

REPORT No. 158/19
CASE 12.921
REPORT ON MERITS

HERMINIO DERAS GARCÍA AND FAMILY
HONDURAS

I. INTRODUCTION

1. On February 6, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Eustaquia García Alvarado (hereinafter “the petitioner”)¹ alleging that the Republic of Honduras (hereinafter “the State of Honduras,” “the State,” or “Honduras”) bore international responsibility for the extrajudicial execution of Herminio Deras García and for threats, illegal detentions, and acts of torture allegedly committed against member of his family.

2. The Commission adopted Report on Admissibility No. 56/13 on July 16, 2013.² On August 1, 2013, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. The parties were informed of the statutory deadlines for submitting additional observations on the merits. All information received was duly relayed between the parties.

II. POSITION OF THE PARTIES

A. Petitioner

3. The petitioner argues that the State is responsible for the extrajudicial execution of Herminio Deras by State agents in January 1983. The petitioner maintains that Mr. Deras was killed because of his work as a member of the Communist Party and as a trade union advisor. It occurred in a context of State persecution and serious human rights violations, including extrajudicial executions, against leaders of student, trade union, and grassroots organizations identified as opponents of the government at that time.

4. The petitioner claims that the State violated the rights to personal integrity and personal liberty of Mr. Deras, in that, prior to his murder, he suffered illegal and arbitrary arrests, threats, and beatings by State agents. The petitioner adds that Honduras also violated his rights to freedom of thought and expression, assembly, and freedom of association in connection with Mr. Deras' work. The petitioner states that the criminal proceedings suffered unwarranted delays and that Mr., Deras' legal representatives did not have access to the file. The petitioner adds that the execution of Mr. Deras has still not been punished because, even though a member of the military was convicted of the crime that judgment was never carried out.

5. In addition, the petitioner argues that the State violated the rights to personal integrity, personal liberty, and privacy of several members of Mr. Deras' family, including children. Those violations involved illegal and arbitrary arrests and cruel, inhuman, and degrading treatment allegedly inflicted by State agents. The petitioner also maintains that Mr. Deras' right to family were also violated in that it was broken up as a result of the above-mentioned facts of the case. It alleges that the State violated the right to freedom of movement and residence of two of Mr. Deras' brothers, because they had found themselves forced to go into exile abroad because of the persecution they suffered. The petition declares that even though these facts were denounced the State never conducted the corresponding investigations to throw light on what had happened and to identify the persons responsible.

¹ Subsequently, the Comité de Familiares de Detenidos-Desaparecidos en Honduras [Committee for Relatives of Disappeared Detainees in Honduras] (COFADEH) and Alba Luz Deras presented themselves as co-petitioners.

² IACHR. Report No. 56/13. Petition 80-02. Admissibility. Herminio Deras García et al. Honduras. July 16, 2013. The Commission declared the petition admissible as regards Articles 4, 5, 7, 8, 11, 13, 16, 17, 22, 19 and 25 of the American Convention, in conjunction with Article 1(1) thereof;

B. State

6. Regarding Mr. Deras' death, Honduras argues that investigations did begin to throw light on what had happened and to identify those responsible. It states that the criminal proceedings complied with due guarantees and that a member of the military had been sentenced to 12 years in prison for the murder. It stresses that it has not been possible to execute that judgment because of inability to locate that person. It adds that the investigation into two other State agents is pending because they are fugitives from justice.

7. The Commission notes that with its writ of June 7, 2010, the Honduran State, in the person of the President of the Court of Justice of Honduras, attached a report acknowledging the following:

Reasonable time limits were exceeded owing to prolonged spells of inactivity in processing the case by the judicial authorities, and that between 1983, when the deed occurred, and 2007, when the last instance was exhausted, 24 years elapsed.

(...)

From an examination of the file (...), assessment of the written testimony, and reading of the final judgment, it transpires that the taking of Mr. Herminio Deras' life by Mr. Marco Tulio Regalado Hernández, in his capacity as a State agent and member of the Armed Forces' Squadron 3-16, constitutes a proven fact against the State of Honduras (...).

It constitutes a proven fact that Mr. Herminio Deras suffered restrictions on the exercise of his right to freedom of association as a member of the trade union organization Diligencia Sindical and member of the Communist Party of Honduras.

(...)

It constitutes a proven fact that Mr. Herminio Deras suffered restrictions on the exercise of his right to freedom of expression imposed by persons acting as agents of the State of Honduras, including Mr. Marco Tulio Regalado Hernández, in the 1980s.

III. DETERMINATIONS OF FACT

A. Context

8. The organs of the inter-American system have pronounced on the context of grave violations of human rights in the State of Honduras in the 1980s.³ In that connection, the Inter-American Court maintained:

There was a pattern of forced disappearances and extra-legal executions committed by the military forces in Honduras. These forces had a special, autonomous status, and they acted under a certain doctrine of national security, in light of which they captured "dangerous" persons or those who were "suspicious" of being alleged Honduran subversives, supporters of the Salvadoran guerrillas or of the Sandinistas. Usually these persons were detained at night, interrogated, tortured, and then given a finishing shot and buried in clandestine cemeteries or unauthorized places. The military forces, in turn, controlled the police forces, and the judges felt intimidated to effectively investigate criminal cases where human rights violations by the armed forces were alleged, and this created a climate of impunity.⁴

9. That context has also been described inside Honduras. Thus, the July 2011 Report of the Truth and Reconciliation Commission stated that:

In the ideological context of the national security doctrine, as part of the repression practiced by the State and paramilitary groups in Honduras people were victims of forced disappearance, extrajudicial executions, torture, illegal detention, and other forms of social violence. (...) Between 1982 and 1984 (...) judicial institutions were practically subordinated to military and police directives based on the national security doctrine.⁵

10. According to the preliminary report on disappeared persons in Honduras 1980-1993 of the National Human Rights Commissioner, those activities were carried out by Intelligence Units of the Armed Forces,

³ IACHR. Report No. 8/93. Case 10.793, Merits. Francisco Javier Bonilla. Honduras. March 12, 1993, par. 17.

⁴ 1/A Court H.R. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 7, 2003. Series C No. 99, para. 70; *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, paras. 153, b, 165, 167, and 198; and *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paras. 147, b, 157, and 188.

