

**REPORT No. 174/10**  
**CASE 12.688**  
**MERITS**  
**NADEGE DORZEMA ET AL or THE GUAYUBIN MASSACRE**  
**DOMINICAN REPUBLIC**  
November 2, 2010

**I. SUMMARY**

1. On November 25, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or the “IACHR”) received a complaint lodged by the Support Group for Repatriates and Refugees represented by Cherubin Tragelus and by the Dominican-Haitian Cultural Center represented by Antonio Pol Emil, alleging the responsibility of the Dominican Republic (hereinafter “the Dominican State,” “the State” or the “Dominican Republic”). The petition alleges that the State is internationally responsible for the events that took place on June 18, 2000, in which Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema lost their lives, and in which the personal integrity of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique was harmed. The petition also alleged that some of the victims’ personal liberty had been violated and that the State had not provided the judicial guarantees and judicial protection to make possible reparation of the damage caused. On October 23, 2006, the Executive Secretariat of the IACHR received the accreditation of the International Clinic for the Defense of Human Rights of UQAM, represented by Bernard Duhaime and Carol Hilling as co-petitioners (hereinafter, they and the initial petitioners will be referred to as “the petitioners”).

2. On December 22, 2008, the Commission approved the Admissibility Report No. 95/08, in which it concluded that the Commission was competent to hear the complaint lodged by the petitioners and decided, based on arguments of law and of fact, and without prejudging the merits of the case, to declare admissible the complaint alleging the presumed violation of Articles 4, 5, 7, 8, 24 and 25 of the American Convention on Human Rights (hereinafter the “American Convention”), in connection to Article 1(1) of the same instrument. Furthermore, in application of the *iura novit curia* principle, the Commission concluded that the petition was admissible based on the alleged failure to comply with the provisions of Article 2 of the American Convention.

3. In that regard, during the analysis on the merits, the petitioners alleged that on June 18, 2000, at the border between Haiti and the Dominican Republic, Dominican troops massacred Haitian nationals and, at the same time, injured others; that the facts remained unpunished because they were investigated by the military justice system, and that the persons arrested were expelled from the country with no legal or administrative determination made regarding their juridical status. In that regard, the petitioners alleged that the victims injured and executed were subjected to an attempt against their lives; to expulsion from the country without due guarantees, and that they were denied justice because they were Haitian nationals. The petitioners considered that the facts fit within the general context of discriminatory conduct against Haitians or persons of Haitian origin by Dominican agents. Therefore, the petitioners considered that the State was responsible for the violation of the rights mentioned above.

4. For its part, the State considered that the allegations were inadmissible because the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention had not been met. Likewise, the State argued that the judicial proceedings before a military tribunal have legal and constitutional grounds, and are also in accordance with international human rights laws. Therefore, the State affirmed that the facts were duly investigated and the responsible individuals brought before civil and military justice. Furthermore, the State ruled out the notion that the facts in the present case had been the result of deliberate actions.

5. After analyzing the position of the parties, the Inter-American Commission concluded that the Dominican State was responsible for the violation of the right to life, to personal integrity, to personal liberty, to non discrimination, to judicial guarantees and judicial protection, enshrined in Articles 4, 5, 7, 24, 8 and 25 of the American Convention in connection to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of the persons listed throughout this report.

## **II. PROCESSING BEFORE THE IACHR**

6. On November 28, 2005, the Repatriated and Refugee Support Group and the Dominican-Haitian Cultural Center lodged the initial petition. The processing of the petition from the date it was lodged until the decision on admissibility was made is explained in detail on the Admissibility Report issued on December 22, 2008.<sup>1</sup>

7. On January 27, 2009, the Commission notified the parties of the above mentioned report and, based on the provisions of Article 38.1 of the Rules of Procedure then in force, granted the petitioners a period of two months to submit additional observations on the merits, and, based on the provisions of Article 38.4 of the same Rules of Procedure, placed itself at the parties disposal in order to reach a friendly settlement.

8. On March 27, 2009, the petitioners requested a two-month extension to submit their observations which the Commission granted setting a deadline of May 5, 2009.

9. On April 24, 2009, the State requested an extension to submit observations to the Admissibility Report. On April 29, 2009, the Commission informed the State that once the petitioners submitted their observations they would be forwarded to the State in order that it may submit its observations.

10. On May 5, 2009, the petitioners submitted their observations on the merits which were forwarded to the State on June 22, 2009, and requesting that the State submit its observations within a period of two months. On August 6 and 10, 2009, the State submitted its observations to the petitioner's document. On August 17, 2009, the relevant parts were forwarded to the petitioners who were asked to submit their observations within a month. The parties did not address the offer of a friendly settlement.

11. On September 11, 2009, the petitioners requested a two-month extension to submit their observations which the Commission granted starting on October 15, 2009. On December 10, 2009, the petitioners submitted their observations to the State's document and submitted additional observations on the merits. The relevant parts of those observations were forwarded to the State on January 25, 2010, requesting that the State submit any observations it deemed appropriate within a month.

12. On February 22, 2010, the State requested a one-month extension which the Commission granted on March 24, 2010. On April 27, 2010, the State requested an additional extension which was granted on May 27, 2010.

13. On May 28, 2010, the State submitted its observations whose relevant parts were forwarded to the petitioners on August 17, 2010, requesting that they submit their observations within a month.

14. On August 17, 2010, the IACHR requested that the parties submit specific information on the case regarding judicial proceedings and the victims' relatives within a period of one month. On September 20 and 21, 2010, the State and the representatives submitted some of the information requested by the Commission. On September 22, 2010, the Commission forwarded those documents to the respective parties granting them a period of one month to submit any observation they deemed relevant.

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<sup>1</sup> IACHR, Report No. 95/08 (admissibility), Petition 1351/05, Nadege Dorzema et al. or "the Guayubín Massacre", Dominican Republic, March 5, 2008.

### III. POSITION OF THE PARTIES

#### A. Position of the Petitioners

15. The petitioners allege that the Dominican State is responsible for violating Articles 1, 2, 4, 5, 7, 8, 24 and 25 of the American Convention, for the massacre of seven persons, and for injuries to the physical, psychic and moral integrity of the survivors and the relatives of the victims. The petitioners allege, that the bases for those violations can be found on the events that transpired on June 18, 2000, on the Botoncillo-Copey highway which were perpetrated by the Dominican Republic Armed Forces through the pursuit, the resulting accident caused involving the vehicle in which the victims traveled, and the subsequent extrajudicial execution of several victims. Those facts have been called “the Guayubín Massacre.” The petitioners also allege the impunity of the proceedings carried out before the Military Tribunal and the impossibility of the victims to have access to ordinary criminal jurisdiction. Lastly, the petitioners allege that the survivors were expelled from the country without due judicial guarantees.

16. The petitioners allege that Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema lost their lives. Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, Honorio Winique, Jospeh Devraine, Maudiré Felizor, Noclair Florvilien, Rose Marie Petit-Homme-Estilien, Joseph Dol, Sylvie Felizor, as well as five persons “whose names are unknown,” suffered harm to their personal integrity. The petitioners also considered the relatives of the victims to be victims themselves.

17. The petitioners allege that in the early morning hours of June 18, 2000, the truck transporting Haitian nationals reached the checkpoint located at “Botoncillo”, Municipality of Guayubín, in the Dominican Republic. At that location, members of the Border Intelligence Operations Department of the Armed Forces, who were patrolling and inspecting vehicles, signaled the truck to stop, a signal ignored by the driver of the truck who continued on his way. Consequently, the petitioners allege, the troops began pursuing the truck and firing at it indiscriminately. The petitioners say that, according to the testimony of witnesses, the troops could see that there were persons inside the truck. They add that after the truck overturned while on a curve near the locality of “El Copey”, the Dominican troops continued to fire at the alleged victims who, terrified, were trying to flee the scene. As a consequence of those actions, six Haitians and one Dominican lost their lives, and several Haitians were injured.

18. The petitioners allege that the State failed to comply with the obligation established in Article 2 of the American Convention, in connection to Articles 8, 25 and 1(1) of the same instrument, by not revoking domestic laws that violated the provisions of the Convention. The petitioners point out that domestic legislation grants jurisdiction to military tribunals to hear cases of human rights violations perpetrated by the armed forces, which was recognized by the State and confirmed by the Supreme Court of Justice when it decided the issue of competence by ruling in favor of the Military Tribunal as having jurisdiction to hear the facts of the massacre. The petitioners argue that the existence of laws that grant jurisdiction to military tribunals to hear cases of human rights violations committed by its agents, affect the victim’s right to justice and to have access to an independent and impartial court. .

19. In addition, the petitioners allege that the judicial authorities, based on the jurisprudence of the Inter-American Court, failed to ensure that the domestic legislation “did not contravene the provisions of the Convention.” In the present case, the petitioners argue that the Supreme Court of Justice violated the Convention and contravened inter-American jurisprudence when it granted jurisdiction to military tribunals.

20. The petitioners argue that the State violated Article 4 of the American Convention when members of the armed forces arbitrarily deprived Jacqueline Maxime, Fritz Alce (alias Gemilord), Pardis Fortilus, Roselene Theremeus, Ilfaudia Dorzema, Nadege Dorzema, and Máximo Rubén Espinal of life, by pursuing, opening fire on, and forcing the truck that transported them into an accident and executing some of the survivors.

21. The petitioners also point out that the right to life takes into account the use of lethal force by government agents and prohibits the arbitrary deprivation of life. They point out that "State agents may and should resort to the use of force only against individuals who threaten the security of a citizen or of the agents themselves, therefore, the State cannot employ force against civilians who do not constitute such a real and specific threat." The petitioners argue that the victims did not represent any danger because they were unarmed and defenseless. They add that, although the troops knew that the truck was carrying persons, they continued to fire at the rear end of the truck for a prolonged period of time, and they deliberately caused the accident, although doing so would "likely" endanger the lives of the individuals." Furthermore, the petitioners argue that, after the truck overturned "the troops continued to fire at the victims who were terrified and trying to flee the place." The petitioners conclude that those actions constituted a disproportionate, unreasonable and unjustified use force that resulted in 7 dead and 13 injured.

22. With regard to Article 5 of the American Convention, the petitioners allege that the State violated the right to physical integrity of Honorio Winique, Renaud Timat, Joseph Pierre, Celafoi Pierre, Roland Israel, Rose Marie Dol, Josué Maxime, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Michel Florantin and Silvie Thermeus, who were wounded by bullets and suffered injuries as a result of the accident involving the truck in which they were traveling.

23. Furthermore, the petitioners allege that the State caused harm to the moral and psychological integrity of the survivors and their relatives. In that regard, the petitioners point out that the troops, "forced [the] survivors to pick up, carry the bodies and place them inside the ambulances," without taking into consideration that they were either in a state of shock or injured and that the dead were their companions, friends and even their relatives. The petitioners allege that the survivors who were transported to detention centers were threatened by the troops with forced labor and jail if they didn't pay for their release. The petitioners also allege that the decision by the State to bury the remains together with the victims of the massacre in a common grave did not respect the moral and psychological integrity of their relatives who, in addition, had to assume responsibility for the children left behind by the deceased.

24. With regard to Article 7 of the Convention, the petitioners allege that the State violated the right to liberty of the individuals detained due to the fact that some of the survivors were taken and arbitrarily held in the Montecristi and Dajabón detention centers, without being told the reason for their detention, without being asked for identification, and without being taken before a judge or competent judicial authority. Nor were they allowed to file judicial recourse to challenge the legality of the arrest.

25. The petitioners also allege that the State violated the rights recognized in Articles 8 and 25 of the Convention with regard to the obligation to respect the rights enshrined in Article 1(1). They allege that by allowing the military tribunal to have jurisdiction to hear the facts and not allowing the proceedings to take place within the ordinary jurisdiction, the State violated the victims' right to judicial protection and to due process. They point out that relatives sought to file proper legal recourse before civilian judges. However, the coexistence of military and ordinary proceedings, in addition to the unjustified delay in ruling on the appeal to resolve the conflict of jurisdictions, prevented the relatives from having access to simple, prompt, adequate and effective recourse to competent, independent and impartial judges and tribunals.

26. The petitioners point out that the relatives filed an appeal with the Supreme Court of Justice in March 2003, requesting that the proceeding in the military tribunal be transferred to ordinary jurisdiction but, the petitioners maintain, the relatives were never notified of the January 2005 ruling in favor of military jurisdiction and only learned about the decision within the framework of lodging the complaint with the IACHR. The petitioners allege that the delay in the decision and the lack of notification demonstrate the irregularity and ineffectiveness of the domestic judicial system.

27. The petitioners argue that when the "State allows entities that are potentially implicated to carry out investigations, independence and impartiality are clearly compromised; that Military Tribunals,

by their very nature, do not meet the requirements of an independent and impartial tribunal applicable to civil proceedings because they are not part of the independent civil justice system but part of the executive branch.”

28. The petitioners allege that, in addition to the lack of independence, impartiality and diligence of proceedings in military tribunals, the judicial proceedings were rushed. The petitioners point out that only one of the victims of the massacre was questioned during the military investigation, a fact that constitutes grave negligence because neither the victims nor the witnesses were allowed to challenge the testimony of the troops, and openly contradicts international standards which demand an immediate, exhaustive, serious and impartial investigation. The petitioners add that there was an absence of judicial independence and impartiality *de jure e in concreto*, due to the fact that shortly after the facts, the Office of the Secretary of State of the Armed Forces issued a communication stating the institution’s position, indicating that “the military acted in accordance with their duty to be vigilant and protect [the] territory.”

29. On the other hand, the petitioners allege that the persons detained at the Dajabón center were expelled from the national territory by government agents before their legal status was determined through either judicial or administrative proceedings. The petitioners argue that, in accordance with the inter-American system, before beginning any proceedings to expel persons who are under their control, authorities have the obligation to determine the status of those persons providing all due judicial guarantees, something that, they point out, did not happen in the present case.

30. The petitioners maintain that the State violated rights enshrined in Article 24 of the Convention in connection to Article 1(1), given that the facts of the case fall within the general context of discriminatory actions against Haitians or persons of Haitian origins on the part of Dominican agents, specially on the border with Haiti. The petitioners emphasize that, in general, Haitian migration takes place “under extreme conditions, marked by the absence of legal parameters and by discriminatory attitudes.” They argue that to consider any group as inferior violates the notion of equality, as is the case of Haitian nationals in the Dominican Republic who are not allowed to enjoy rights that are guaranteed to other foreign nationals. Based on the jurisprudence of the Inter-American Court, the petitioners maintain that “the migration status of a person cannot in any way provide justification to deprive that person from enjoying and exercising their human rights.”

