO

The preceding judgment has ordered the payment of sums of money to the siblings of the direct victims to compensate the non-pecuniary damage they suffered owing to the facts of the case. I share this decision and would like to make some comments on it.

In general (and without prejudice to the results of a more exhaustive examination of the matter), it may be said that the Court has approached the issue of non-pecuniary damage caused to the immediate next of kin of the victims of homicide and forced disappearance, as follows:

- a) It has applied the presumption that this type of facts results in non-pecuniary damage to the direct victim's parents: "in the case of the victim's parents – [the Court has said] – non-pecuniary damages need not be shown, as they can be presumed" (Castillo Páez case. Reparations. Judgment of November 27, 1998, para. 88).
- b) To the contrary, in the case of siblings, the Court has evaluated the nature of the relationship that existed between them and the victim in each specific case. Thus, for example:
 - 1) In the Aloeboetoe case, it followed the rule that consists in distinguishing between the reparations corresponding to the "successors" and those due to the other "claimants or dependants", and it applied this rule to both non-pecuniary and pecuniary damages. Based on this distinction, it adopted the presumption that the death of the victims resulted in a damage to their "successors", but established that "with regard to the other claimants or dependants, the *onus probandi* corresponded to the Commission[, which] has not submitted the evidence necessary to show that the conditions indicated have been fulfilled" (Aloeboetoe case. Reparations. Judgment of September 10, 1993, para. 71).
 - 2) In the Loayza Tamayo case, it granted reparations for non-pecuniary damage to the siblings of María Elena Loayza, based on the confirmation that they were "members of a close family" and that, as such, "could not have been indifferent to Ms. Loayza Tamayo's terrible suffering" (Loayza Tamayo case. Reparations. Judgment of November 27, 1998, para. 143). Each sibling received a compensation of US\$3,000.00 (three thousand United States dollars) from the State of Peru, under this heading (Judgment cited, para. 143 and operative paragraph 4.d).
 - 3) In another case, the Court began by observing that the sibling of Adolfo Garrido and Raúl Baigorria had "offered no convincing evidence" demonstrating an "affective relationship [with the latter] such that" their disappearance would have caused them grievous suffering. However, it observed the fact that these relatives of the victims showed an interest in their fate when they disappeared and took measures to discover their whereabouts (Garrido and Baigorria case. Reparations. Judgment of August 27, 1998, para. 63 and 64). Consequently, the Court condemned the State of Argentine to pay the sum of US\$6,000 (six thousand United States dollars) to

each of the siblings of the persons who had disappeared (Judgment cited, para. 63 and 64 and operative paragraph 1). In this respect, it took into account that, when the judgment on reparations went into force, the purchasing power of the dollar in Argentina was well below the existing level in most countries of the continent.

4) In the Blake and Castillo Páez cases, the Court evaluated and gave full significance to the evidence submitted concerning the fact that – given the specific circumstances of the respective cases – the siblings of each of the victims experienced grave and exceptional suffering owing to their disappearance (Blake case. Reparations. Judgment of January 22, 1999, para. 57; Castillo Páez case. Reparations. Judgment of November 27, 1998, para. 89). We should not forget that in the first of these two cases, the siblings of the disappeared person were declared to be direct victims of the violation of Article 5 of the American Convention (Blake case. Merits. Judgment of January 24, 1998, paras. 112 to 116). The Court condemned the State of Guatemala to pay the sum of US\$30,000 (thirty thousand United States dollars) each to Richard Blake Jr. and Samuel Blake, brothers of Nicolas Chapman Blake, the direct victim of the disappearance (Judgment cited, operative paragraph 2.a.i) and, also, the State of Peru to pay to Mónica Inés Castillo Páez, sister of Rafael Castillo Páez, the direct victim in the respective case, the sum of US\$30,000 (thirty thousand United States dollars) (Judgment cited, para. 90 and operative paragraph 1).

It is therefore an innovation that the Inter-American Court has condemned a State to pay reparations for non-pecuniary damage to the siblings of the direct victims of homicides and forced disappearances, even though it was not proven that the siblings and the victim saw each other often or maintained alive the affective relations corresponding to their ties of consanguinity in some other way. This means that the Court has extended to the siblings, the presumption that applies to the parents of the victims of homicides or disappearances in its judgments, regarding the psychological and emotional sufferings caused by facts of such a horrendous nature – a presumption which, it is worth recalling, does admit evidence to the contrary. When establishing, in fairness, the amount of the respective compensations, the Court has acted with caution, calculating at US\$1,000.00 (one thousand dollars) the amount of the reparation for each of the victim's siblings. In my opinion, the caution has been greater than justified, but I must recognize that it is in keeping with the presumptive nature of the damage in question.

Both the use of reasonable presumptions (which admit evidence to the contrary) and, in particular, the inclusion of the victim's siblings within the sphere of the persons who may be presumed to be affected by homicides and other facts of a similar gravity, corresponds to the evolution of comparative law, concerning the law on responsibility. By taking the step I have referred to in this opinion in the Paniagua Morales case, the Court – in order to protect the human being and in the context of the application of the American Convention – is opportunely incorporating this evolution of comparative law in order to achieve integral reparation for the damage in question.

Carlos Vicente de Roux-Rengifo
Judge

Manuel E. Ventura-Robles
Secretary