⁵ Truth and Reconciliation Commission, Report: *So That the Events Will Not Be Repeated*. Honduras, 2011, pp. 56 and 83.

especially Intelligence Battalion 3-16. That battalion received special training in counterinsurgency which gave them "certainty and conviction that they were entitled to arrest, torture, and execute citizens."⁶

B. Regarding Herminio Deras and events prior to his death

11. At the time of the facts, Herminio Deras was 42 years old and lived in the city of San Pedro Sulas, in the department of Cortés. Mr. Deras was a teacher by profession and a Honduran Communist Party leader. He also advised several trade unions on Honduras' northern coast.⁷ According to information provided by the petitioners, at the time of the fact Mr. Deras' family consisted of: i) his wife, Otilia Flores; ii) his two children Herminio and Lorena, aged 7 and 11, respectively; iii) his parents Maria Eustaquia García and Domingo Deras; iv) his siblings, Alba Luz, Irma Isabel, Consuelo, Héctor and Luis Rolando Deras; and v) his nephews, nieces, and brothers and sisters in law, José Herminio Deras Barahona, Sandra Ivón Hernández Deras, Marlin García, Julio Cesar Chavarría Banegas, Elba Flores Ortiz, and Cristóbal Hernández Pérez.⁸

12. The IACHR takes note of the information provided by the petitioners and contained in statements by family members of Mr. Deras regarding a number of raids, arrests, beatings, and threats against Herminio and several of his next-of-kin between 1977 and 1982, committed in many cases by State agents.⁹ Those acts were due to the participation of Mr. Deras and family members in Communist Party activities and trade union organizations. They added that, even though complaints had been filed against those acts, no investigation was conducted. That information was not contested by the State, which also did not produce any documentation to the contrary. The Commission will now summarize that information:

1977

- Military personnel raided the house of Mr. Deras' mother. Since they did not find him, they hit his mother on the head with a pistol and threatened to kill her if they couldn't find a mimeograph that Mr. Deras allegedly had to perform his political activities. Those acts were witnessed by Mr. Deras' sister Irma Isabel, who was 15 years old at that time.
- Military personnel raided the house of Mr. Deras' father and accused him of operating a clandestine radio. His father was beaten, tied up and taken out of his home.
- Irma Isabel, Mr. Deras' sister, was arrested along with two other people by State agents for allegedly distributing the Vanguardia newspaper, produced and published by the Communist Party. All three were taken to cells pertaining to the National Directorate of Intelligence (hereinafter "DNI") where they were blindfolded, their hands tied to their feet, and told they would have "the newspaper taken out of their stomachs if they didn't deliver a copy."

1979

- Mr. Deras was detained by State agents for allegedly having instigated a strike by workers at a textile factory. Mr. Deras "escaped from detention in DNI installations."

1981

- On November 26, members of the Third Infantry Battalion and, destroyed it, and took away several objects they found in it. At his home, they arrested his wife Otilia Flores and his sister-in-law Elba Flores. Mr., Deras managed to escape by jumping over the outside wall of his house, Both Otilia and Elba were taken to the DNI facilities and then transported to Tegucigalpa, where they were threatened, blindfolded, and denied food and water for days. State agents interrogated them to get them to reveal

⁶ National Human Rights Commissioner, *The Facts Speak for Themselves: Preliminary Report on Disappeared Persons in Honduras 1980-1993*. Tegucigalpa, 2002, p. 392.

⁷ Annex 1. Statement by Otilia Flórez Ortiz on August 12, 1998. Attached to judicial file 7159-02. Press release "Acribillan a Herminio Deras," La Tribuna newspaper, January 31, 1983. Attached to file 7591-02.

⁸ Communication from the petitioners, February 2, 2014

⁹ Communications by the petitioner(s) of August 2, 2010 and February 2, 2014. Annex 1. Statement by Otilia Flórez Ortiz on August 9, 1998. Statement by Elba Flores Ortiz, on February 6, 2002. Statement by Luis Ronaldo Deras García, on August 12, 1998. Statement by Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02. Annex 2. Press releases on the machine gunning of the Deras family home. Attached to the petitioners' communication of August 2, 2010. Annex 3. Complaint filed by Otilia Flores Ortiz on February 4, 1983. Appended to the petitioners' brief of August 2, 2010.

Mr. Deras' whereabouts. Both stated that Lieutenant Marco Tulio Regalado was in charge of the interrogations.

– That same day, Mr. Deras' brother, Luis Rolando, was detained by State agents and taken to the DNI facilities. He said he was threatened and "tortured physically." He said they told him they were going to find and murder his brother Herminio "because he was a communist."

1982

– On January 1, Mr. Deras' home was machine-gunned by unknown individuals.

– During the year, Mr. Deras' home was kept under watch by "covert agents" from an unoccupied house nearby, who fired shots at his house.

C. Regarding Mr. Deras' death and subsequent events to the detriment of his family

13. According to statements by the petitioners and Irma Deras, Mr. Deras' sister, on January 26, 1983 Herminio asked his father whether they could swap cars. That was because the traffic police had stopped him and taken down the number of his license plate. They said that Mr. Deras had stated that "he was frightened they would capture and disappear him." They added that Mr. Deras' father had refused and had asked his son to "leave the country as soon as possible."¹⁰

14. Early in the morning of January 29, 1983, Herminio Deras was driving his car in the Las Flores district of San Pedro Sula when he was intercepted by traffic officer Fausto Reyes. According to Mr. Reyes' statement that day "a document registration operation was mounted" on orders from Captain Rafael Canales Núñez, the officer in charge of Intelligence Battalion 3-16. Mr. Reyes stated that Captain Canales had told him that said operation "was a special mission" designed to "arrest a 'terrorist' and hand him over to the Security Forces." He added that the officer in charge of that mission was Lieutenant Marco Tulio Regalado.

15. Mr. Reyes states that while "I was routinely checking" Mr. Deras' vehicle," a vehicle stopped (...) from which "two (...) members of military counterintelligence, known as Battalion 3-16, got out." He said that one of those two officers was Lieutenant Marco Tulio Regalado and that they got into Mr. Deras' vehicle. He stated that "it was rumored that Marco Tulio was sick, incapable of living without killing someone (...) I personally know that he is a very violent man."

16. He maintained that when he asked Lieutenant Marco Tulio Regalado why they were going to take him away, he had answered "on orders from above." He explained that he saw Mr. Deras driving the car with the two officers. Mr. Reyes said that a few moments later, while he was buying coffee at a nearby market, he heard a gunshot. He stated that when he arrived at the scene, "there was Mr. Herminio, dead, inside the car on the street."¹¹

17. The Commission likewise notes that Irma Isabel Deras declared as follows regarding the death of her brother:

[Herminio Deras] struggled with his captors, who wanted to get him into the vehicle; when they couldn't they shot him. We counted 30 bullet wounds on his body. (...). When they were struggling, Herminio shouted to a taxi driver going by to let his family know what was happening, but that taxi driver was threatened by the man on the motorbike. We know this because he sent us a note telling us, but he did not sign it so we could not locate him (...) Now that Mr. Fausto Reyes has made his statements public, it is my understanding that it was he who got Herminio out of the car and handed him over to those who murdered him.¹²

18. The IACHR also observes that an article in the La Tribuna newspaper had the following to say about Mr. Deras' death:

¹⁰ Annex 1. Statement by Irma Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02. Communication from the petitioners, February 2, 2014

¹¹ Annex 1. Testimony of Fausto Reyes Caballero, October 28, 1998. Attached to judicial file 7159-02.