31. The petitioners point out that both, the massive expulsion of Haitians without prior judicial guarantees which is the context for the present case, as well as their difficulty in gaining access to the judicial system reflect racial discrimination. In that regard, the petitioners allege that “racial attacks and illegal homicides are rarely investigated and that it is even [rarer] for those responsible to face punishment for their acts.”

32. The petitioners conclude that the Guayubín Massacre is one of many extrajudicial killings and executions of legal or undocumented Haitians in the Dominican Republic, especially near the border, that remain unpunished. Based on the preceding and on reports and the jurisprudence of international organizations, the petitioners argue that the “discriminatory treatment of the victims on June 18, 2000, as well as during the inadequate, ineffective and delayed judicial proceedings,” constitute a violation of the American Convention.

33. With regard to the individual identification of the victims, the petitioners indicate that “some of the victims and their relatives were illegally returned to Haiti by State agents [...] [which leads to] the victims finding themselves in a defenseless and vulnerable situation that forces them to move frequently. Furthermore, as a result of the earthquake that hit Haiti on January 12, 2010, a number of technical difficulties have developed to locate and communicate with the victims and their families.” In that regard, the petitioners point out that it is “impossible [...] to deliver a full and updated list of victims and relatives,” and therefore request that the IACHR take into account the “extraordinary situation,” and to interpret the requirements of the Convention and of its Rules of Procedure in a flexible manner that is adapted to the context, in accordance with the principle of *pro homine* and with the constant

jurisprudence of the Court and of the Commission on this subject matter.” Last, the petitioners reserve the right to submit an updated list of victims and relatives in the future.

## **B. Position of the State**

34. The Dominican State reiterates that the case must be declared inadmissible because the victims and their relatives still have available legal remedies in the ordinary judicial system to have access to compensation for the effects of the facts that took place on June 18, 2000, if pertinent. The State adds that the judicial proceedings in the military tribunal have legal and constitutional bases in addition to meeting the standards established in international human rights laws.

35. The State alleges that in compliance with the provisions of Article 1(1) of the American Convention, “the Armed Forces have established the School of Human Rights and International Humanitarian Law which provides courses to members of the Armed Forces across the country [...] for the purpose of teaching them how treat people as human beings regardless of their beliefs, race or religion.”

36. With regards to the right to life enshrined in Article 4 of the American Convention, the State acknowledges that on the day the events took place, when a military patrol tried to detain the vehicle that had crossed the checkpoint, six Haitian nationals and one Dominican national lost their lives. However, the State contends that the deaths of those persons should not be classified as murder because, in accordance with the Dominican Criminal Code, “the elements required for the act to constitute murder are that, once a homicide has been committed, there must be additional aggravating acts committed against the victims, a situation that has not been established by any means in this case.” Furthermore, the State contends that premeditation implies “intent before the action to attempt against any person with the objective of taking their life or to commit acts of violence against them.”

37. The State alleges that the troops did not know the persons traveling in the vehicle. On the contrary, “they had received information from the national intelligence system that the offenders were trying to presumably carry out illicit narcotics trafficking.” The State adds that the events took place at night, in a dark area, and given that the vehicle was covered with a tarp, it was impossible to determine that there were persons inside. Therefore, the State rejects the notion that the actions were intentional.

38. With regard to the disproportionate use of force and opening fire with the intent of executing the Haitian nationals, the State contends that the troops “did not have any other means with which to stop the vehicle carrying the offenders, although they had been engaged in a pursuit of the vehicle for a few kilometers, which, under the law, could be construed as legal excuse due to provocation, which would in turn derive in attenuating circumstances with regard to any punishment that could be imposed on the accused.”

39. On the other hand, the State makes reference to “the contradictory testimony given by the driver of the vehicle [with regard to the events of June 18, 2000, because that person’s] credibility was compromised since he could bear criminal responsibility in the case.” The State adds that “by proceeding with the arrest of the driver and bringing him before the ordinary justice system, [the military demonstrated] that they respected his individual rights.”

40. With regard to Articles 8 and 25 of the American Convention, the State points out that the Office of the Secretary of State of the Armed Forces ordered that the investigation of the massacre be conducted by a board comprised of general officers from various branches, and that the case was tried by the Joint Armed Forces and National Police Court Martial of First Instance. The State reports that the alleged authors were charged with violating Articles 295, 304 and 309 of the Criminal Code, in accordance with the provisions of Article 3 of the Armed Forces Code of Justice which establishes that “military jurisdictions are competent to prosecute offenses committed by military personnel while discharging their duty, regardless of where the offenses were committed.” Based on the preceding, the Supreme Court of Justice dismissed the complaint lodged by the relatives of the victims requesting that the facts be heard in the ordinary justice system.

41. The State affirms that “it recognizes and applies the norms of general and American International Law to the extent that those norms have been adopted by the national government [...]. However, the sovereignty of the Dominican nation as a free and independent State is inviolable.” In the present case, the State contends that the armed forces “fulfilled their duty to empower the competent jurisdiction to shed light on such a regrettable incident.”

42. The State points out that the competence of the military tribunal to hear the facts is recognized in Article 2 of the Armed Forces Code of Justice which establishes that “[t]he administration of justice within the armed forces is the responsibility of the Courts Martial, the Provosts created by the present law and of the Supreme Court of Justice acting as Court of Cassation,” and in Article 145 of the Organic Law of the Armed Forces which establishes that “crimes and violations committed by military personnel in active service, shall be tried and sanctioned in accordance with the provisions of the Armed Forces Code of Military Justice.” In that regard, the State points out that Article 5 of the Criminal Code of the Dominican Republic establishes that its provisions are applicable to “Military Offenses, Violations or Crimes,” and, therefore, the Code “which is a general application of common law, acknowledges the existence of a special criminal jurisdiction for members of the Armed Forces.” The State further alleges that Article 55.17 of the Constitution grants “full authority to the President of the Republic to name or dismiss the members of the Joint Armed Forces and National Police Courts Martial.” According to the State, all the preceding arguments prove that at the time the events took place, the military tribunals were duly constituted and recognized to try crimes within their jurisdiction, “under the absolute rule of law.”

43. The State asserts that the Guayubín Massacre was fully investigated and that those responsible were brought before both civil and military justice. The State reports that the Investigative Board of General Officers “recommended that the prosecution of the individuals which were allegedly responsible for the crime of illicit trafficking in persons, be carried out by the ordinary justice system [...] before [...] the Public Prosecutor of the Judicial District of the Province of Montecristi,” since the special military jurisdiction cannot try persons who are not members of the armed forces. The State further adds that “the general principle of the right to the indivisibility of proceedings notwithstanding, the establishment of a special military jurisdiction for members of the Armed Forces and of ordinary jurisdiction for civilians is due to the fact that there is no connection between the offenses for which military personnel and civilians can be charged.”

44. The State reiterates that it has complied with “all substantive norms, international treaties and procedural laws in the process to empower the jurisdictional levels that, as an independent power, investigated, tried and issued rulings regarding members of the Armed Forces involved in the case.”

45. The State contends that the acquittal of the members of the military by the Appellate Joint Armed Forces and National Police Court Martial, although they had been convicted in the Court of First Instance, was due to the fact that those members of the military “benefitted from the general principle of the right to individualization of punishment given that, although [...] the autopsies were performed and the causes of death, injury or blows received by the victims were determined, it was impossible to carry out ballistic analyses to identify which weapon fired which projectiles in order to be able to legally assign individual responsibility because the bullets fired could not be recovered due to the fact that they entered and exited the bodies of the victims.”

46. With regard to the petitioners’ contention that following the massacre the armed forces adopted an institutional posture that compromised the independence and impartiality of the military tribunal, the State points out that that contention is based on “a news report [...] where the source providing the information was taken out of context, since the armed forces are not competent to define or classify what action or omission may constitute a criminal offense, and limited themselves to pointing out that the members of the military were doing their duty.”

47. Lastly, the State contends “[t]hat civil action may only be pursued in civilian courts and that that course of action shall be suspended until a final decision is rendered on the public action lodged

before or while the civil action was being pursued; therefore, it would be a rush to judgment to speak of a violation of the human rights of the Haitian nationals.”

#### IV. ANÁLISIS ON THE MERITS

##### A. Evaluation of the evidence

48. The Inter-American Commission, pursuant to Article 43(1) of the Rules and Procedures of the Inter-American Commission on Human Rights (hereinafter “Rules of the IACHR”), will examine the allegations and the evidence provided by the parties. The Commission will also take into account information that is public knowledge.<sup>2</sup>

##### B. Considerations of Fact

###### *Context*

49. Historically, the situation of Haitian immigrants in the Dominican Republic has been a complex issue and it has been a matter of concern for the Inter-American Commission on Human Rights and for other international protection organizations.<sup>3</sup> In its “Report on the human rights situation in the Dominican Republic, of 1999,” the Inter-American Commission considered that, during the period under study, Haitian immigrants who constantly crossed the border in search of work “have been victims of all kinds of abuse at the hands of authorities, from murder to mistreatment, massive expulsions, deplorable living conditions,” and that in the context of expulsions, they have been denied the opportunity to prove that they reside legally in the Dominican Republic. Furthermore, the Commission considered that the expulsions of Haitians by Dominican authorities were carried out in a violent and hurried manner, and that the persons who were being expelled were detained in establishments where food was scarce and where, in certain cases, they were mistreated.<sup>4</sup>

50. The United Nations Human Rights Committee considered that, during the period under study, Haitians in the Dominican Republic were subjected to expulsions and deportations carried out without guarantees of due process which should regulate these proceedings.<sup>5</sup> Likewise, the Committee has contended that they did not have equal access to effective remedies, including the right to challenge expulsion orders, nor were they in fact allowed to lodge those recourses.<sup>6</sup>

51. In addition, the Commission contended that the extrajudicial executions committed by officers of the National Police, agents of the National Drug Control Directorate or members of the Armed Forces, take place in an environment in which these agents go beyond their responsibilities and abuse

<sup>2</sup> Article 43.1 of the Rules of Procedure of the IACHR establishes: “The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.” In particular, the IACHR will take into account, as it has done in other reports, United Nations reports and the Commission’s own reports.

<sup>3</sup> United Nations Committee on Human Rights. Analysis of the reports presented by States Parties in accordance with Article 40 of the Covenant. CCPR/C/79/Add.18. May 5, 1993. United Nations Human Rights Committee. Analysis of the reports presented by States Parties in accordance with Article 40 of the Covenant. CCPR/CO/71/DOM. April 26, 2001.

<sup>4</sup> Inter-American Commission on Human Rights. Report on the human rights situation in the Dominican Republic, OEA/Ser.LV/II.104, Doc. 49 rev. 1, October 7, 1999, par. 317. See also, *Human Rights Watch*, “Illegal Persons: Haitians and Haitian-Dominicans in the Dominican Republic”, vol. 14, no 1(B), April 2002, Petitioners’ document of May 5, 2009. Annex 27

<sup>5</sup> United Nations Committee on Human Rights. Analysis of the reports presented by the State Parties in accordance with Article 40 of the Covenant. CCPR/C/79/Add.18. May 5, 1993. United Nations Human Rights Committee. Analysis of the reports presented by the States Parties in accordance with Article 40 of the Covenant. CCPR/CO/71/DOM. April 26, 2001. V. United Nations, Final observations of the Committee to Eliminate Racial Discrimination, Dominican Republic, CERD/C/DOM/CO/12, May 16, 2008, Petitioners’ document of May 5, 2009. Annex 34. See also *Human Rights Watch*, “Illegal Persons: Haitians and Haitian-Dominicans in the Dominican Republic,” vol. 14, no 1(B), April 2002, Petitioners’ document of May 5, 2009. Annex 27.

<sup>6</sup> United Nations, Final observations of the Committee to Eliminate Racial Discrimination, Dominican Republic, CERD/C/DOM/CO/12, May 16, 2008, Petitioners’ document of May 5, 2009. Annex 34.

their powers in actions that result in the death of the victims.<sup>7</sup> Furthermore, the IACHR has taken note that in several of these cases the victims of extrajudicial executions have been killed while being unarmed and defenseless.<sup>8</sup> The Commission has also concluded that the State did not adequately investigate those extrajudicial executions, nor did it prosecute and punish the responsible individuals.<sup>9</sup> Based on the preceding, the Commission urged the State “to adopt urgent measures to fully investigate these violations of the right to life” so that those responsible be brought to trial and punished by the ordinary justice system.”<sup>10</sup>

52. Lastly, the Inter-American Court of Human Rights, based on the report submitted by the Dominican Republic to the United Nations Human Rights Committee in 2002, considered it a fact that the State asserted that its primary concern was “to combat exclusion and social inequality, seeking mechanisms to integrate the whole society and put behind, once and for all, old anti-Haitian practices.”<sup>11</sup> In this regard, in the report issued following his visit to the Dominican Republic, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance, concluded that massive expulsions, deportations and the mistreatment of immigrants are due to the fact that “there is racism and racial discrimination in Dominican society.”<sup>12</sup>

*With regard to the events of June 18, 2000, and the days that followed*

53. Around 3:00 a.m. on June 18, 2000, in the northern border between Haiti and the Dominican Republic, in the Santa María area of the Dominican Republic, a yellow Daihatsu vehicle carrying 37 Haitian nationals was heading toward Los Cerros de Gurabo<sup>13</sup>. Two Dominican nationals were in the cabin and, in the rear of the vehicle which was covered by a tarp, were the Haitian nationals.”<sup>14</sup>

54. When the vehicle reached the customs checkpoint at Botoncillo, personnel from the Border Intelligence Operations Department in Montecristi (hereinafter “DOIF”), together with other army troops, ordered the driver of the truck to stop, but the driver ignored the order and that was the reason why military personnel pursued the vehicle for several kilometers in a patrol (wagon) from which they opened fire.<sup>15</sup> The version of the military personnel involved in the pursuit is that, first, they signaled the

<sup>7</sup> Inter-American Commission on Human Rights. Report on the human rights situation in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, par. 138, 142 and 469.

<sup>8</sup> Inter-American Commission on Human Rights. Report on the human rights situation in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, par. 141.

<sup>9</sup> Inter-American Commission on Human Rights. Report on the human rights situation in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, par. 140 and 470.

<sup>10</sup> Inter-American Commission on Human Rights. Report on the human rights situation in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, par. 470. Follow up report to the IACHR recommendations on the human rights situation in the Dominican Republic, 2001, par. 45.

<sup>11</sup> United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the final observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, May 28, 2002, par. 46. Cited by Court in the consideration of facts section in I.A Court H.R, Case of the Yean Girls and Bosico Vs. Dominican Republic. Preliminary Exceptions, Merits, Reparations and Costs. Judgment issued September 8, 2005. Serie C No. 130, par. 109.4.