¹² Annex 1. Statement by Irma Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02.

Some neighbors, with fear told the widow that three heavily armed men and a woman had got out of both cars and began beating [Herminio Deras] to get him to enter one of the vehicles. Moments later he was badly beaten up by his attackers, who not only hit his skull, they also knifed him and then killed him with seven shots.

19. The same article states that Mr. Deras' body was taken by Public Security (FUSEP) agents to the morgue at the Leonardo Martínez hospital.¹³ The petitioners explained that the Commanders of the Third Police Station in the district of Las Flores, near to where this took place, appeared at the scene and ordered that Mr. Deras' body be taken to the morgue.¹⁴ The State did not contest this information.

20. Otilia Flores, Mr. Deras' wife, said she heard of what had happened and went to the aforementioned hospital. She added:

[The body of Herminio Deras] was at the entrance (...) guarded by military, who had thrown him into a cart. When I asked for him, they (the military) told me I should take that damn corpse away.¹⁵

21. The petitioners stated that Otilia Flores took Herminio's body to her home, followed by the military. They added that a couple of hours later Herminio's father arrived with a coffin and they proceeded to take his remains to his native town, El Progreso, in the department of Yoro. They added that, on that same day, Sergeant Virgilio Padilla, the officer in charge of the Third Police Station, declared to the media that the "car with the criminals had passed by [the station], but who was to know that it was carrying murderers" [*quien para saber que allí iban los asesinos*].¹⁶ That information has not been refuted by the State.

22. On February 4, 1983, Otilia Flores denounced the death of her husband to the First Criminal Court in San Pedro Sula, Mrs. Flores accused State agents as the alleged perpetrators and added that in previous years Herminio and members of his family had been threatened and attacked.¹⁷

23. Mr. Reyes declared that some days after the murder of Mr. Deras, he had told his superior, General Gustavo Adolfo Álvarez Martínez, that he knew the people who had committed that crime. He declared that said General answered: "that a soldier keeps what he sees to himself, because if not, he ceases to be an honorable soldier and breaks the oath he swore to the Fatherland, and that he himself would deal with this matter."¹⁸

24. There is no information in the file of any proceedings between the presentation of the complaint and 1998, when the Public Prosecutors' Office filed a new complaint, as will be reported in the following section.

25. In addition, the Commission observes that, as indicated by the petitioners and in statements by members of Mr. Deras' family, on June 8, 1984 military personnel raided two homes of the Deras family in El Progreso. The following family members were arrested: i) his sister Irma Isabel Deras; ii) his sister Consuelo Deras; iii) his brother Héctor Deras; iv) his nephew José Herminio Deras, aged 16; v) his father Domingo Deras; vi) his niece Sandra Ivonne Hernández Deras, aged 17; vii) his cousin Marlen García; and viii) his brothers-in-law Julio Cesar Chavarría Benegas and Cristóbal Hernández Pérez¹⁹. That information has not been contested by the State.

26. The petitioners pointed out that José Herminio Deras declared that he had been kept in a DNI cell with 18 people and that "it was forbidden to speak to prevent them identifying each other." He said that a State agent had told him: "just like we killed the tree, we are now going to kill the leaves." He said that all of them were photographed and that on June 9 he and his grandfather Domingo Deras had been released.²⁰

¹³ Annex 1. Press release "Acribillan a Herminio Deras," La Tribuna newspaper, January 31, 1983. Attached to file 7591-02.

¹⁴ Communication by the petitioners on February 2, 2014.

¹⁵ Annex 1. Statement by Otilia Flórez Ortiz on August 12 1998. Attached to judicial file 7159-02.

¹⁶ Communication from the petitioners, February 2, 2014.

¹⁷ Annex 3. Complaint filed by Otilia Flores Ortiz on February 4, 1983. Appended to the petitioners' brief of August 2, 2010.

¹⁸ Annex 1. Testimony of Fausto Reyes Caballero, October 28, 1998. Attached to judicial file 7159-02.

¹⁹ Communication from the petitioners, February 2, 2014. Annex 1. Statement by Irma Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02.

²⁰ Communication from the petitioners, February 2, 2014.

27. For her part, Irma Deras stated that the others were constantly hit and kicked. She maintained:

We did not identify anyone because we were blindfolded and tied, but we did when they released us we were in the Office of the Director of National Investigation and from there taken in army trucks to the air force base in Tegucigalpa. From there they sent us to the air force base in San Pedro Sula, and after that to the Court in El Progreso.

28. Irma Deras added that on several occasions they were interrogated by military personnel who asked "Where are the guns? What's the name of the guerrilla cell?" "How many times have you been to El Salvador?" They said that when they denied that information, they wiped mud in their faces. She maintained that they paid a "collective bond" and "thanks to pressure from family and grassroots organizations, they let us go."²¹

29. The petitioners reported that "for lack of proof, the detainees were released on parole (*libertad provisional*). The Commission notes that the State did not contest this information. Nor did it document any investigation of members of Mr. Deras' family for the crime of sedition.

30. In addition, the Commission takes note of the information provided by the petitioners regarding Mr. Deras' parents and two of his brothers,²² which the State did not contest either. As regards Domingo Deras, Herminio's father, the petitioners declared as follows:

Domingo Deras fell into a deep depression, and spoke to no one. His work as a builder and his blocks and mosaics factory went bankrupt, both because, nobody hired him because he was stigmatized and because he neglected it in order to comply with all the judicial requirements (...). He began to drink heavily and when he was drunk kept saying that "if I hadn't refused to swap cars, Herminio would be alive" and what a bad father he was. On June 12, 1987, when he was 72 years old, he sat down in a chair and shot himself in the head (...) and died a few minutes later. He left a note saying "Forgive me for not have been brave enough to defend you."

31. Regarding María Eustaquia García, Herminio's mother, the petitioners stated that:

After the violent death of her son Herminio, she fell into deep depression, which triggered epileptic episodes, with constant fits, so that her health deteriorated, the family economy collapsed, her husband's construction business failed, and her son Héctor went into exile to save his own life. (...) Her husband's suicide made her even more depressive. Finally her health deteriorated so much that she never again left her bed. She died on May 22, 2010.