<sup>12</sup> United Nations Human Rights Council. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance, Doudou Diène, and of the independent expert on minority matters, Gay McDougall. A/HRC/7/19/Add.5. A/HRC/7/23/Add. 3. March 18, 2008.

<sup>13</sup> Sworn testimony given by Félix Antonio Núñez Peña on May 15, 2009. Petitioners’ document of December 10, 2009, Annex 1.

<sup>14</sup> Summary Court of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15- (2000), July 24, 2000, Communiqué of June 18, 2000, National Police of Montecristi, Interrogation of Johannes Paul Franco Camacho and of Feliz Ant. Núñez Peña in Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Interrogation of Cadet Bernardo de Aza Núñez in preliminary proceedings of the Court Martial of First Instance, June 19, 2000; Interrogation Michel Frances, in preliminary proceedings of the Court Martial of First Instance, July 17, 2000; in Petitioners’ document of May 5, 009, Annexes 1, 2, 3, 4, 6, 12. Note from the Attorney General of the Armed Forces to the Secretary of State of the Armed Forces. State document dated July 13, 2007. Annex.

<sup>15</sup> Testimony of Sylvie Thérémus, Rose Marie Dol, Renaud Tima, Celafoi Pierre and Joseph Pierre given on September 22, 2007. Petitioners’ document of December 10, 2009, Annexes 14, 15, 16, 17 and 18. Sworn testimony of Félix Antonio Núñez Peña given May 15, 2009 and newspaper article “The official version of the Armed Forces”, Diario Última Hora June 19, 2000, in petitioners’ document dated December 10, 2009, Annexes 1 and 4. Note from the Attorney General of the Armed Forces to the Secretary of State of the Armed Forces. State document dated July 13, 2007. Annex.

car with their high beams, and then they fired into the air and at the tires in an effort to make the truck stop.<sup>16</sup> The survivors' version is that the military personnel fired at the body of the vehicle where the persons were.<sup>17</sup> In the military investigation of the facts, the authorities were able to determine that the truck had bullet holes in the rear cargo area and in the cabin of the truck but no impact whatsoever on the tires.<sup>18</sup>

55. Furthermore, the survivors contend that the troops knew that the truck was carrying persons because the tarp covering the rear of the vehicle moved and it was a clear night.<sup>19</sup> On the other hand, the troops maintain that the tarp did not move and that it was dark, and, therefore, they did not know that the truck was carrying persons.<sup>20</sup>

56. Several persons were injured in that shooting and some of them suffered mortal wounds.<sup>21</sup>

57. Several kilometers further down the road, in the Copey area, the truck overturned on the side of the road trapping some persons underneath.<sup>22</sup> The account provided by several survivors indicate

<sup>16</sup> Interrogation of Cadet Bernardo de Aza Núñez. Preliminary proceedings of the Court Martial of First Instance, June 19, 2000, Petitioners' document of May 5, 2009, Annexes 3 and 6. Interrogation of Johannes Paul Franco Camacho. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document of May 5, 2009, Annex 3. Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceeding No. 15-(2000), July 24, 2000. Petitioners' document of May 5, 2009, Annex 1. Unidentified witness. Newspaper article in *Diario Ultima Hora* of June 19, 2000, Petitioners' document of December 10, 2009, Annex 4. Interrogation of Johannes Paul Franco Camacho. Preliminary proceedings of the Court Martial of the First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 3. Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceeding No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness. Reference made in the note from the Attorney General of the Armed Forces to the Secretary of State of the Armed Forces. State document dated July 13, 2007. Annex.

<sup>17</sup> Testimony of Renaud Tima on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 16. Testimony of Sylvie Therméus on September 22, 2007, petitioners' document dated December 10, 2009, Annex 14.

<sup>18</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceeding No. 15-(2000), pg. 8, July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Interrogation of Cadet Bernardo de Aza Núñez. Preliminary proceedings of the Court Martial of First Instance, June 19, 2000, Petitioners' document dated May 5, 2009, Annex 6.

<sup>19</sup> Sworn testimony of Félix Antonio Núñez Peña on May 15, 2009, Petitioners' document dated December 10, 2009, Annex 1. Lunar calendar for June 2000, SFA Moon Phase Calendar, Stephen F. Austin State University Observatory, Petitioners' document dated May 5, 2009, Annex 5.

<sup>20</sup> Interrogation of Cadet Bernardo de Aza Núñez. Preliminary proceedings of the Court Martial of First Instance, June 19, 2000, Petitioners' document dated May 5, 2009, Annexes 3 and 6. Interrogation of Johannes Paul Franco Camacho, Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 3. Joint Armed Forces and National Police Courts Martial of the First Instance, Proceeding No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness. Newspaper article in *Diario Ultima Hora* of June 19, 2000, Petitioners' document dated December 10, 2009, Annex 4. Interrogation of Johannes Paul Franco Camacho. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 3. Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of the First Instance, Proceeding No. 15-(2000), July 24, 2000. Petitioner's document dated May 5, 2009, Annex 1. Unidentified witness. Reference made in the note of the Attorney General of the Armed Forces to the Secretary of State of the the Armed Forces. State document dated July 13, 2007. Annex.

<sup>21</sup> Preliminary Autopsy Report issued by the Regional Forensic Medicine Institute, Petitioners' document dated May 5, 2009, Annexes 2 and 6. "Body of an adult male, young, mixed race, brown complexion.....Manner of death: HOMICIDE. Conclusion: The death of the man described, identified as MÁXIMO RUBEN DE JESUS ESPINAL was due to HEMORRHAGE AND DIFFUSE CEREBRAL LACERATION CAUSED PRODUCED BY GUNSHOT WOUND (1), whose effects were essentially fatal." Death Certificate of Máximo Rubén Espinal dated June 18, 2000, Office of the Attorney General, Judicial District of Montecristi. Petitioner's document dated December 10, 2009, Annex 3. "...presents contusion from gunshot wound in the occipital region with no exit. Fatal". Testimony of Félix Antonio Núñez Peña on May 15, 2009, Petitioners' document dated December 10, 2009, Annex 1. Sworn testimony of Félix Antonio Núñez Peña on May 15, 2009, Petitioners' document dated December 10, 2009, Annex 1. Death Certificate of Máximo Rubén Espinal. Petitioners' document dated December 10, 2009, Annex 3. National Police of Montecristi communication dated June 18, 2000; Petitioners' document dated December 10, 2009, Annex 2. Testimony of Celafoi Pierre on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 17.

<sup>22</sup> Sworn testimony of Félix Antonio Núñez Peña on May 15, 2009, petitioners' document dated December 10, 2009, Annex 1. Testimony of Sylvie Therméus on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 14. Petitioners' document dated May 5, 2009, Annex 18. Testimony of Rose Marie Dol on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 15. Testimony of Renaud Tima on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 16. Petitioners' document dated May 5, 2009, Annex 17. Testimony of Joseph Pierre on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 18. Testimony of Joseph Desravine on September 22, 2007, Petitioners' document dated December 10, 2007, Annex 19. Testimony of Rose Marie Dol on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 15. Manuel Azcona, Witnesses say that the Guayubín case ws an execution, June 30, 2000, newspaper *Listín Diario*, Petitioners document dated May 5, 2009, Annex 20. Testimony of Sylvie Therméus on September 22, 2007, Continúa...

that during the pursuit, a white vehicle pulled right next to the truck and hit it, causing the truck to overturn.<sup>23</sup> That account is confirmed by several residents of Copey, who say that they heard a collision between two vehicles and afterwards saw the overturned truck and a white vehicle next to it.<sup>24</sup> The military version states that the driver of the truck lost control of the vehicle on a curve.<sup>25</sup>

58. According to the survivors once the truck had overturned, the troops continued firing at the persons who were trying to flee.<sup>26</sup> The military version states that once the truck had overturned, the troops did not fire or fired into the air.<sup>27</sup>

59. During these events the following persons lost their lives: Jacqueline Maxime<sup>28</sup>, Fritz Alce<sup>29</sup>, Roselene Theremeus<sup>30</sup>, Ilfaudia Dorzema<sup>31</sup>, Pardis Fortilus<sup>32</sup> and Nadege Dorzema<sup>33</sup>, all Haitian

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Petitioners document dated December 10, 2009, Annex 14. Interrogation of Feliz Ant. Nuñez Peña. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners document dated May 5, 2009, Annex 4. Newspaper article in Diario Ultima Hora of June 19, 2000, Petitioners document dated December 10, 2009, Annex 4. Interrogation of Feliz Ant. Nuñez Peña, Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 4. Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness. Testimony of Renaud Tima on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 16.

<sup>23</sup> Testimony of Sylvie Therméus on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 14. Petitioners' document dated May 5, 2009, Annex 18. Testimony of Rose Marie Dol on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 15. Testimony of Renaud Tima on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 16. Petitioners' document dated May 5, 2009, Annex 17. Testimony of Joseph Pierre on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 18. Testimony of Joseph Desravine on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 19. Testimony of Rose Marie Dol on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 15. Manuel Azcona, Witnesses say that the Guayubín case was an execution, June 30, 2000, newspaper Listín Diario, Petitioners document dated May 5, 2009, Annex 20. Testimony of Sylvie Therméus on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 14. Interrogation of Felix Ant. Nuñez Peña. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 4.

<sup>24</sup> Testimony of Andrés Bolben Monegro, Microna Audelencia Martínez Salcedo and Florentina Bastista, May 15, 2009, Petitioners' document dated December 10, 2009, Annexes 10, 11 and 12. Testimony of Florentina Bastista on September 18, 2007. Petitioners' document dated May 5, 2009, Annex 7.

<sup>25</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness. Interrogation of Johannes Paul Franco Camacho. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000. Petitioners' document dated May 5, 2009, Annex 3.

<sup>26</sup> Testimony of Félix Antonio Nuñez Peña on May 15, 2009. Petitioners' document dated December 10, 2009, Annex 1. Testimony of Sylvie Therméus on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 14. Petitioners' document dated May 5, 2009, Annex 18. Testimony of Rose Marie Dol on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 15. Testimony of Renaud Tima on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 16. Petitioners' document dated May 5, 2009, Annex 17. Testimony of Joseph Pierre on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 18. Testimony of Joseph Desravine on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 19. Testimony of Rose Marie Dol on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 15. Manuel Azcona, Witnesses say that the Guayubín case was an execution, June 30, 2000, newspaper Listín Diario, Petitioners' document dated May 5, 2009, Annex 20. Testimony of Sylvie Therméus on September 22, 2007. Petitioners' document dated December 10, 2009, Annex 14. Interrogation of Felix Ant. Nuñez Peña. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 4.

<sup>27</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness. Interrogation of Johannes Paul Franco Camacho. Preliminary proceedings of the Court Martial of First Instance, July 18, 2000, Petitioners' document dated May 5, 2009, Annex 3.

<sup>28</sup> Also identified by the name Yaschin Masime. Preliminary autopsy report for Yachin Masime, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.1 "Body of black adult male, young, black hair...Manner of death: ACCIDENTAL Conclusion. The death of the man described YACHIN MASIME was due to SEVERE CLOSED TRAUMA TO THE THORAX AND ABDOMEN, whose effects were essentially fatal."

<sup>29</sup> Also identified by the name Gemilord or Gemilar Alce. Preliminary autopsy report for GEMILAR ALCE, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.7 "Body of adult male, young, black race, black hair...Manner of death: HOMICIDE. Conclusion: The death of the man described GEMILAR ALCE was due to HEMORRHAGE AND DIFFUSE CEREBRAL LACERATION PRODUCED BY GUNSHOT WOUND (1), whose effects were essentially fatal."

<sup>30</sup> Also identified by the name Rosalaine Therneur. Preliminary autopsy report for Rosalaine Therneur, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.2 "Body of adult female, young, black race, black hair...Manner of death: HOMICIDE. Conclusion. The death of [...] Rosalaine Therneur was due to HYPOVOLEMIC SHOCK and/or SEVERE VERTEBRO-MEDULLARY LESION PRODUCED BY GUNSHOT WOUND (1), whose effects were essentially fatal."

<sup>31</sup> Also identified by the name Fosieu Dosema. Preliminary autopsy report for Fosieu Dosema, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.3. "Body of adult female, young, black race, black hair  
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nationals,<sup>34</sup> and Máximo Rubén de Jesús Espinal, who was one of the Dominican drivers.<sup>35</sup> According to the autopsy reports, the death of six of those persons was due to gunshot wounds mainly to the head, thorax and abdomen,<sup>36</sup> and in the case of another person, death was due to trauma to the thorax and abdomen.<sup>37</sup> According to those autopsy reports, Pardis Fortilus<sup>38</sup> and Nadege Dorzema<sup>39</sup>, had respectively six and four gunshot wounds to the back.

60. Once the truck overturned, the troops called medical personnel to the scene,<sup>40</sup> and when the ambulances arrived, the troops ordered the survivors to load the deceased and those gravely injured on the ambulances.<sup>41</sup> The injured were transported to a hospital in the city of Santiago<sup>42</sup> and the

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...Manner of death: HOMICIDE. Conclusion. The death of [...] FOSEU DOSEMA was due to HYPOVOLEMIC SHOCK PRODUCED BY MULTIPLE GUNSHOT WOUNDS (4), whose effects were essentially fatal."

<sup>32</sup> Also identified by the name Noupardy Fortilus. Preliminary autopsy report for Noupardy Fortilus, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.5. "Body of adult female, young, black race, black hair...manner of death: HOMICIDE. Conclusion: The death of [...] NOUPARDY FORTILUS was due to HYPOVOLEMIC SHOCK PRODUCED BY MULTIPLE GUNSHOT WOUNDS [6], whose effects were essentially fatal."

<sup>33</sup> Also identified by the name Nana Dosema. Preliminary autopsy report for Nana Dosema, issued by the Regional Forensic Institute, Petitioners' document dated may 5, 2009, Annex 2.4. "Body of adult female, young, black race, black hair...Manner of death: HOMICIDE. Conclusion: The death of [...] NANA DOSEMA was due to HYPOVOLEMIC SHOCK PRODUCED BY MULTIPLE GUNSHOT WOUNDS (4), whose effects were essentially fatal."

<sup>34</sup> National Police of Montecristi Communication of June 18, 2000, Petitioners' document dated December 10, 2009, Annex 2. Newspaper Diario La República, June 19, 2000; newspaper Diario El Siglo of June 20, 2000, Petitioners' document dated December 10, 2009, Annexes 6 and 7. Testimony of Félix Antonio Núñez Peña on May 15, 2009, Petitioners' document dated December 10, 2009, Annex 1.