32. As for Mr. Deras' brothers, the petitioners reported that in September 1984 Héctor Deras left the country to go to the United States. That was after his father Domingo had told him that he had heard from DNI agents of a plan to murder him. He explained that those agents had told him: "You already lost one son. Don't lose another." The petitioners reported that Héctor Deras died in 2010, one day after he had returned to Honduras to visit his mother. The Commission has no information the death of Héctor Deras.

33. Finally, the petitioners stated that Mr. Deras' sister, Alba Luz, had been studying in Romania since 1975. They said that "because of the current political situation and the persecution of her family" she had been unable to return to Honduras. The petitioners explained that Alba Luz did return to Honduras in 2000 to work with the Catholic Church's Reflection Team and that in 2009, due to her functions in support of the "resistance process, she received message saying "we are going to screw you."

D. The Criminal Proceeding

34. On July 30, 1998, the Public Prosecutors' Office filed a complaint against the following members of Battalion 3-16: Marco Tulio Regalado, Rafael Canales Núñez, and Alexander Raymundo Hernández Santos for the murder of Herminio Deras. The complaint described the situation in Honduras between 1980 and 1984, especially the persecution and subsequent extrajudicial execution of persons considered to pose a threat to the government at that time. The complaint also cited the testimony of Fausto Reyes regarding what had happened

²¹ Annex 1. Statement by Irma Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02.

²² Communication from the petitioners, February 2, 2014.

on the day Herminio Deras died and the statements made by various family members.²³ That same day, the complaint was admitted by the Judge of the Third Criminal Court of San Pedro Sula.²⁴

35. The Commission notes that the Judge took statements from several members of Herminio Deras' family, who cited the occasions on which there had been persecution, threats, and harassment by State agents as well as what happened on January 29, 1983. In that connection, Isabel García stated that:

I am absolutely sure that it was premeditated murder. (...) I would also like to point out that as long as I remember my brother was constantly persecuted by the police (the DNI at that time), because he was a political leader and trade union advisor, he was a member of the Communist Party of Honduras and was its secretary general at the time of his death. That persecution had gone on for years (...).²⁵

36. Otilia Flores stated that there had been no investigation after she had filed her complaint in 1983, because "out of fear nobody went to investigate because it was the 1980s, when all the leaders of grassroots organizations were being repressed (...)"²⁶

37. On May 19, 1999, the Judge ordered the arrest of accused Marco Tulio Regalado²⁷, at the request of the Public Prosecutors' Office.²⁸ The IACHR notes that in October 1999 Marco Tulio Regalado was detained and gave a statement, in which he claimed that he had had no part in Mr. Deras' death and did not know Fausto Reyes. He added that his work in Battalion 3-16 had consisted of "analyzing the purposes pursued by trade union, religious, political, military and other organizations, with a view to making the country safe during the cold war." He added: " I did not know Mr., [Deras], nor do I know even whether he is alive or dead, which is what they asked me [*esa pregunta me la hizieron (sic)*] in the Inter-American Court of Human Rights."²⁹

38. On October 7, 1999, the Judge ordered an ocular inspection of the Personnel Section of the Armed Forces in order to ascertain what tasks Marco Tulio Regalado performed. That inspection was not carried out because the archives in question were located at the Office of the Director of Personnel in Tegucigalpa. The Judge sent an official letter requesting that that office certify said officer's curriculum vitae via fax.³⁰ The IACHR has no information as to whether or not that information was sent to the Judge.

39. That same day, the public prosecutor from the Public Prosecutors' Office asked for a face-to-face confrontation between Otilia Flores and Marco Tulio Regalado.³¹ That procedure was carried out in San Pedro Sula on October 8, 1999. During the hearing, Mr. Regalado denied knowing Fausto Reyes and denied that he had checked out Herminio Deras' car on the day he was murdered. For her part, Otilia Flores alleged that she had been tortured by Marco Tulio Regalado.³²

40. On October 11, 1999, the Judge issued a remand order against Marco Tulio Regalado for the crime of murder.³³ On November 3, 1999, the Judge issued a resolution stating her decision to conduct a separate investigation into Rafael Canales Núñez and Alexander Raymundo Hernández Santos "because they are fugitives from justice."³⁴

41. According to the petitioners, on February 6, 2000, Otilia Flores and Elba Flores Ortiz were threatened when they were at the court to make another statement by a group of family members of Marco Tulio Regalado. They

²³ Annex 1.t Complain filed by the Public Prosecutors' Office on July 30, 1998. Attached to judicial file 7159-02.

²⁴ Annex 1.t Communication from the Third Criminal Court on July 30, 1998. Attached to judicial file 7159-02.

²⁵ Annex 1. Statement by Isabel Deras García, on August 12, 1998. Attached to judicial file 7159-02.

²⁶ Annex 1. Statement by Otilia Flórez Ortiz on August 12 1998. Attached to judicial file 7159-02.

²⁷ Annex 1. Arrest warrant issued by the Third Criminal Court on January 19, 1999. Attached to judicial file 7591-02.

²⁸ Annex 1. Application for an arrest warrant filed by the Public Prosecutors' Office on March 6, 1999. Attached to judicial file 7591-02.

²⁹ Annex 6. Defendant's unsworn statement of October 5, 1999. Attached to judicial file 7591-02.

³⁰ Annex 1. Communication from the Third Criminal Court on October 7, 1998. Attached to judicial file 7159-02.

³¹ Annex 1. Request for a face-to-face confrontation filed with the Third Criminal Court on October 7, 1999. Attached to judicial file 7159-02.

³² Annex 1. Minutes of the confrontation, October 8, 1999 Attached to judicial file 7159-02.

³³ Annex 1. Arrest warrant (remand order) issued by the Third Criminal Court on October 11, 1999. Attached to judicial file 7591-02.

³⁴ Annex 5. Ruling handed down by the Judicial District Criminal Court of First Instance of San Pedro Sula on March 17, 2004. Attached to judicial file 4366-02.

stated that they had had to be escorted by the public prosecutor's office.³⁵ The State did not contest this information.

42. On March 17, 2004, the Judicial District Criminal Court of First Instance of San Pedro Sula handed down a judgment acquitting Marco Tulio Regalado. The Court considered that "after analyzing and weighing all the evidence brought during the proceedings, this court still has doubts as to whether the accused committed the crime and therefore deems it appropriate to issue an acquittal."³⁶ The State indicated that following that judgment Mr. Tulio Regalado was released.³⁷

43. Following an appeal filed by the Public Prosecutors' Office, on May 23, 2005 the District Court of Appeals of San Pedro Sula revoked the judgment of the court of first instance and sentenced Marco Tulio Regalado to 12 years in prison for the crime of murder. The Court maintained: "assessing as a whole the statements given by Otilia Flores Ortiz, Luis Rolando Deras García, Irma Isabel Deras García, and Fausto Ramón Reyes Caballero, as well as the death certificate and the confrontation hearing (...) this Court is convinced that Tulio Regalado Hernández took part as perpetrator in the crime examined in these proceedings."³⁸

44. Mr. Regalado's defense filed an appeal for annulment, which was declared groundless by the Supreme Court of Justice on March 5, 2009. The Supreme Court stated:

The appellant bases his claim on the affirmation that the Court did not take into consideration several documents issued by the Armed Forces that in his opinion constitute authentic documents. However, this Court reiterates once again that said documents merely illustrate the accused's career. In no way do they demonstrate whether or not he participated in the crime of which he stands accused. Therefore said documents are not valid for annulment purposes. This court weighs the evidence presented at the trial and based on that assessment finds the accused guilty. Since there was no error in the assessment of the evidence as the appellant asserts, this appeal is declared groundless.³⁹

45. On February 27, 2009, the Judicial District Court of Execution of Sentence in San Pedro Sula issued a warrant for the arrest of Marco Tulio Regalado.⁴⁰ The State pointed out that it had requested Interpol and the National Directorate of Criminal Investigation to detain the convict and that the last time it did this was on January 15, 2015.⁴¹ The IACHR has no information regarding detention of Mr. Tulio Regalado.

46. The IACHR also takes note of the information provided by the petitioners regarding other acts of harassment and threats against Mr. Deras' next-of-kin. Thus, the petitioners maintained that on March 9, 2009, three unidentified men entered the home of Otilia Flores and her daughter, Lorena, "destroyed everything in the house" and took away personal items. They said that Lorena's 15-year-old son was pulled abruptly out of bed and had a weapon pointed at his face.⁴² The petitioners also reported the following:

Patricia Alejandra Chavarría, aged 15, the daughter of Irma Isabel Deras, was filmed and threatened by agents of the National Directorate of Criminal Investigation. Alba Luz Deras, who works for the Jesuits, received death threats following the militarization of Radio Progreso. And the home of Luis Rolando Deras García is under surveillance by unknown individuals in a green Chevrolet, with polarized glass windows and without a license plate. The patrols usually take place between 7:30 and 9:30 p.m.⁴³

IV. LEGAL ANALYSIS

³⁵ Communication from the petitioners, February 2, 2014.

³⁶ Annex 5. Ruling handed down by the Judicial District Criminal Court of First Instance of San Pedro Sula on March 17, 2004. Attached to judicial file 4366-02.

³⁷ State's communication of April 11, 2016.

³⁸ Annex 1. Decision of the District Court of Appeals of San Pedro Sula on May 23, 2005. Attached to judicial file 7591-02.

³⁹ Annex 4. Certification of the ruling of the Supreme Court of Justice by the Office of the Clerk of the Court of the Court of Appeals. Appended to the petitioners' brief of August 2, 2010.

⁴⁰ Annex 1. Arrest warrant issued by the Judicial District Court of Execution of Sentence in San Pedro Sula. Attached to judicial file 7591-02.

⁴¹ State's communication of April 11, 2016.

⁴² Annex 1. Observations on the merits by the petitioners of February 2, 2016, folio 36.

⁴³ Annex 1. Observations on the merits by the petitioners of February 2, 2016, folio 36.

A. Rights to life, freedom of thought and expression, and freedom of association (Articles 4.1,⁴⁴ 13.1,⁴⁵ and 16.1⁴⁶ of the American Convention in conjunction with Article 1.1 thereof)

47. Both the Commission and the Inter-American Court have pointed out that the right to life is a prerequisite for the enjoyment of all other human rights and if it is not respected all other rights are meaningless.⁴⁷ Moreover, compliance with the obligations derived from Article 4.1 of the Convention not only presupposes that no one is deprived of his or her life arbitrarily; it also establishes the duty of States to prevent their agents violating that right.⁴⁸ The Court added:

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.⁴⁹

48. Regarding the right to freedom of expression established in Article 13 of the American Convention, the IACHR has emphasized its broad scope and has examined the provision in the Convention that protects it from several angles through which human beings relate to information.⁵⁰ Both the IACHR and the Court have adopted this broad interpretation of the right to freedom of thought and expression by analyzing its two dimensions: individual and social. Thus, the Inter-American Court has found that the right to freedom of thought and expression grants those who are protected by the American Convention not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds.⁵¹ The Commission stresses that this right may be impaired when human rights defenders, including trade union leaders, are victims of acts of aggression, threats, and harassment. That is so inasmuch as such acts may silence or intimidate persons exercising their right to be critical or to file complaints against alleged human rights violations.

49. Regarding the right to freedom of association established in Article 16 of the American Convention, the Commission once again points out that it has two dimensions: one individual, and the other social. On the one hand that implies that "those who are protected by the Convention (...) have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right."⁵² The IACHR has also pointed out that "they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose."⁵³

50. For its part, the Court has maintained that these rights are especially applicable in labor contexts, so that the State must respect and guarantee them so that workers or their representatives can exercise them fully.

⁴⁴ Article 4.1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

⁴⁵ Article 13.1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

⁴⁶ Article 16.1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

⁴⁷ IACHR. Report No. 33/13. Case 11.576, Admissibility and Merits. José Luis García Ibarra and family. 1 Ecuador, July 10, 2013, par. 129. I/A Court H.R. *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, par. 144.

⁴⁸ I/A Court H.R. *Case of Zambrano-Vélez et al. v. Ecuador*, Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, par. 80; *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment on the Merits, Judgment of November 19, 1999. Series C No. 63, par. 144.

⁴⁹ I/A Court H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, par. 66.

⁵⁰ IACHR. Case 12.442, Suit brought before the Inter-American Court of Human Rights, Gabriela Perozo et al., Venezuela, April 12, 2007, par. 141.

⁵¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 108.

⁵² I/A Court H.R. *Case of Huilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005, Series C No. 121, par. 69.

⁵³ IACHR. Report No. 56/12. Case 12.775, Merits. Florentín Gudiel et al. Guatemala. March 21, 2012, par. 216.