<sup>35</sup> Preliminary autopsy report for Máximo Rubén de Jesús Espinal, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.6. "Body of adult male, young, mixed race, brown complexion...manner of death: HOMICIDE. Conclusion. The death of the man described MÁXIMO RUBEN DE JESUS ESPINAL was due to HEMORRHAGE AND DIFFUSE CEREBRAL LACERATION PRODUCED BY GUNSHOT WOUND (1), whose effects were essentially fatal." Death certificate of Máximo Rubén Espinal June 18, 2000, issued by the Office of the Attorney General, Judicial District of Montecristi. Petitioners' document dated December 10, 2009, Annex 3. "presents contusion produced by gunshot wound in the occipital region with no exit. Fatal." Sworn testimony of Félix Antonio Núñez Peña on May 15, 2009. Petitioners' document dated December 10, 2009, Annex 1. Medical Examiner's Certificate of Máximo Rubén Espinal. Petitioners' document dated December 10, 2009, Annex 3. National Police of Montecristi Communication of June 18, 2000, Petitioners' document dated December 10, 2009, Annex 2.

<sup>36</sup> According to the National Police communication, the Haitian nationals who at the time were unidentified had: "cranial trauma," "penetrating wound to the right anterior thoracic region and gunshot wound to the right forearm," "penetrating gunshot wound to the right maxillary region with exit wound in the occipital region," "penetrating gunshot wound to the abdominal lumbar-column region;" "penetrating wound to the axillary region with exit wound in the right [sic] hand", "gunshot wound to the anterior thoracic region." In addition, it was determined that Máximo Rubén Espinal, died due to a "gunshot wound to the occipital region with no exit. Fatal." National Police of Montecristi communication of June 18, 2000, petitioners' document dated December 10, 2009, Annex 2. medical Examiner's certificate of Máximo Rubén signed by Dr. Manuel Gómez on June 18, 2000, Petitioners' document dated December 10, 2009, Annex 3. National Police of Montecristi, communication of June 18, 2000, Petitioners' document dated December 10, 2009, Annex 2.

<sup>37</sup> Preliminary autopsy report of Yachin Masime, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.1. "Body of adult male, young, black race, black hair...Manner of death: ACCIDENTAL. Conclusion: The death of the man described YACHIN MASIME was due to SEVERE CLOSED TRAUMA TO THE THORAX AND ABDOMEN, whose effects were essentially fatal. "

<sup>38</sup> Also identified by the name Noupardy Fortilus. Preliminary autopsy report for Noupardy Fortilus, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.5. "Conclusion. The death of [...] NOUPARDY FORTILUS was due to HYPOVOLEMIC SHOCK PRODUCED BY MULTIPLE GUNSHOT WOUNDS [6], whose effects were essentially fatal." "Presents an entry wound in the vertebro-lumbar region."

<sup>39</sup> Also identified by the name Nana Dosema. Preliminary autopsy report for Nana Dosema, issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, Annex 2.4. "Conclusion. The death of [...] NANA DOSEMA was due to HYPOVOLEMIC SHOCK PRODUCED BY MULTIPLE GUNSHOT WOUNDS (4), whose effects were essentially fatal. "presents two entry gunshot wounds in the right half of the back."

<sup>40</sup> Testimony of 2d Lieutenant Johannes Paul Franco Camacho, Private Wilkins Siri Tejada, Major Lagrange in military proceedings on July 17 and 18, 2000. State document dated September 20, 2010, Annex. Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Unidentified witness since the name is crossed out with black marker.

<sup>41</sup> Testimony of Sylvie Therméus, Rose Marie Dol, Renaud Tima, Celafoi Pierre and Cecilia Petit-Home, on September 22, 2007, Petitioners' document dated December 10, 2009, Annexes 14, 15, 16, 17 and 20.

<sup>42</sup> Testimony of Renaud Tima on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 16. Testimony of Joseph Desravine on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 19 and Petitioners' document dated May 5, 2009, Annex 14. .

deceased were transported by the National Police to the Forensic Pathology Department.<sup>43</sup> In addition, military personnel arrived in helicopter to the Copey area.<sup>44</sup>

61. Among those seriously injured with gunshot wounds and trauma who were transported to the hospital were Francois Michel<sup>45</sup> and Joseph Desravine.<sup>46</sup> Joseph was threatened with imprisonment by the authorities and as a result, fled from the hospital.<sup>47</sup>

62. The communication notifying that the deceased persons were being transported to the Forensic Department said:

[...] we are sending seven (7) bodies, six (6) Haitian nationals and one Dominican national identified as MÁXIMO RUBÉN ESPINAL, 23 years of age, where [...] of GUNSHOT WOUNDS and another CRANIAL TRAUMA [...] We do not know the names of the Haitian nationals because they did not carry any identification.<sup>48</sup>

63. The Dominican driver and the surviving Haitian nationals were taken to the Border Intelligence Operations Department in Montecristi, identified by the persons as Fortaleza Jail.<sup>49</sup> Among that group were: Sylvie Thermeus (who was pregnant), Rose Marie Dol, Cecilia Petit-Home, Joseph Pierre, Selafoi Pierre, Roland Israel, Josué Maxime, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique<sup>50</sup>. Later on, those persons were transported to a military base which the survivors referred to as "the military jail" of Dajabón<sup>51</sup>. There, agents told them that they had to work in the fields planting bananas or rice, or they would have to give the agents money in order to buy fuel for the agents to take them to the border with Haiti.<sup>52</sup> The individuals detained pooled their money to give to the authorities who later transported them to the border.<sup>53</sup>

64. According to press reports, some of which quote Dominican authorities, the victims who were executed were buried by Dominican authorities in a common grave in Gurabo, Dominican Republic.<sup>54</sup> According to military authorities, "by order of the forensic authorities the bodies were turned over to relatives and friends to be buried."<sup>55</sup>

<sup>43</sup> National Police of Montecristi communication of June 18, 2000, and Medical Examiner's certificate of Máximo Rubén signed by Dr. Manuel Gómez on June 18, 2000, Petitioners' document dated December 10, 2009, Annexes 2 and 3.

<sup>44</sup> Testimony of Cecilia Petit-Home on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 20. .

<sup>45</sup> Also identified as Michel Floant, Francois Michel or Michel Frances. Medical Examiner's Certificate for Francois Michel dated June 23, 2000, who exhibited, "double exposed fracture type (III) left tibial region." State document dated September 20, 2010. Annex. This person was questioned in the course of the investigation under military jurisdiction on June [illegible], 2000. State document dated September 20, 2010. Annex.

<sup>46</sup> Testimony of Joseph Desravine on September 22, 2007, Petitioners' document dated December 10, 2009. Annex 19.

<sup>47</sup> Testimony of Joseph Desravine on September 22, 2007, Petitioners' document dated December 10, 2009, Annex 19, and Petitioners' document dated May 5, 2009, Annex 14.

<sup>48</sup> National Police of Montecristi communication of June 18, 2000, and Medical Examiner's certificate of Maximo Rubén Espinal signed by Dr. Manuel Gómez on June 18, 2000. Petitioners' document dated December 10, 2009, Annexes 2 and 3.

<sup>49</sup> Testimony of Sylvie Therméus, Rose Marie Dol, Renaud Tima, Celafoi Pierre, Joseph Pierre and Cecilia Petit-Home, on September 22, 2007, Petitioners' document dated December 10, 2009, Annexes 14, 15, 16, 17, 18 and 20.

<sup>50</sup> The Commission notes that it has the testimony of five of these persons. However, the State makes no allegations regarding their detention or expulsion, but it is evident from the case file that the Director of Intelligence reported that on the day the events took place, there were eleven persons under detention, a fact confirmed by the Commander of the 10<sup>th</sup> Infantry Battalion and which coincides with the number of victims.

<sup>51</sup> Testimony of Sylvie Therméus, Rose Marie Dol, Renaud Tima, Celafoi Pierre, Joseph Pierre and Cecilia Petit-Home, on September 22, 2007, Petitioners' document dated December 10, 2009, Annexes 14, 15, 16, 17, 18 and 20.

<sup>52</sup> Testimony of Sylvie Therméus y Rose Marie Dol on September 22, 2007, Petitioners' document dated December 10, 2009, Annexes 14 and 15.

<sup>53</sup> Testimony of Sylvie Therméus, Rose Marie Dol, Renaud Tima, Celafoi Pierre, Joseph Pierre and Cecilia Petit-Home, on September 22, 2007, Petitioners' document dated December 10, 2009, Annexes 14, 15, 16, 17, 18 and 20.

<sup>54</sup> Newspaper article "The Haitians shot and killed lived in the country; they are buried in Gurabo" Diario El Siglo, on June 21, 2000 (Petitioners' document dated May 5, 2009, Annex 7. Photo published in the newspaper Diario El Siglo on June 21, 2000, (Petitioners' document dated May 5, 2009, Annex 1. Ezequiel Abiú López, Human Rights organizations will ask the international community to condemn what took place. Newspaper Listín Diario, no other details, Petitioner's document dated May 5, 2009, Annex 24.

<sup>55</sup> Report of the Secretary of State of the Armed Forces, June 26, 2000, State document dated September 20, 2010, Annex.

65. On June 18, 2000, the Armed Forces issued a communication which read:

At 0300 hours of 06-18-2000, when DOIF personnel together with members of the National Army stationed at the military post in Botoncillo, ordered a yellow Daihatsu truck covered with a tarp, no further description known, to stop because there was information that the truck would try to smuggle a load of drugs, the truck tried to run over the military personnel there forcing them to fire one shot into the air, and when the truck didn't stop, the members of the patrol shot the vehicle's tires which caused the vehicle to get into an accident, and found out that there were approximately thirty (30) Haitian nationals under the tarp, seven (7) of whom died as a result of the accident and thirteen (13) were injured, six (6) of them have gunshot wounds and eleven (11) have been detained.<sup>56</sup>

66. On June 18, 2000, the Commander of the 10<sup>th</sup> Infantry Battalion reported to the Commander of the 4<sup>th</sup> Infantry Brigade:

[...] members of the Border Intelligence Operations Detachment [...] where engaged in an operation at the Botoncillo military checkpoint [...] they ordered the driver of a yellow truck to stop [...] the driver did not obey the signal to stop and [...] was pursued [...] during the pursuit several shots were fired with the intention of making him stop [...] the truck overturned, the truck was carrying approximately (28) undocumented Haitian nationals, (8) of whom were injured and (7) died [...] of the deceased (2) suffered gunshot wounds and trauma, an also some of the injured suffered gunshot wounds [...] (11) Haitian nationals were unharmed, among them a minor, who were taken to the Migration Office in this city in order to be sent back to their country, the injured were taken to the hospital [...] where (3) of them remained under care, lthe bodies were taken to the Forensic Institute of the city of Santiago, the officer in charge and the driver of the vehicle were taken to the J-2 Department of the Armed Forces Secretariat for questioning.

[...] the truck which is the subject of this file has been investigated before as being used to transport illegal individuals with al the negative consequences for the nation [...]

[...] this vehicle was being monitored because information had been obtained that it was used to transport all kinds of contraband being brought by the illegal individuals such as drugs and weapons.<sup>57</sup>

67. On June 19, 2000, during the interrogation regarding the facts, Elisabeth Contreras Martínez, companion of the Dominican driver Máximo Rubén de Jesús Espinal, who had lost his life the previous day, stated that in the afternoon of June 16, 2000, "two young men dressed in military uniforms came to their house asking for some money" which Rubén gave to them. According to her statements, her companion had told her that that was the third time the military men had come to their house asking for money and that wherever they saw him they asked him for money.<sup>58</sup>

68. On the same day, Major Lagrange stated that they had information that persons may try to smuggle drugs across, and that, before the events took place, they had detected two cars carrying weapons and that they had detained some persons; that during the pursuit of the yellow vehicle only he and Cadet Núñez had fired, and that after the truck rolled over they only fired into the air "in order to stop the persons from fleeing."<sup>59</sup> In addition, Cadet Núñez stated that during the pursuit, Major Lagrange fired into the air and that, afterwards, he and the major shot the tires and that once the truck overturned,

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<sup>56</sup> Note issued on June 18, 2000, by the J-2, Director of Intelligence, SEFA, entitled "Truck runs over checkpoint and then is involved in an accident." State document dated September 20, 2010, Annex. Reference made in the note from the Attorney General of the Armed Forces to the Secretary of State of the Armed Forces. State document dated July 13, 2007. Annex.

<sup>57</sup> Note of June 18, 2000, from the Commander of the 10<sup>th</sup> Infantry Battalion. State document dated September 20, 2010. Annex

<sup>58</sup> Testimony of Elisabeth Contreras given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

<sup>59</sup> Testimony of Major Lagrange given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

Lieutenant Casilla and Lieutenant Franco Camacho fired into the air. He added that since there was a full moon, he was able to see that the tarp was tied over the bed of the truck.<sup>60</sup>

69. For his part, 2<sup>nd</sup> Lieutenant Johannes Paul Franco stated that the bed of the truck had “a taut tarp, totally flat,” and that once the truck rolled over he fired into the air “to prevent the Haitians to continue to flee.”<sup>61</sup> First Lieutenant Santiago Florentino Casilla stated that they were at the checkpoint because they had information that, during the weekends, vehicles crossed carrying firearms and illegal substances. He added that except for Private Siri Tejada and the driver, everyone else in the wagon fired into the air and at the tires several times during the pursuit, and fired into the air after the truck overturned in order to make the persons fleeing stop.<sup>62</sup> Private Wilkins Siri Tejada stated that during the pursuit, only Major Lagrange and Cadet Núñez, opened fire and that from the truck’s cabin they threw a “telmo” at them.”<sup>63</sup>

70. On the same date, Corporal Danilo de Jesús Franco, who was not involved in the pursuit but was at a police station facing the road where the vehicles in question came through, testified in military proceedings that when the truck passed in front of the police station, from what he could see, “it was obvious that the bed of the truck was covered with a yellow tarp tied with ropes” and that “there were troops dressed in fatigues in the wagon.”<sup>64</sup>

71. On date unknown,<sup>65</sup> the Haitian national Michel Francois, who was in the yellow truck the day of the events, testified in military proceedings that “the troops fired into the air, then fired at the tires but not hitting them due to the high speed the truck was traveling at” and that several people –including him—suffered gunshot wounds and fell over him. He added that some of his companions died “from the injuries suffered” when the truck overturned and that two Haitians took off running, and that’s why “the guards shot and killed them, and that the guards then started arguing among themselves about why they had shot to kill.” He ended his testimony requesting that, once he recovered, he be allowed to live in the Dominican Republic because his daughters lived there.<sup>66</sup>

72. On June 19, 2000, the Office of the Secretary of State of the Armed Forces ordered an investigation following up on recommendations made by the Joint Board of General Officers of the Armed Forces:

[...] that then Major Ferison Lagrange Vargas FAD, 1<sup>st</sup> Lieutenant Santiago Florentino Casilla, Cadet Bernardo de Aza Núñez, Navy, and 2<sup>nd</sup> Lieutenant Johannes Paul Franco Camacho, FAD, be brought to justice before the Joint Armed Forces and National Police Court Martial of First Instance to answer for their responsibility in the facts.