For that reason, "in the event of a general or public interest, extra protection of freedom of expression is needed, especially in respect of persons officially representing others."⁵⁴

51. In the instant case, the Commission observes that it is not disputed that Mr. Deras died on January 29, 1983, as a result of several shots fired by members of the military after having been stopped, when he was driving a vehicle. The IACHR also notes that, based on statements by police officers and witnesses, the District Court of Appeals, in a second instance judgment, convicted military agent Marco Tulio Regalado of murder. The Commission underscored that said judgment became final following rejection of an appeal for annulment filed by Mr. Regalado's defense counsel. Neither the Honduran State nor the petitioners have contested the outcome of those proceedings in their dealings with the Commission.

52. Since it is clear that Herminio Deras died at the hands of State agents, the Commission stresses that the Honduran State has not submitted an explanation that might lead one to consider that the death of Mr. Deras constituted a legitimate use of force, in accordance with the principles of legitimate purpose, strict need and proportionality. Nor does such a conclusion transpire from the information in the file. On the contrary, as indicated, the State has acknowledged that Mr. Regalado was found criminally responsible for the death of Herminio Deras.

53. Therefore, the Commission considers that it clearly transpires that what happened in the instance case constituted extrajudicial execution. Consequently, the Commission concludes that the Honduran State violated the right to life of Herminio Deras García, recognized in Article 4.1 of the American Convention, in conjunction with Article 1.1 of the same instrument.

54. Furthermore, the Commission notes that the extrajudicial execution of Mr. Deras occurred in a context acknowledged by both international and domestic organizations as being shaped by the so-called "doctrine of national security." That entailed the commission of grave human rights violations, including extrajudicial execution, against persons considered to be members or sympathizers of the Salvadoran guerrillas or Sandinistas. The ISACHR observes that Mr. Deras' status as a trade union leader and political leader in the Communist Party matches the profile of what the government at the time considered a target in accordance with a well-established context. On top of that, there is the information provided by the petitioners regarding several raids on his home, attempts at arrest and acts of aggression suffered by Mr. Deras at the hands of military agents for years prior to his execution, due precisely to his trade union and political work. That information, which will be analyzed in the following section, was not contested by the State.

55. Thus, the IACHR observes that the State attempted, through numerous means, to deny Mr. Deras' right to freedom of expression and freedom of association, a process that culminated in his extrajudicial execution. In light of the above, the Commission considers that the extrajudicial execution of Mr. Deras, in clear reprisal for his activities as a political leaders and trade unionist, also violated his rights to freedom of expression and association. Consequently, the IACHR concludes that the State violated, to his detriment, the rights protected in Articles 13.1 and 16.1 of the American Convention in conjunction with Article 1.1 of said instrument.

⁵⁴ I/A Court H.R. *Case of Lagos del Campo v. Peru*. Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, par. 96.

B. Rights to personal integrity, personal freedom, privacy, protection of the family, and rights of the child (Articles 5.1, 5.2⁵⁵ 7.1, 7.2, 7.3⁵⁶, 11.2⁵⁷, 17.1⁵⁸, 19,⁵⁹ and 22.1⁶⁰ of the American Convention, in conjunction with Article 1.1 thereof).

56. The Commission notes the allegations of the petitioners about the raids, acts of violence illegal and arbitrary arrests and interventions, harassment and threats against Herminio Deras and his family committed by State agents prior to his death, between 1977 and 1982. The petitioners reported that they had identified members of the Third Infantry Battalion and DNI agents as the persons who committed the aforementioned acts. They added that they had filed complaints about those acts but that but that no investigations had been carried out. The IACHR notes that it lacks documentation in that regard. That notwithstanding, the State did not contest the petitioners' allegations. Nor did it provide information regarding the start of any investigations into them.

57. The Commission further notes that, according to the petitioners and the statement made by Mr. Deras' sister Irma, in June 1984, after Mr. Deras' death, military personnel raided and illegally and arbitrarily arrested several of his next-of-kin. Reportedly, those persons had been put in DNI cells where they were beaten, threatened, and interrogated regarding their alleged membership of guerrilla groups. Again, the State did not contest the allegations of the petitioners.

58. In the Commission's opinion, the allegations made by the petitioners and not contested by the State form part of the aforementioned "national security doctrine" context. The IACHR notes that, based on the information furnished by the petitioners regarding the details of each of these episodes, it is possible to determine that they are connected with the participation by Mr. Deras and some of his relatives in trade union and political organizations identified by the government of the day as participants in, or sympathizers, of Salvadoran guerrillas.

59. Given that the allegations of the petitioners, that the State has not contested, entail various violations of rights upheld in the American Convention, the Commission shall proceed to take a stand on each of them

60. As regards the right to personal integrity, Article 5.1 of the American Convention upholds, in broad terms, the right to physical, psychological, and moral integrity. For its part, Article 5.2 establishes, more specifically, an absolute prohibition against subjecting anyone to torture or cruel, inhuman, or degrading punishment or treatment, as well as the right of anyone deprived of liberty to be treated with respect for the inherent dignity of the human person. The Inter-American Court has held that any violation Article 5.2 of the Convention necessarily entails violation of Article 5.1 thereof.⁶¹

⁵⁵ Article 5.1. Every person has the right to have his physical, mental, and moral integrity respected.

Article 5.2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment (...).

⁵⁶ Article 7.1. Every person has the right to personal liberty and security.

Article 7.2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

Article 7.3. No one shall be subject to arbitrary arrest or imprisonment.

⁵⁷ Article 11.1. Everyone has the right to have his honor respected and his dignity recognized; 2.

Article 11.2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation.

Article 17.1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

⁵⁹ Article 19. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

⁶⁰ Article 22.1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

⁶¹ I/A Court H.R. *Case of Quispialaya Vilcapoma v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2015. Series C No. 308, par. 125.

61. Likewise, both the IACHR and the Court have repeatedly held that international human rights law absolutely and strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment.⁶² The prohibition is absolute and unrepeatable and today pertains to international *jus cogens* (compelling law).⁶³

62. The IACHR observes in the instant case that the petitioners alleged that i) Mr. Deras' mother was beaten in her home by military personnel; ii) Mr. Deras' father was beaten in his home, tied, and taken out of his home by military personnel; iii) Mr. Deras' sister, Irma Isabel, had her hands tied to her feet and was threatened in a DNI cell; iv) Mr. Deras' wife and his sister-in-law were blindfolded and threatened in a DNI cell and were denied food and drink for days; v) Mr. Deras' brother, Luis Rolando, was threatened and beaten by members of the DNI; and vi) several of Mr. Deras' next of kin were taken to DNI cells where they were beaten and kicked by military personnel.