[...] that the individuals who allegedly committed the offense of illicit trafficking in persons be brought under the ordinary justice jurisdiction for prosecution by the Public Prosecutor of the Montecristi Province.<sup>67</sup>

73. On June 19, 2000, the Commander of the 4<sup>th</sup> Infantry Brigade reported the following to the Chief of the General Staff:

<sup>60</sup> Testimony of Cadet Núñez given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

<sup>61</sup> Testimony of 2<sup>nd</sup> Lieutenant Johannes Paul Franco, given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex

<sup>62</sup> Testimony of 1<sup>st</sup> Lieutenant Florentino Casilla, given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

<sup>63</sup> Testimony of Private Wilkins Siri Tejada, given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

<sup>64</sup> Testimony of Corporal Danilo de Jesús Franco, given in military justice proceedings on June 19, 2000. State document dated September 20, 2010. Annex.

<sup>65</sup> The information provided by the State is incomplete. The first page of the interrogation is missing.

<sup>66</sup> Testimony of Michel Floant (Frances o Francois), given in military justice proceedings (no date). State document dated September 20, 2010. Annex.

<sup>67</sup> Referred to in the note of the Attorney General of the Armed Forces to the Secretary of State of the Armed Forces. State document dated July 13, 2007, and referenced in State document dated August 19, 2009. Annex.

[...] at the speed that the truck was traveling with the illegal persons [...] the high speed and recklessness, that we were informed that if the vehicle in which the security personnel was traveling had tried to pass the truck to block its path [...] it would have been worse and more lethal for that team which was performing its national security duties in the area, and at the same time taking into account the alert we had received from informants we have in the area that there was going to be an attempt to smuggle drugs and firearms and we didn't know what type of vehicle was going to be used, and taking into account this alert and the time at which this incident occurred we could not dismiss the possibility that this was the vehicle, and in any event the vehicle was traveling illegally carrying undocumented individuals who for a price try to reach their destination by any means and this is prohibited.<sup>68</sup>

74. On June 20, 2000, the Forensic Pathology Department of the Regional Forensic Institute, issued the preliminary autopsy reports of the seven persons who died in the events of June 18, 2000, providing a: a) police record, b) external description of the body, c) anatomopathological diagnosis, d) manner of death, and e) conclusion.<sup>69</sup>

75. On June 21, 2000, the Joint Board investigating the events of June 18, 2000, issued the following summary:

[...] the Haitian nationals [...] climbed on to the vehicle [...] some 20 kilometers from the border. And they were placed lying on their backs, across the bed of the truck and covered with a tarp by [Dominicans] who transport illegals from Haiti.

[...] who were driven on secondary roads and canal berms until reaching the main highway to the city of Santiago which was their final destination.

[...] that when they reached the crossing point at Botoncillo [...] about 50 kilometers from the border, the patrol from the Border Intelligence Operations Detachment (DOIF) which was [...] inspecting vehicles due to a report that there would be an attempt to smuggle drugs and/or firearms, ordered the truck to stop and the truck did not stop but rather [...] increased its speed.

[...] that the DOIF Commander [...] who was in charge of the patrol unit, ordered them to get in the patrol vehicle and gave pursuit in the dark and on a poorly maintained road, signaling with their high beams and honking their horn in order to make the truck stop but failing to do so. [...] fired three times into the air [...] in order to persuade the driver to stop but failing to achieve the objective. [...]

[...] that they continued their pursuit for a distance of 17 kilometers, with the driver of the truck avoiding being caught by zigzagging and throwing objects throughout the pursuit. The patrol then proceeded to open fire on them with an M-16 rifle, aiming at the tires trying to stop the truck, and hitting the truck-bed and the cabin. In addition, the members of the patrol who were riding in the bed of the patrol wagon fired several times with a similar weapon and with the same objective.

[...] that the truck slid in a sharp curve causing the truck to roll over violently and trapping several Haitians under the vehicle.

[...] that the wagon carrying the patrol slid and collided with the overturned truck, stopping there.

[...] that once they had climbed down from the wagon, two members of the patrol fired into the air in order to persuade the Haitian nationals who were fleeing the scene to stop.

[...] that all the members of the DOIF patrol and regular service troops at the checkpoint agreed [...] that the truck had the bed covered flat with a tarp made out of sacks.

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<sup>68</sup> Report dated June 19, 2000, from the Commander of the 4<sup>th</sup> Infantry Brigade to the Chief of the General Staff, State document dated September 20, 2010. Annex.

<sup>69</sup> Preliminary autopsy reports issued by the Regional Forensic Institute, Petitioners' document dated May 5, 2009, and State document dated September 20, 2010.

[...] The members of the patrol pointed out that they became aware that there were persons in the truck when they reached the scene of the accident.<sup>70</sup>

76. On June 23, 2000, the Under Secretary of State of the Armed Forces issued a report on the events of June 18, 2000, which stated:

[...] the interest of the [...] patrol in detaining the vehicle in question was due to the fact that they had information that a vehicle carrying drugs or firearms was going to try to cross the border, and therefore, a thorough check of all vehicles circulating in that area was ordered and that's what the truck in question tried to avoid [...] speeding away, and that is the reason the patrol proceeded to pursue them and the situation which is the subject of [this] case file took place.

[...] that [...] Second Lieutenant JOHANNES PAUL FRANCO CAMACHO [...] [once the truck had overturned] pulled out his service pistol and fired some shots into the air to make the Haitian nationals who were fleeing to stop [...]

[...] that [...] Ms. ELIZABETH CONTRERAS [...] states that on Friday, June 16, 2000, two young men in military uniform came to her house demanding some money in order to allow the illicit trafficking of undocumented persons.

[...] that the members of the armed forces [...] at the time the events took place were performing their duties;

[...] that the members of the patrol involved in the incident did not know the true motive why the driver of the truck did everything in his power to ignore the order to stop, that the vehicle had a tarp over the bed and the Haitian nationals, for the most part, were either sitting or lying down in the truck in question [...], and presuming that they were indeed committing a serious offense;

[...] that in the present case (one) Dominican national and [six] Haitian nationals lost their lives [...]

[...] that other Haitian nationals who were injured received medical attention [...] and were later released while the remaining Haitian nationals were repatriated.

[...] that there is no truth to the assertion that the military patrol killed anyone at the scene of the truck accident [...]

[...] According to the autopsy [...] seven persons lost their lives: one presents severe closed trauma to the thorax and abdomen as a result of the accident and the rest, various contusions and gunshot wounds.

[...] According to the attending physicians in the case, 13 persons were injured, 6 of whom suffered gunshot wounds and 7 suffered various blows. One remains hospitalized while the others were released from the health facilities where they were being treated.

[...] By order of the forensic authorities the bodies were turned over to relatives and friends for burial.

[...] All the members of the DOIF patrol remain under arrest and it was recommended that they be brought before the Court Martial [...] to determine their individual responsibility with regard to the gunshot wounds that killed persons and injured (six) others. [...] <sup>71</sup>

77. Based on the preceding, it was decided that the members of the military be brought before the Court Martial to be tried as alleged authors under the provisions of Articles 295, 304 and 309 of the Criminal Code of the Dominican Republic and that the civilians involved in the alleged trafficking in persons be prosecuted in the ordinary justice system. Last, a separate investigation was recommended to

<sup>70</sup> Summary issued on June 21, 2000, by the Joint Board, State document dated September 20, 2010. Annex.

<sup>71</sup> Report of the Secretary of State of the Armed Forces of June 26, 2000, State document dated September 20, 2010. Annex.

look into accounts that “military personnel in the area are engaged in collecting money to allow the smuggling of undocumented persons.”<sup>72</sup>

78. On June 26, 2000, the Secretary of State of the Armed Forces submitted to the President of the Republic, for his review and decision, a report on the events of June 18, 2000, in which he stated:

[...] results of the investigation conducted by a Joint Board of General Officers of the Armed Forces into the roll over accident of the yellow Daihatsu truck, (no license plates), [...] as a patrol comprised of members of the Border Intelligence Operations Detachment (DOIF) was trying to stop the vehicle, and fired several shots at the vehicle, resulting in the death of (7) persons, (6) of them Haitian nationals and the other one a Dominican national. The Joint Board of General Officers that conducted the investigation recommended that [the military personnel involved] be tried by Court Martial [...] for alleged violations of Articles 295, 304 and 309 of the Criminal Code and in concert with the provisions of Article 3 of the Armed Forces Code of Justice; a recommendation fully supported by this Office.

[...] The civilians involved in this case shall be placed under the jurisdiction of the Public Prosecutor of the Judicial District of Montecristi for further legal action.<sup>73</sup>

79. On June 27, 2000, the Public Prosecutor of Montecristi submitted a report to the Attorney General of the Republic in which he stated:

[...] on 6/18/2000, a patrol of members of the Border Intelligence Operations Detachment, killed six Haitian nationals and one Dominican national [...] when the pursuit was initiated from the El Posito area, there was a rigorous vehicle checking operation in progress by elements of the Army in order to prevent the entry of Haitian nationals into Dominican territory.

[...] through the Regional Forensic Institute we released the bodies and the autopsy results. [...] that [...] the medical examiner [...] certified the manner of death of [those] persons

[...] that on June 26, 2000 [...] the Office of the Secretary of State of the Armed Forces brought to justice Mr. FELIX ANTONIO NÚÑEZ PEÑA [...] driver of the vehicle [...] and Mr. RUDY JIMÉNEZ ORTIZ [...] the individual organizing the trip.

[...] Together with these elements we are submitting a tape recording of the interview of the minor who was traveling with the deceased Dominican MÁSIMO RUBÉN ESPINAL and the driver.

In closing, Mr. Attorney General, after a thorough investigation of the facts, we conclude that the investigation reveals: [...] that the incident in which the Haitian nationals and the Dominican national lost their lives was the result of an unnecessary action on the part of the members of the Army, since, as several of the persons involved have stated, some of these Haitian nationals were assassinated after the truck had overturned, and it would have been sufficient to shoot the tires and not the passengers and therefore, this action, by all accounts, was totally unnecessary.<sup>74</sup>

80. On July 13, 2000, when the Prosecutor of the Joint Armed Forces and National Police Court Martial of First Instance became aware that the facts could be classified as “criminal,” he requested through decision 15-(2000), that the appropriate preliminary criminal proceedings be initiated.<sup>75</sup> On the same date, the Secretary of State of the Armed Forces informed the Prosecutor of the Joint Armed Forces and National Police Court of the First Instance that he had granted approval to have the military personnel involved tried by the Joint Court Martial “as alleged authors of the crime of murder [against

<sup>72</sup> Report of the Secretary of State of the Armed Forces of June 26, 2000, State document dated September 20, 2010. Annex.

<sup>73</sup> Report of the Secretary of State of the Armed Forces of June 26, 2000, State document dated September 20, 2010. Annex.

<sup>74</sup> Note submitted on July 19, 2000, by the Attorney General of the Republic to the Secretary of State of the Armed Forces, State document dated September 20, 2010. Annex.

<sup>75</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000, pg. 2. Petitioners’ document dated May 5, 2009, Annex 1.

seven persons, as well as] “causing injury to another (6) persons, in violation of Articles 295, 304 and 309 of the Criminal Code, the last article having been modified by Law No. 24-97.”<sup>76</sup>

81. On July 14, 2000, the Prosecutor of the Joint Armed Forces and National Police Court Martial of the First Instance requested the Judge with jurisdiction over preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance to initiate the corresponding preliminary criminal proceedings.<sup>77</sup> On that same date, the above mentioned Prosecutor issued arrest warrants for Major Ferison Lagrange Vargas FAD, 1<sup>st</sup> Lieutenant Santiago Florentino Casilla, Cadet Bernardo de Aza Núñez, Navy, and 2<sup>nd</sup> Lieutenant Johannes Paul Franco Camacho.<sup>78</sup>

82. On July 17, 2000, during the interrogation conducted under military justice jurisdiction, Major Lagrange Vargas stated, among other things, “according to medical reports, there were approximately six (6) persons suffering gunshot wounds but, in the majority of those cases, the wounds were not fatal and their death occurred after the truck overturned.” He added that only he and Cadet Bernardo de Aza Núñez fired approximately 20 shots (5 into the air and 15 at the tires) because they were the ones carrying rifles.<sup>79</sup> On the same day, during the interrogation of Private Wilkins Siri Tejada, he stated that during the pursuit, Major Lagrange fired several shots into the air and, since the truck didn’t stop, the Major and Cadet Bernardo de Aza Núñez fired several shots at the tires; that he did not fire because he was unarmed and that he did not see the tarp tied.<sup>80</sup>

83. On the same date, during the interrogation of one of the members of the military who was at the Botoncillo post, but who was not part of the patrol that pursued the yellow truck, stated that “as far as he knew,” the deaths and the injuries were the result of the accident.<sup>81</sup> Another agent who was interrogated stated that when he saw the yellow truck pass by, he noticed that the bed of the truck was covered by a “tarp tied with rope.”<sup>82</sup>

84. On July 18, 2000, during the interrogation conducted under military justice jurisdiction, Second Lieutenant Johannes Paul Franco Camacho stated, among other things, that “some members of the patrol [fired] several shots at the area of the tires to try to stop the truck,” that neither during nor after the pursuit were they attacked by the persons traveling in the truck, and that the tarp that covered the bed of the truck “was not tied but that it was pressed against the truck in some form or fashion.”<sup>83</sup> At an undetermined date,<sup>84</sup> First Lieutenant Santiago Florentino Casilla stated that during the pursuit, they threw “a gallon container from the truck and [...] other objects he could not describe,” and that once the truck overturned, the troops fired several shots into the air “to try to stop any aggression towards them,” that it was not true that they had fired at the Haitians and that neither the driver of the patrol wagon, Johannes Paul Franco Camacho nor Private Wilkins Siri Tejada fired any shots.<sup>85</sup>

85. On July 18, 2000, the Attorney General of the Republic addressed the Secretary of State of the Armed Forces in the following manner:

<sup>76</sup> Note dated July 13, 2000, sent by the Secretary of State of the Armed Forces to the Prosecutor of the Joint Armed Forces and Judicial Police Court Martial of First Instance, State document dated September 20, 2010, Annex.