63. The Commission notes that those allegations of acts committed by military personnel were not contested by the State. The Commission further observes that those deeds took place in the aforementioned context of "national security doctrine." Although the Commission does not possess sufficient information to be able to say whether in each of the deeds described in which personal integrity was violated there were elements constituting torture, it is abundantly established that the aforementioned persons suffered at least cruel and inhuman treatment. The Commission reiterates that these facts were neither contested nor investigated by the State. Consequently, the IACHR concludes that the State is responsible for violation of rights protected in Articles 5.1 and 5.2 of the American Convention, taken in conjunction with Article 1.1 of that instrument, to the detriment of the persons listed in paragraph 62 to this report.

64. Based on the right protected under Article 11.2 of the American Convention, the Inter-American Court has maintained that the sphere of privacy is characterized by being exempt and immune from abuse and arbitrary invasion by third parties or public authorities.⁶⁴ In the same vein, a home is a space in which persons are free to live their private life.⁶⁵ Thus, the Court has held that the illegal intrusion of a dwelling by armed forces constitutes an abuse and an arbitrary invasion of the private life and home of the persons affected.⁶⁶

65. In the instant case, the petitioners alleged that military personnel raided the following homes without any judicial warrant: those belonging to i) Herminio Deras; ii) Mr. Deras' parents; and iii) two homes of family members in the town of El Progreso. That information has not been contested by the State. Consequently, the IACHR concludes that the State is responsible for violation of the right protected in Article 11.2 of the American Convention, taken in conjunction with Article 1.1 of that instrument, to the detriment of the persons referred to in the foregoing paragraph.

66. Regarding the right to personal liberty, the Commission stresses that Article 7 of the American Convention specifies the guarantees of that right that States must respect and safeguard. For its part, the Court has established that Article 7 of the American Convention contains two distinct types of regulation: one general and the other specific. The general regulation is set forth in the first numbered paragraph: "1. Every person has the right to personal liberty and security." While the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7[2]) or arbitrarily (Article 7[3]), to be informed of the reasons for the detention and the charges brought against him (Article 7[4]), to judicial control of the deprivation of liberty (Article 7[5]), and to contest the lawfulness of the arrest (Article 7[6]).⁶⁷ Any

⁶² IACHR. Report No. 33/16. Case 12.797, Merits. Linda Loaiza López Soto and family members. Venezuela. July 29, 2016, par. 172. See, also: I/A Court H.R. *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 28, 2018. Series C No. 371, par. 177.

⁶³ I/A Court H.R. *Case of Herzog et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 15, 2018. Series C No. 353, par. 220.

⁶⁴ I/A Court H.R. *Case of Yarce et al. v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 22, 2016. Series C No. 325, par. 255.

⁶⁵ I/A Court H.R. *Case of the Santa Bárbara Campesino Community v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 299, par. 200.

⁶⁶ I/A Court H.R. *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, par. 243.

⁶⁷ I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, par. 346.

violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.⁶⁸

67. In the instant case, the petitioners alleged that military personnel detained i) Irma Isabel Deras after raiding her home; ii) Otilia Flores and Elba Flores after raiding their home; iii) Luis Rolando Deras; and iv) several family members of Mr. Deras in June 1984. The IACHR reiterates that the State has not contested that information.

68. The Commission notes that the State did not submit information regarding the legal basis for the detentions carried out to the detriment of the persons mentioned in the foregoing paragraph. The IACHR notes that, according to the information submitted, the arrests were carried out without a judicial warrant and with no reason to claim the existence of flagrante delicto. On the contrary, the Commission takes note of the fact that they were carried out after arbitrarily raiding several homes of Mr. Deras' next-of-kin. That being so, the IACHR considers that the detentions were carried out illegally and arbitrarily.

69. In addition, the IACHR has information indicating that some of the family members of Mr. Deras were under-age children at the time of the facts cited in this section.⁶⁹ Accordingly, the Commission concludes that the State violated its duties to afford the special protection to minors established in Article 19 of the American Convention, in conjunction with Article 1.1 of the same instrument.

70. Regarding the right recognized in Article 22, 1 of the American Convention, the Court has pointed out that it establishes protection of the right to freedom of movement and residence. That is because all persons lawfully within a State have the right to move freely within that State and to choose their place of residence; and the right to enter, to remain in, or to leave the State's territory without any unlawful interference.⁷⁰ In addition, the Court has indicated that the right to freedom of movement and residence may be affected when a person is the victim of threats or harassment and the State does not provide the guarantees necessary to allow him/her to move freely and reside in the territory in question, even when those threats and harassments are carried out by non-State actors.⁷¹

71. The Court found that Article 22.1 of the Convention had been violated to the detriment of several peoples who had been forced into exile "finding themselves (...) without being able or wanting to return home owing to a well-founded fear of persecution."⁷² In that regard, the Court has referred to the social, family, and economic impact of exile for those persons.⁷³ In addition, the failure to conduct effective investigation into acts of violence, and the impunity surrounding them, may undermine victims' trust in the justice system and help create conditions for lack of security. For that reason, impunity may foster or perpetuate exile.⁷⁴

72. In the instant case, the Commission observes that Héctor Deras, the victim's brother, left the country due to acts of violence, threats, and harassment against the family and due, in particular, to the alleged existence of a plan by military personnel to murder him. The IACHR likewise notes that Alba Luz, the victim's sister, could not return to Honduras during the time of the facts due to the same circumstances.

73. The Commission considers that the failure to investigate these matters, as the next section will explain, as well as the absence of effective protection measures, is sufficiently well substantiated by the departure from

⁶⁸ I/A Court H.R. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 54.

⁶⁹ The boys were Herminio Deras and José Herminio Deras, while the girls were Lorena Deras and Sandra Hernández.

⁷⁰ I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, par. 138.

⁷¹ I/A Court H.R. *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248, par. 220.

⁷² I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, paras. 140, 141, and 144.

⁷³ I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, par. 141.

⁷⁴ I/A Court H.R. *Case of V.R.P., V.P.C et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 350, par. 309.

the country of Héctor Deras and the impossibility for Alba Luz of returning to attribute international liability to the State. Therefore, the IACHR concludes that the State is responsible for violating the right to freedom of movement and residence, protected by Article 22.1 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of Héctor and Alba Luz Deras.

74. Finally, in connection with protection of the family established in Article 17.1 of the American Convention, the Commission considers that the allegations refer to alleged impairments, the substance of which is examined in several sections of the present report. Consequently, the ISACHR does not deem it necessary to pronounce separately on those allegations.