<sup>77</sup> Subpoena dated July 14, 2000 issued by the Prosecutor of the Joint Armed Forces and National Police Court Martial, State document dated September 20, 2010, Annex.

<sup>78</sup> Arrest warrant dated July 14, 2000, issued by the Prosecutor of the Joint Armed Forces and Judicial Police Court Martial, State document dated September 20, 2010, Annex.

<sup>79</sup> Testimony of Major Lagrange given on July 17, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

<sup>80</sup> Testimony of Private Wilkins Siri Tejada, given on July 17, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

<sup>81</sup> Testimony of Private Pedro María Peña Santos, given on July 17, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

<sup>82</sup> Testimony of Corporal Danilo de Js. Franco, P.N., given on July 17, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

<sup>83</sup> Testimony of 2<sup>nd</sup> Lieutenant Johannes Paul Franco Camacho, given on July 18, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

<sup>84</sup> The information provided by the State is incomplete. The first page of the interrogation is missing.

<sup>85</sup> Testimony of 2<sup>nd</sup> Lieutenant Johannes Paul Franco Camacho, given on July 18, 2000, in military justice proceedings, State document dated September 20, 2010, Annex.

I am forwarding a copy of the report issued, at our request, by the Public Prosecutor of the Judicial District of Montecristi [June 27, 2000] with regard to the incident in which six Haitian nationals and one Dominican national lost their lives [...]

[...] there are elements that must be thoroughly and responsibly investigated by whichever jurisdiction is finally empowered, and therefore, I specifically request that these elements be incorporated into the case file and taken into account by the investigators and/or those responsible for the criminal prosecution.

[...] We regret that we have not been able to benefit yet from the report issued by the commission You named to look into these events, which would have provided this Office with a more complete perspective on the current facts, considering that the Office of the Attorney General of the Republic is not an entity entirely foreign to the military jurisdiction and that, furthermore, has the responsibility to watch after the peace and well-being of the citizenry.

[...] The preceding notwithstanding, and given the various implications of the matter at hand, we will not take part in the recent controversy regarding the legitimacy of the military justice system, and limit ourselves to stating our conviction that in the present case, military justice must proceed rigorously, energetically and with transparency in determining the responsibility of those involved and impose commensurate sanctions.<sup>86</sup>

86. On July 19, 2000, the Civil Registry certified that there were death certificates of the persons who died on June 18, 2000. In that regard, the various certificates established that:

[...] on July 18, 2000, [the] Public Health Official made an appearance [...] and stated that on the eighteenth day of June of the year two-thousand [Máximo Rubén de Jesús Espinal, Jacqueline Maxime, Gemilar Alce, Rosalene Thermeus and Pardis Fortilus] died of (Autopsy Report under Study), in Santiago.

[...] on July 18, 2000, [the] Public Health Official made an appearance [...] and stated that on the eighteenth day of June of the year two-thousand [Ilfaudia Dorzema and Nadege Dorzema] died as a result of a traffic accident in Santiago.<sup>87</sup>

87. On July 21, 2000, the Prosecutor of the Joint Armed Forces and National Police Court Martial of First Instance issued an order remitting the case file to the judge with jurisdiction over preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance in order that he "adopt[ed] the necessary steps to close the case."<sup>88</sup>

88. On date unknown<sup>89</sup> the judge with jurisdiction over the preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance issued an order [*providencia calificativa*], establishing that:

[...] [based on] the preliminary autopsy reports [...] the [seven individuals killed on June 18, 2000] died of gunshot wounds sustained in the early hours of 6-18-2000.

[...] due to the speed at which that vehicle was traveling it could not negotiate a sharp curve on the road and overturned and, as a result, caused the death of [the seven individuals]<sup>90</sup>

<sup>86</sup> Note submitted on July 19, 2000, by the Attorney General of the Republic to the Secretary of State of the Armed Forces, State document dated September 20, 2010, Annex.

<sup>87</sup> Excerpts of Certificates by the Civil Registry on July 19, 2000, State document dated September 20, 2010, Annex.

<sup>88</sup> Subpoena Duces Tecum No. 13-(2000) issued by the Prosecutor of the Joint Armed Forces and National Police Court Martial of First Instance and Decree No. 10 (2000) issued by the Joint Armed Forces and National Police Court Martial of First Instance in preliminary proceedings, State document dated September 20, 2010, Annex.

<sup>89</sup> The information provided by the State is incomplete because it does not include the resolution or the date it was issued.

<sup>90</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000), no date. State document dated September 20, 2010, Annex.

89. On July 24, 2000, in preliminary proceedings, the Joint Armed Forces and National Police Court Martial of First Instance, Proceedings No. 15-(2000) decided:

TO DECLARE: [...] that there are serious, grave, precise and consistent signs of guilt that point to the criminal liability of Major Ferison Lagrange Vargas, FAD; 1<sup>st</sup> Lieutenant SANTIAGO FLORENTINO CASILLA, E.R., Cadet BERNARDO DE AZA NÚÑEZ, Navy, and 2d Lieutenant JOHNNNATAN PAUL FRANCO CAMACHO, FAD. to be charged with the crime of murder in the deaths of [...] MAXIMO RUBEN DE JESUS ESPINAL, a Dominican national and the Haitian nationals YACHIN MASIME, NOUPADY FORTILUS, ROSELAINÉ THERNEUS, GERMILAR ALCE, FAVIA DOZEMA AND NADGE DOZEMA, in violation of Articles 295<sup>91</sup> and 304<sup>92</sup> Second paragraph of the Dominican Criminal Code.

TO REMIT AND TO ORDER

FIRST REMIT [...] to the Criminal Court of the Joint Armed Forces and National Police Court Martial of First Instance [...] as individuals charged with the commission of the offense previously indicated, in order that they stand trial in that court in accordance with the provisions of the law.

SECOND ORDER [...] that the order of imprisonment issued by the Public Prosecutor [*Magistrado Procurador Fiscal*] against the accused [...] remains in full force until a judgment is rendered and that the judgment have the irrevocable authority of *res judicata*. [...] <sup>93</sup>

90. On July 28, 2000, the Prosecutor of the Joint Armed Forces and National Police Court Martial indicted the members of the military implicated in the events, for the death of the six Haitian nationals and one Dominican national, as well as for the injuries sustained by six other persons in violation of Articles 295, 304 and 309 of the Dominican Criminal Code. The indictment established that:

[...] there are several attenuating circumstances such as: 1- they were involved in a very delicate operation that had been ordered by their superiors. 2- they had information that a vehicle would cross carrying drugs. 3- this vehicle tried to avoid the checkpoint, even taking another highway, even though it had been ordered to stop and had to be pursued for more than 15 kilometers. 4-the troops observed when one of the occupants was thrown out of the right side door of the truck and they didn't stop, giving the impression that they were carrying something big or serious. 5- that the Haitian nationals being smuggled were either sitting or lying down and covered with a tarp as if they were packages or sacks of something illegal. These are not fabrications but the testimony of the same aggrieved [...] persons [Michel Floant and Félix Antonio Núñez Peña.<sup>94</sup>]

91. On May 3, 2001, the Criminal Chamber of the Court of First Instance of the Judicial District of Montecristi, ruled with regard to the Dominican nationals involved in the facts:

First: The case file of RAMÓN ANTONIO MARTINEZ (a) Ramoncito, is set aside until that time he is arrested and brought to justice to stand trial. Second: The individual named RUDDY JIMENEZ ORTIZ is declared not guilty of the charges brought against him, therefore the charges are dismissed and it is ordered that he be set free. Third: RUDDY JIMÉNEZ ORTIZ, is released from the obligation to pay court costs; Fourth: FÉLIX NÚÑEZ PEÑA is declared guilty of violating Law 344-98 and is therefore sentenced to one year (1) and nine (9) months in prison and the payment

<sup>91</sup> Art. 295.- Anyone who voluntarily kills another person, is guilty of homicide.

<sup>92</sup> Art. 304- Homicide shall be subject to a punishment of 30 years of labor in public works, when the offense is committed before, concurrently or following the commission of another crime. The same punishment shall apply when the objective has been to prepare, facilitate or commit a crime, or assist in the escape of the authors or accomplices of said crime or to ensure their impunity.

Paragraph II.- In any other case, the guilty individual shall be sentenced to public labor.

<sup>93</sup> Preliminary proceedings of the Joint Armed Forces and National Police Court Martial, Proceedings No. 15-(2000), pg. 8, July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1. Petitioners' document dated December 10, 2009, Annex 5. Photo published in the newspaper Diario El Siglo on June 21, 2000 (Petitioners' document dated December 10, 2009, Annex 8. Preliminary proceedings of the Joint Armed Forces and national Police Court Martial of First Instance, Proceedings No. 15-(2000), July 24, 2000. Petitioners' document dated May 5, 2009, Annex 1.

<sup>94</sup> Indictment No. 07(2000) issued by the Prosecutor of the Joint Armed Forces of the Court Martial of First Instance, State document dated September 20, 2010, Annex.

of court costs; Fifth: The court rules that the vehicle involved in the accident be confiscated and turned over to the Dominican State.<sup>95</sup>

92. On June 19, 2001, the Criminal Court of First Instance of Montecristi issued a parole order for Félix Núñez Peña.<sup>96</sup>

93. On September 23, 2002<sup>97</sup>, Thelusma Fortilus, Rosemond Dorzema, Nerve Fortilus, Alce Gyfranord, Alce Ruteau, Mirat Dorzema and Onora Thereneus, relatives of the Haitian victims who died on June 18, 2000, filed a private criminal action with the Judge of the Court for Preliminary Criminal Proceedings of the Judicial District of Montecristi given that, among other things, “the crime committed by the accused was not a military or police offense but a common law offense, and therefore, it falls under the jurisdiction of ordinary justice.”<sup>98</sup> However, according to the information provided by the petitioners, which the State did not contest, the Court declined its competence due to the existence of investigative proceedings into the same facts under military jurisdiction.

94. The Military and Police Court Martial scheduled a hearing for February 5, 2003.<sup>99</sup>

95. On March 5, 2004, the Exceptional Military Jurisdictional Authority [*Instancia Jurisdiccional Militar de Excepción*] issued a judgment which determined that:

FIRST: First Lieutenant SANTIAGO FLORENTINO CASILLA, National Army, and Cadet BERNARDO DE AZA NUÑEZ, Navy, are declared guilty of violating Articles 295 and 304 of the Dominican Criminal Code to the detriment of MAXIMO RUBEN DE JESUS ESPINAL, the Haitian nationals YACHI MASIME, NOUPADY FORTILUS, ROSELAIN THERNEUS GEMILAR ALCE, FAVIA DOZEMA and NADGE DEZEMA, and are therefore sentenced to five (5) years in prison to be served in the La Victoria National Penitentiary.

SECOND: Lieutenant Colonel FERISON LAGRANCE VARGAS, Dominican Air Force, is declared guilty of violating Articles 295 and 304 of the Dominican Criminal Code, and taking into account the attenuating circumstances established in Article 463<sup>100</sup> of the cited Criminal Code, was sentenced to prison (prisión correccional),” consisting of thirty (30) days suspension from duty under the provisions of Article 107, last section of the article, of the Armed Forces Code of Justice.

<sup>95</sup> Certification issued by the Criminal Chamber of the Court of First Instance of the Judicial District of Montecristi on June 8, 2009, Annex. Judgment No. 239-2001-00023.

<sup>96</sup> Certification issued by the Criminal Chamber of the Court of First Instance of the Judicial District of Montecristi on June 8, 2009. State document dated June 29, 2009. Annex.

<sup>97</sup> The date of the document is September 30, 2002, but the certificate issued by the court for preliminary criminal proceedings indicates that the court received the recourse on November 18, 2002.

<sup>98</sup> Petitioners' document dated May 5, 2009, Annex 44. Petitioners' document dated November 26, 2005. Annex.

<sup>99</sup> Certification dated February 7, 2003, Office of the Secretary of State of the Armed Forces. Petitioners' document dated November 26, 2005. Annex.

<sup>100</sup> Art. 463.- Whenever there are attenuating circumstances benefitting the defendant, the courts shall modify the punishment in accordance with the following scale: 1<sup>st</sup> .- Whenever the law establishes a sentence of thirty years to labor in public works, the maximum degree of punishment to labor in public works shall be imposed. However, if the offense is a crime against the internal or external security of the State, the criminal court in issuing a guilty verdict shall place the accused under the jurisdiction of the government in order that they may be expelled or banished from the territory; 2<sup>nd</sup> .- Whenever the law establishes the maximum penalty of labor in public works, the punishment imposed shall be from three to ten years of labor in public works, and the punishment will be the same even in cases of confinement, when there are two or more attenuating circumstances in favor of the defendant.; 3<sup>rd</sup> .- whenever the law establishes that an offense be punished with the penalty of labor in public works that is not the maximum, the courts may reduce the penalty to confinement or to prison for a period at least a year, unless the law allows the prison penalty to be reduced further; 4<sup>th</sup> .- Whenever the penalty is confinement, detention, exile or civilian demotion, the courts shall impose a prison term of at least two months; 5<sup>th</sup> . Whenever the Code establishes the maximum of a sentence for a felony crime, and there are attenuating circumstances in favor of the defendant, the courts shall impose the minimum of the penalty and could even impose a lower penalty should they deem it appropriate; 6<sup>th</sup> .- Whenever the Code establishes prison penalty and fines simultaneously, the criminal courts, if there are attenuating circumstances, are authorized to reduce prison time to less than six days, and fines to less than five (5) pesos, even in cases of recidivism. The courts shall also be able to impose one or another of the penalties described in this paragraph and even substitute prison time with a fine, although the penalty imposed shall never be lower than those imposed by police officers.

THIRD: Captain Johanne Paul Franco Camacho, Dominican Air Force, is declared not guilty of the charges brought against him and is therefore released from any criminal liability.<sup>101</sup>

96. The members of the military Santiago Florentín Castilla and Bernardo de Aza Núñez filed an appeal to the judgment of March 5, 2004,<sup>102</sup> and at an undetermined date, the Appellate Joint Armed Forces and National Police Court Martial heard the appeal and resolved:

FIRST; To admit as good and valid the appeal filed by Captains SANTIAGO FLORENTINO CASILLA C-001-1178358-5, and BERNARDO DE AZA NÚÑEZ, C-001-1178745-3, National Army, of judgment No. 04, dated 03-05-04, of the Joint Armed Forces and National Police Court Martial of First Instance, which sentenced them to five (5) years in prison to be served in the Public Prison La Victoria National Penitentiary, Santo Domingo Norte, for violation of Articles 295 and 304, of the Dominican Criminal Code.