C. Right to a fair trial and judicial protection (Articles 8(1) and 25(1), in conjunction with 1.1 of the American Convention)

75. Both the IACHR and the Court have determined that in cases concerning violent deaths, especially those in which state agents may be involved, the investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute, and punish all those responsible for the deeds.⁷⁵ In addition, States are required to provide a simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and the victims obtain reparations for the harm suffered.⁷⁶

76. Furthermore, in cases where death may have been the consequence of the use of lethal force by state agents, the European Court has found that the “most careful scrutiny” must be used, taking into consideration “not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.”⁷⁷ Thus, “[a]ny deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard.”⁷⁸

77. In the instant case, the Commission observed various omissions and irregularities in respect of the proceedings that should have been pursued following the death of Mr. Deras. First, the Commission notes that members of the security forces did not preserve the scene of the crime but, rather, took Mr. Deras' remains to the morgue. Second, the public authorities did not perform an autopsy when Mr. Deras' remains were taken to the morgue in order to clarify the causes of death. Third, no steps were taken to ascertain the number of shots and the type of bullets used and to compare them with the weapons of the military personnel involved.

78. In addition, after the complaint filed by Otilia Flores immediately after Mr. Deras' death, the judicial authorities failed to initiate an investigation to throw light on what had happened, nor to identify those responsible. The Commission observes that it took the Public Prosecutors' Office 15 days from the time of the event to file a complaint, which eventually ended in a second instance conviction of Marco Tulio Regalado for the crime of murder. The IACHR notes that said judgment has still not been executed. The IACHR observes from the information available that the aforementioned person is a fugitive from justice and the State has not furnished information indicating that it has made every effort within its power to locate him. The State also reported that two other State agents involved in the facts of this case fled and proceedings against them are pending. The Commission observes that the State has also failed to submit information on steps taken to locate them so as to ensure the continuity of these proceedings and establish responsibilities for the death of the victim.

79. Thus, the IACHR notes that, based on the documentation provided, the investigations are allegedly still open 35 years after the facts. Given the scant information available and the length of time that has elapsed, the Commission considers that the State has not demonstrated that it acted with due diligence or within a

⁷⁵ IACHR. Report No. 41/15. Cases 12.335, 12.336, and 12.757 and 12,711. Merits. Gustavo Giraldo Villamizar Durán et al. Colombia. July 28, 2015, par. 195. See, also: I/A Court H.R. *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 122, par. 219; and *Case of Mendoza et al. v. Argentina*, Preliminary Objections, Merits and Reparations, Judgment of May 14, 2013. Series C No. 260, par. 218.

⁷⁶ I/A Court H.R. *Loayza Tamayo Case v. Peru*. Reparations. Judgment of November 27, 1998. Series C No. 42, par. 169.

⁷⁷ ECtHR. *McCann and others v United Kingdom*. Decision of 27 September 1995, par. 36.

⁷⁸ ECtHR. *Milkhalikova and others v Ukraine*. Decision of January 13, 2011, par. 42.

reasonable period of time. Moreover, the Commission underscore the fact that the criminal liability of State agent Marco Tulio Regalado was established in criminal proceedings flawed by various omissions and irregularities, thereby preventing the victim's family from having full knowledge of the facts and of the assignment of all responsibilities.

80. Based on the above, the Commission considers that to this day the crime has gone unpunished and that the State has failed to comply with its duty to guarantee an appropriate investigation to identify and, where applicable, punish all those responsible for Mr. Deras' death, and even to enforce the only conviction imposed for his extrajudicial execution. Consequently, the IACHR concludes that the State violated the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Deras' next-of-kin.

81. The Commission also underscores the fact that the State has not presented information on any start to investigations to throw light on the various violations of the American Convention already identified in the present report committed against family members of Mr. Deras. Consequently, the Commission considers that the State also failed to comply with its duty to guarantee an appropriate investigation designed to identify and, where applicable, punish all those responsible for acts against personal integrity, illegal and arbitrary detentions, raids, and so on. Therefore, the IACHR concludes that the State violated the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Deras' next-of-kin.

D. Right to humane treatment/personal integrity (Article 5.1 in connection with Article 1.1 of the American Convention)

82. The Inter-American Court has indicated, on several occasions, that the next-of-kin of victims of grave human rights violations may, in turn, be considered victims.⁷⁹ Furthermore, the Commission has determined that "the single loss of a loved one as a consequence of the arbitrary use of force by security forces, in an ongoing context of threats and defenselessness, followed by the further lack of clarification and impunity, permits the inference of an adverse effect on the physical and psychological integrity of the immediate family unit of those killed."⁸⁰

83. Regarding impunity, the Court has held:

[T]he absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.⁸¹

84. In the instant case, the Commission already considered it established that Herminio Deras lost his life as a result of an extrajudicial execution committed by military personnel, which constitutes grave violation of human rights that, of necessity, inflicted suffering on his next-of-kin. In addition, in the instance case, there is a situation of impunity in that only one person has been convicted and that sentence has not been enforced. Furthermore, the Commission takes note of the threats allegedly received by family members during the process, which the State has also not contested. Consequently, the Commission concludes that the State violated the right to humane treatment/personal integrity recognized in Article 5.1 of the American Convention, in connection with Article 1(1) of the same instrument, to the detriment of the family members of Herminio Deras García identified in the present report on the merits.

V. CONCLUSIONS AND RECOMMENDATIONS

⁷⁹ I/A Court H.R. *Case of Furlan and Family v. Argentina*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, par. 249.

⁸⁰ IACHR. Report No. 11/10. Case 12.488, Merits. Barrios Family, Venezuela. July 26, 2010, par. 227.

⁸¹ I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Decision of November 27, 2008, par. 102.

85. Based on determinations of fact and law, the Inter-American Commission concluded that the State is responsible for violating the rights to life, personal integrity, personal liberty, judicial guarantees, honor and dignity, freedom of thought and expression, freedom of association, the rights of the child, freedom of movement and residence, and judicial protection, established in Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 8.1, 11.2, 13.1, 16.1, 19, 22.1, and 25.1 of the American Convention, in conjunction with Article 1.1 thereof.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS
THAT THE STATE OF HONDURAS:**

1. Make full reparation for the violations of human rights identified in the present report, including fair compensation for physical damage and pain and suffering, as well as measures of satisfaction duly agreed upon with family members.
2. Arrange for family members of Herminio Deras García to receive the necessary physical and mental health care. Such measures should be implemented if so wished by the victims and in the manner agreed upon with them and their representatives.
3. Conduct a thorough and effective investigation of the human rights violations found in the instant report. That must entail: i) making every effort needed to capture Marco Tulio Regalado to ensure that he serves the sentence imposed; and ii) that all other responsibilities are investigated by the ordinary criminal justice system.