SECOND: This Appellate Joint Armed Forces and National Police Court Martial, acting under the provisions of the law and a ruling to the contrary, modifies sentence No. 04, of 03-05-2004, of the Joint Armed Forces and National Police Court Martial which sentenced Captains SANTIAGO FLORENTINO CASILLA, C-001-1178358-5, and BERNARDO DE AZA NÚÑEZ, C-001-1178745-3, National Army, to five (5) years in prison, and therefore order their release under the provisions of Articles 321<sup>103</sup> and 327<sup>104</sup>, of the Dominican Criminal Code.<sup>105</sup>

97. On March 12, 2003, the relatives of the deceased Haitian victims lodged a recourse with the Supreme Court of Justice in which they argued:

[...] the Joint Armed Forces and National Police Court Martial [...] has not been able to make any progress in this proceedings although three years have elapsed since they took jurisdiction over the case [...] [Moreover] the proceedings instituted in this jurisdiction do not inspire any confidence due to the absence of procedural transparency and because rights are not guaranteed [...]

[Therefore] it is not justice and it violates all legal guarantees to allow a tribunal that is not competent in the ordinary justice system to institute proceedings involving aggrieved civilians.

Consequently, they requested that the Supreme Court:

FIRST: Consider [...] jurisdiction in the appointment of judges;

SECOND: Designate the Court of Preliminary Proceedings of the Judicial District of Montecristi to continue with the preliminary investigation of the charges against Major F.A.D. Ferison Lagrange Vargas, 1<sup>st</sup> Lieutenant Santiago Florentino Casilla, Navy Cadet M.G. Bernardo de Aza Núñez, 2<sup>nd</sup> Lieutenant Johannes Paul Franco Camacho, charged with violating Articles 265, 266, 295, 296, 297, 309 of Law 24-97, to the detriment of Haitian nationals Yacim Máxime, Rosaline Theneurs, Fosiu Dosema, Noupardy Fortilus and the Dominican national Rubén de Jesús Espinal, this being the competent ordinary jurisdiction to carry out preliminary criminal proceedings and afterwards elevate the case to the ordinary criminal court for trial;

<sup>101</sup> State document dated June 29, 2009, Annex. Petitioners' document dated November 26, 2005, Annex.

<sup>102</sup> State document dated June 29, 2009, Annex. Petitioners' document dated November 26, 2005, Annex. State document dated September 20, 2009. Record of appeal lodged by Santiago Florentino Casilla and Bernardo de Aza Núñez. Annexes.

<sup>103</sup> Art. 321.- Homicide, injuries or trauma are excusable if they have been immediately preceded by provocation, threats or serious violence on the part of the victim.

<sup>104</sup> Art. 327.- (Repealed by Law 24-97 of January 28, 1997).

Art. 328.- There is no crime or offense when homicide, injuries or trauma are the result of the immediate need to legitimately defend oneself or another.

Art. 329.- The following cases constitute immediate need of legitimate defense: 1<sup>st</sup> when a person commits homicide, causes injury or inflicts trauma trying to repel at night someone from the climbing up the walls or causing damage to a house, walls or fences; or the breaking of doors or entrances to inhabited places, homes or attached buildings; 2<sup>nd</sup> when the action is taken to defend against the attacks of those committing violent acts of robbery or destruction.

<sup>105</sup> State document dated June 29, 2009, Annex. Petitioners' document dated November 26, 2005, Annex. State document dated September 20, 2010. Annex.

THIRD: Order that the Joint Armed Forces and National Police Court Martial of First Instance cede jurisdiction over this case in favor of the Court of Preliminary Proceedings of the Judicial District of Montecristi which is competent to carry out the appropriate preliminary criminal proceedings.<sup>106</sup>

98. On January 3, 2005, the Supreme Court of Justice of the Dominican Republic denied the motion lodged by the relatives of Haitian victims executed requesting the Court to appoint a judge. In that regard, the Court said:

[...] conflicts over jurisdiction interrupt the normal course of proceedings.

[...] based on the provisions [of Article 383 of the Code of Criminal Procedure<sup>107</sup> and Article 28 of Law No. 834 of July 15, 1978<sup>108</sup>] whenever two or more courts of equal rank are empowered to hear the same case, and the petitioner has provided evidence to that effect, the court or courts subsequently petitioned must remove themselves to give preference to the court that was originally responsible for hearing the matter. In the event that none of the parties so requests, judges may act on their own to remove themselves from the case, leaving solely and exclusively the court originally empowered, and Article 28 of Law No. 834, of July 15, 1978, becomes the rule; [...]

#### RESOLVES:

FIRST: Denies the motion to appoint a judge requested by Telusma Fortilus, Rosemond Dorsala and co-parties, by decision issued on March 12, 2003 [...]; and SECOND: Orders that the [...] resolution be communicated to the Attorney General of the Republic and to the interested parties, for appropriate action. [...]<sup>109</sup>

99. In August and September of 2010, the representatives of the relatives of the victims executed requested the authorities to grant them access to several documents under military jurisdiction.<sup>110</sup>

#### *Regarding the victims in the constant case*

100. Based on the evidence contained in the case file, as well as on the allegations of the petitioners, the IACHR considers the following persons to be identified victims at the time the report on the merits is issued:

101. Persons executed: Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema.

102. Persons whose personal integrity was harmed: Joseph Pierre, Selafoi Pierre, Silvie Theremeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, Honorio Winique and Joseph Devraine.

<sup>106</sup> Resolution No. 25-2005 Decision dated January 3, 2005, of the Supreme Court of Justice of the Dominican Republic. State document dated June 29, 2009. Petitioners' document dated November 26, 2005. Annex.

<sup>107</sup> The cited article establishes: "In criminal or correctional matters, judges may be designated by the Supreme Court of Justice, and in merely police matters, by courts of first instance, provided the judges of the preliminary hearing and the correctional or criminal courts, as well as the police courts that do not come under the authority of either, are considering the same offense or related offenses or the same violation."

<sup>108</sup> The cited article establishes: "If the same case is pending in two courts of equal rank and equally competent to hear it, the second court to be petitioned must cede jurisdiction to the other one if one of the parties so requests. Failing this, it may do so of its own initiative."

<sup>109</sup> Resolution No. 25-2005 Decision issued on January 3, 2005, by the Supreme Court of Justice of the Dominican Republic. State documents dated July 13, 2007, June 29, 2009 and September 20, 2010. Annex. Judgment. Petitioners' document dated May 5, 2009, Annex.

<sup>110</sup> Requests for access to the appeals lodged by the convicted members of the military Santiago Florentín and Florentino Casilla Bernard de Aza Núñez; to the decision of the Court Martial that considers the appeal; to the report submitted by the Office of the Secretary of State of the Armed Forces to the Office of the Secretary of State for Foreign Relations dated 06/18/2010; to the decision of the investigative board of general officers which had recommended that the members of the armed forces be brought before the Joint Armed Forces and National Police Court Martial of First Instance for appropriate judicial action. Document submitted by the representatives dated September 21, 2010, Annexes 2-C.2, 2-C.3, 2-D.2, 2-E, 2-F.

103. Relatives of the persons executed: Thelusma Fortilus, Rosemond Dorzema, Nerve Fortilus, Alce Gyfranord, Alce Ruteau, Mirat Dorzema, Onora Thereneus, and the following persons:

- Relatives of Fritz Alce: Lifaité (Pito) Alcé<sup>111</sup> (father), Nortilia Alcé<sup>112</sup> (mother), Franceau and Jheffly Alcé (children), Jeannette Prévaly<sup>113</sup> (partner).
- Relatives of Iffaudia Dorzema: Illiodor Dorzema (padre), Tinacie Jean (mother), Nali and Odelin Dorzima (siblings), nine brothers, sisters and children.
- Relatives of Jacquelin Maxime: Jacques Wana Maxime (daughter or son), Elcéus Maxime<sup>114</sup> (father), Lamerchie Estimable<sup>115</sup> (mother), Micheline and Josué Maxime (siblings), partner and children.
- Relatives of Máximo Rubén de Jesús Espinal: Elisabeth Contreras<sup>116</sup> (partner), Ana María Espinal<sup>117</sup> (mother), Fausto Peralta<sup>118</sup> (father), siblings, children.
- Relatives of Nadège Dorzema: Kernelus Guerrier (partner), Nathalie Guerrier (daughter), Révaline Charles (mother), sister, children.
- Relatives of Pardis Fortilus: Lourdie Pierre (partner), Loubens Fortilus (son), Elusma (Elusma) Fortilus<sup>119</sup> (father), Erzulia (Ezcra Isima) Rose Exama<sup>120</sup> (mother), two sisters, children.
- Relatives of Roselène Thermeus: Dieula Servilus (daughter), Rose Dol (daughter), Gertide Dol (daughter) Lona Beauvil (daughter), Rony Beauvil (son), Louna Beauvil (daughter), Cercius Mételeus (sister), Thérèse Joseph (Dol)<sup>121</sup> (mother), Groseon Thermeus<sup>122</sup> (father).

### C. Considerations of law

104. The Commission considers that, based on the manner in which the events took place, it is pertinent to divide the legal analysis of the rights allegedly violated with regard to the persons executed and their relatives, as well as to the survivors, and to the persons detained.

<sup>111</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>112</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>113</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>114</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>115</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>116</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>117</sup> That person is referred to as a relative in the Excerpts of Death Certificates issued July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>118</sup> That person is referred to as a relative in the Excerpts of Death Certificates issued July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>119</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>120</sup> In addition to being included in the list submitted by the petitioners, said persons is referred to as a relative in the Excerpts of the Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>121</sup> In addition to being included in the list submitted by the petitioners, said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

<sup>122</sup> Said person is referred to as a relative in the Excerpts of Death Certificates issued on July 19, 2000, and submitted by the State in document dated September 20, 2010.

*With regard to the persons executed and their relatives, as well as the survivors*

1. *Right to Life (Article 4<sup>123</sup>) and to Personal Integrity (Article 5<sup>124</sup>) in connection with the Obligation to Respect those Rights (Article 1(1)) of the American Convention on Human Rights.*

105. With regard to the right to life, the Commission recalls:

Article 4 of the Convention guarantees the right of every human being to not be deprived of his life arbitrarily, which includes the need that the State to adopt substantive measures to prevent the violation of this right, as would be the case of all measures necessary to prevent arbitrary killings by its own security forces, as well as to prevent and punish the deprivation of life as a consequence of criminal acts carried out by individual third parties.<sup>125</sup>

106. The Inter-American Court has maintained that the States have the right and the obligation to guarantee the security of its citizens and keep the peace, resorting to the use of force if necessary.<sup>126</sup> Along those lines, the IACHR recalls that “the responsibilities of the armed forces [are limited] to the defense of national sovereignty.”<sup>127</sup> In that regard, the IACHR considers that the States have the power to defend their borders, and to do so, they could, under certain circumstances, rely on the armed forces as long as “the use remains within the established limits and follows the procedures that help preserve both citizen security and the fundamental rights of every human being.”<sup>128</sup>

107. Following the jurisprudence of the Inter-American Court, although government agents may legitimately use lethal force in the performance of their duties, its use should be the exception and it should be planned and limited by authorities in proportion to the threat, in order that “force or coercive tactics are used only after all other means of control have been exhausted or failed.”<sup>129</sup>

108. Thus, the Inter-American Court has established that the use of force must be the exception, and it must be planned and limited in proportion to the threat by the authorities. According to the Court, the use of lethal force and firearms by state security agents against persons must be even more restricted and, as a general rule, it should be prohibited. The exceptions that define the circumstances under which the use of force is considered legitimate should be established by law and should be strictly interpreted in order to always minimize its use, and should never exceed “what is absolutely necessary” in relation to the force or threat it is intended to repel.<sup>130</sup> Whenever excessive force is used, all resulting deprivation of life is arbitrary.<sup>131</sup>

<sup>123</sup> 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.

<sup>124</sup> Article 5.

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

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

<sup>125</sup> IA Court H.R., *Case Servellón García et al.* Judgment dated September 21, 2006. Series C No. 152, par. 98; IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*. Judgment dated July 5, 2006. Series C No. 150, par. 64; IA Court H.R., *Case Ximenes Lopes Vs. Brasil. Preliminary Exception*. Judgment dated November 30, 2005. Series C No. 139, par. 125; and IA Court H.R., *Case of the Ituango Massacres*. Judgment dated July 1, 2006. Series C No. 148, par. 131.

<sup>126</sup> IA Court H.R., *Case Servellón García et al.* Judgment dated September 21, 2006. Series C No. 152; IA Court H.R. *Case Montero Aranguren et al (Retén de Catia)*. Judgment dated July 5, 2006. Series C No. 150;

<sup>127</sup> IACHR, *Report on citizen security and human rights*, OEA/Ser.LV/II., Doc. 57, December 31, 2009, par. 102.

<sup>128</sup> IA Court H.R., *Case Bulacio*.

<sup>129</sup> IA Court H.R., *Case Zambrano Vélez et al Vs. Ecuador*. Fondo, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166, par. 83; and IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*. Judgment dated July 5, 2006. Series C No. 150, par. 67. See also, ECHR, *Case of Nachova and others v. Bulgaria*, Applications nos. **43577/98 and 43579/98**, Judgment of 6 July, 2005, para. 94.

<sup>130</sup> IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*, Judgment dated July 5, 2006. Series C No. 150. Par. 68. In the same sense see. ECHR, *Huohvanainen v. Finland*, 13 March 2007, no. 57389/00, pars. 93-94.; ECHR, *Erdogan and Others v. Turkey*, 25 April 2006, no. 19807/92, par. 67; ECHR, *Kakoulli v. Turkey*, 22 November 2005, no. 38595/97, par. 107-108; ECHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, par. 148-150, 194, and the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly, resolution 34/169, of December 17, 1979, Article 3.

<sup>131</sup> IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*, Judgment dated July 5, 2006. Series C No. 150. Par. 68. In the same sense also see Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the

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109. In that regard, the IACHR has determined that state agents may use lethal force “in cases where it is inevitable in order to protect themselves or others from an imminent threat of death or serious injury, or when it is impossible to maintain law and order by any other means and it is strictly necessary and proportionate.”<sup>132</sup> The use of force, including lethal force,<sup>133</sup> will only be lawful when non violent means are manifestly incapable of protecting the threatened rights.

110. For its part, the European Court of Human Rights (hereinafter “the European Court”) has considered that the term “absolutely necessary” with regard to the use of lethal force, indicates that a stricter and more convincing *test of necessity* must be used than that applicable when determining whether State action is necessary in a democratic society. Consequently, the degree of force used must be strictly proportional in order to achieve the objective allowed.<sup>134</sup>

111. Thus, when it is alleged that a death has occurred as a result of excessive use of force, the Inter-American Court has established clear rules with regard to the burden of proof. In the Court’s words:

[...] whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability , through appropriate evidentiary elements.<sup>135</sup>

112. In this same sense, Article 3 of the United Nations Code of Conduct for Law Enforcement Officials establishes that: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”<sup>136</sup>; and Principle 4 of the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”<sup>137</sup> states that: “ Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

113. Consequently, the law must establish when state security agents may resort to lethal force, restricting its use to only when it is absolutely necessary in relation to the force or threat it is intended to repel.<sup>138</sup> In short, “State agents must distinguish between persons who, by their actions,

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Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, La Habana, Cuba, August 27 to September 7, 1990, Principle 9. Also see, IACHR, *Report on citizen security and human rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 107.

<sup>132</sup> IACHR, *Report on Terrorism and Human Rights*, paragraph 87. IACHR, *Report on citizen security and human rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 113.

<sup>133</sup> IACHR, *Report on citizen security and human rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 117.

<sup>134</sup> ECHR, *Case of Isayeva, Yusupova and Bazayeva v. Russia*, Applications nos. 57947/00, 57948/00 and 57949/00, Judgment of 24 February, 2005, para. 169.

<sup>135</sup> IA Court H.R., *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166. Par. 108; IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*, Judgment dated July 5, 2006. Series C No. 150. Par. 80; IA Court H.R., *Case Baldeón García*. Judgment dated April 6, 2006. Series C No. 147. Par. 120.

<sup>136</sup> UN Doc. A/34/46 (1979), A.G. res. 34/169.

<sup>137</sup> Adopted by the Eighth Congress of the United Nations on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), on August 27 to September 7, 1990.

<sup>138</sup> IA Court H.R., *Case Zambrano Vélez et al vs. Ecuador Merits*, Reparations and Costs. Judgment dated July 4, 2007 Series C No. 166, par. 84; IA Court H.R., *Case Montero Aranguren et al (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 68. In that regard, also see ECHR, *Huohvanainen v. Finland*, 13 March 2007, no. 57389/00, paras. 93-94, ECHR, *Erdogan and Others v. Turkey*, 25 April 2006, no. 19807/92, par. 67; ECHR, *Kakoulli v. Turkey*, 22 November 2005, no. 38595/97, paragraphs. 107-108; ECHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, paragraphs. 148-150, 194, and Code of Conduct for Law Enforcement Officials adopted by the General Assembly of the United Nations, resolution 34/169, of December 17, 1979, article 3; In accordance with Principle 11 of the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” adopted by the Eighth Congress of the United Nations on the Prevention of Crime and Treatment of Offenders, held in Havana, (Cuba), August 27 to September 7, 1990, the rules and regulations on the use of firearms by law enforcement officials must include clear guidelines that ( a ) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; ( b ) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; ( c ) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; ( d ) Regulate the

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constitute an imminent threat of serious injury or death and those persons who do not represent that threat, and use force only against the former.”<sup>139</sup>

114. The Commission recalls that the use of excessive or disproportionate force by law enforcement officials results in the loss of life, and may be equivalent to the arbitrary deprivation of life.<sup>140</sup> Therefore, once the State learns that its security forces have resorted to firearms and, as a result, the loss of life has occurred, it is obligated to initiate *ex officio* and without delay, a serious, independent, impartial and effective investigation.<sup>141</sup> This is based on the obligation of the States to “ensure that their security forces, whom they have empowered with the legitimate use of force, respect the right to life of those persons who are under their jurisdiction.”<sup>142</sup> Furthermore, in cases of alleged extrajudicial executions,

[...] it is essential that the States effectively investigate the deprivation of the right to life, and in its case, punish all those responsible, especially when state agents are involved, since on the contrary, it would be creating, within an environment of impunity, the conditions necessary for the repetition of this type of facts, which is contrary to the duty to respect and guarantee the right to life. Besides, if the acts that violate human rights are not investigated seriously, they would, in some way, result aided by public power, which compromises the State’s international responsibility.<sup>143</sup>

115. The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provides investigative guidelines which should be followed whenever it is believed that a death may have been the result of an extra-legal execution. For its part, the European Court of Human Rights has outlined the elements of an effective investigation in order to evaluate the legality of the use of lethal force. In the Court’s words:

[...] the essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life, and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The investigation must be independent, accessible to the relatives of the victim, completed within a reasonable period of time, effective in the sense that it is capable to lead to a determination of whether the use of force used in such cases was or was not justified in the circumstances or if it was legal, there must be sufficient element of public scrutiny of the investigation or its results.<sup>144</sup>

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control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; ( e ) Provide for warnings to be given, if appropriate, when firearms are to be discharged; ( f ) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

<sup>139</sup> IA Court H.R., *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166, par. 85; in a similar sense, IACHR, *Report on Terrorism and Human Rights 2002*.

<sup>140</sup> IA Court H.R., *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166, par. 85.

<sup>141</sup> IA Court H. R., *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166, par. 88; IA Court H.R., *Case Juan Humberto Sánchez Vs. Honduras*. Judgment dated June 7, 2003. Series C No. 99, par. 112. Also see *Case of the Miguel Castro Castro Prison vs. Peru*. Judgment dated November 25, 2006. Series C No. 160, par. 256, and IA Court H.R., *Case Vargas Areco Vs. Paraguay*. Judgment dated September 26, 2006. Series C No. 155, par.77. In a similar sense also see ECHR, *Erdogan and Others v. Turkey*, supra nota 66, pars.122-123,0 and ECHR, *Nachova and Others v. Bulgaria [GC]*, nos. 43577/98 and 43579/98, pars. 111-112, 6 July 2005. Also see, IACHR, *Report on citizen security and human rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 120.

<sup>142</sup> IA Court H.R., *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166, par. 81; IA Court H.R., *Case Montero Aranguren et al (Retén de Catia) Vs. Venezuela*. Judgment dated July 5, 2006. Series C No. 150, par. 66. Also see IA Court H.R., *Case of the Penal Miguel Castro Castro vs. Peru*. Judgment dated November 25, 2006. Series C No. 160, par. 238, and IA Court H.R., *Case Servellón García et al vs. Honduras*. Judgment dated September 21, 2006. Series C No. 152, par. 102.

<sup>143</sup> IA Court H.R., *Case Servellón García et al Vs. Honduras*. Judgment dated September 21, 2006. Series C No. 152, par. 123; IA Court H.R., *Case Baldeón García vs. Perú*. Judgment dated April 6, 2006. Series C No. 147, par. 91; IA Court H.R., *Case of the Massacre of Pueblo Bello vs. Colombia*. Judgment dated January 31, 2006. Series C No. 140, par. 145; IA Court H.R., *Case of the "Massacre of Mapiripán" Vs. Colombia*. Judgment dated September 15, 2005. Series C No. 134, pars. 137 y 232.

<sup>144</sup> ECHR. *Hugh Jordan v. the United Kingdom*, no. 24746/94 par. 105-109, 4 May 2001.

116. The European Court has established that based on the importance of protecting the right to life, the deprivation of life must be subjected to the most rigorous scrutiny, and it must take into account not only the actions of the State's agents but also the surrounding circumstances of the case.<sup>145</sup>

117. The IACHR notes that the parties have differing opinions with regard to the following facts: a) whether or not the troops who were pursuing the yellow truck were able to see that it was carrying persons in the bed which was covered by a tarp; b) whether the troops fired at the truck's tires or directly into the body and c) whether the troops fired at the persons who were fleeing from the truck after it had overturned.

118. The Commission also notes that there are several elements present in the case that must be taken into account in order to determine whether the Dominican State violated the American Convention with regard to the victims who were executed. In that regard, the Commission finds it is relevant to point out the following facts in connection to the present case:

- Historically, the border between Haiti and the Dominican Republic has seen a great flow of Haitian migrants in search of agricultural work, which is well known to Dominican authorities.
- The testimony included in the case file, as well as information provided by the State indicate that the Dominican Republic was aware of the *modus operandi* used by some Dominicans to smuggle migrants and the authorities had even stopped the same truck in previous occasions when it was carrying Haitians.<sup>146</sup>
- It has been proven that on the day the events took place, the yellow truck that crossed the checkpoint at Botoncillo did not obey the troops' signal to stop but rather sped away. For that reason the DOIF patrol pursued the truck in a wagon along a deserted highway leading to the town of Copey.
- The information contained in the case file indicates that the military had information that there would be an attempt to smuggle drugs across the border, and that is why—according to the Major in charge of the operation—for strategic reasons, they had decided to position themselves at the Botoncillo checkpoint. .
- The testimonies provided by the survivors makes evident that the persons traveling in the yellow truck never fired a shot or endangered the lives of the members of the patrol or of other persons.
- It has been proven that the members of the patrol fired in the direction of the yellow truck. During the military proceedings, the judge confirmed that the truck had bullet holes in the back door and in the cabin, and no impact on the tires.
- The testimonies of the members of the military patrol is consistent in affirming that, during the pursuit, they saw when, from the door on the passenger side of the cabin of the yellow truck, the body of a man came out and ended up lying on the side of the road, but the patrol continued its pursuit and, according to the testimonies, continued firing shots.
- The autopsy reports contained in the case file are those issued on June 20, 2000, by the Forensic Pathology Institute, which established that on six of the seven cases, the cause of death was gunshot wounds, the majority of them to the head, thorax and abdomen.

<sup>145</sup> ECHR, Case of Isayeva, Yusupova and Bazayeva v. Rusia, Applications nos. 57947/00, 57948/00 and 57949/00, Judgment of 24 February, 2005, par. 170. ECHR, Case of Nachova and others v. Bulgaria, Applications nos. 43577/98 and 43579/98, Judgment of 6 July, 2005, par. 93.

<sup>146</sup> Note of June 18, 2000, from the Commander of the 10<sup>th</sup> Infantry Battalion. State document dated September 20, 2010, Annex,

However, in two of the cases, the gunshot wounds were to their backs. Those reports did not provide analysis of the distance or trajectory of the shots that impacted the victims or indicate whether the authorities had taken photos of the scene or of the wounds in the bodies.

119. Based on the preceding paragraphs, the IACHR notes that even though it cannot determine whether the troops were effectively able to see that there were persons traveling in the bed of the truck, it is evident from the context of the events, that the troops were aware of the high flow of Haitian migrants in trucks –and, specifically, that the yellow truck had been previously used to transport migrants– and that even having information that an attempt would be made to have a vehicle cross the border carrying drugs, they should have reasonably considered that it was possible or probable that the truck was carrying persons and not drugs. Moreover, the troops knew that at least the driver and the co-pilot were in the truck since they had seen them at the checkpoint when they signaled them to stop.

120. Even if the patrol members believed that the truck was carrying drugs or even arms, based on the information they had received that a smuggler's vehicle would cross somewhere along that border that very night, the IACHR considers that element to be generic and that it does not support in any way the contention that, in the instant case, the use of force through firearms was strictly necessary or proportionate to the specific situation. Moreover, there are no elements in the case file beyond the testimony and the documents issued after the fact, to determine the source of that information or if it had been investigated and confirmed.

121. On the other hand, the Commission considers relevant to point out that: (i) at no time did the persons traveling in the yellow truck fired at or endangered the lives of the troops traveling in the patrol wagon; (ii) that the possibility that they may be trafficking in drugs did not imply a present and imminent danger to the patrol or to others; (iii) that the fact that the truck sped away did not imply a danger to the members of the patrol or to others because the pursuit was being carried out in the early morning hours on a deserted highway.

122. In that regard, the European Court has established that :

The legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost.<sup>147</sup>

123. In that sense, the Commission recalls that the means of repression authorities may employ with regard to acts that could be considered violent or criminal and that could threaten the rights of the population are limited. In that regard, the Commission considers that, “independently of the seriousness of certain actions and the responsibility of those who perpetrate crimes, the State does not have unlimited power nor can the State resort to any means to achieve its objectives.”<sup>148</sup>

124. However, the IACHR notes that in the instant case, the members of the patrol fired on the truck without ever hitting the tires (which, the patrol members said, was their intention), endangering the lives of the persons in it. The IACHR notes that of the tens of shots fired, not one hit the truck's tires. In that regard, the IACHR points out that the Attorney General of the Republic considered that the actions of the patrol members were, “in every respect, unnecessary,” since “it would have been enough to shoot at the tires and not at the crew.”<sup>149</sup> Furthermore, the Commission observes that upon seeing that a body was coming out of the passenger door, the patrol members could have reasonably inferred that the person had been injured by the bullets, but they nevertheless continued to pursue and to fire shots. In addition,

<sup>147</sup> ECHR, Case of Nachova and others v. Bulgaria, Applications nos. 43577/98 and 43579/98, Judgment of 6 July, 2005, para. 95.

<sup>148</sup> IACHR, *Report on citizen security and human rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 114.

<sup>149</sup> Note sent on July 19, 2000, by the Attorney General of the Republic to the Secretary of State of the Armed Forces, State document dated September 20, 2010, Annex.

the Commission points out that the majority of the gunshot injuries sustained by the victims were to the head, thorax and abdomen.

125. The Commission further notes that the autopsies indicate two different situations, which are supported by the testimony of the survivors: that some of the Haitian nationals sustained gunshot wounds and were killed during the pursuit while in the bed of the truck, and that at least two others were executed while fleeing the scene after the truck had overturned.

126. In the specific cases of Pardis Fortilus and Nadege Dorzema, the IACHR notes that both sustained multiple gunshot wound to the back, which coincides with the testimony of all the survivors that indicated that once the truck had overturned, the troops fired on two persons who were trying to flee. In that regard, the IACHR points out that the Attorney General of the Republic considered the actions of the troops “unnecessary in ever respect” since, “as some of the [witnesses] involved have testified, “some of the Haitian nationals were assassinated after the truck had rolled over.”<sup>150</sup> Moreover, the IACHR notes that it is not evident from the information in the case file that the authorities conducted an analysis of the injuries, but rather, that the military legal system had relied only on the testimony of the military personnel involved in the incidents and who claimed not to have fired on anyone after the truck had overturned. The Commission also notes with concern that, even though the autopsy reports issued in June 2000 established that those victims sustained multiple gunshots which caused their death, a month after the events, one of the death certificates concluded that Nadege Dorzema had died in an “automobile accident.” With regard to the preceding, based on the amount of evidence in the case, the Commission considers that the Dominican State is responsible for the extrajudicial executions of, at least, Pardis Fortilus and Nadege Dorzema.

127. The IACHR also notes that the deaths of Jacqueline Maxime, Fritz Alce, Roselene Theremeus, Ilfaudia Dorzema, Pardis Fortilus, Nadege Dorzema and Máximo Rubén de Jesús Espinal, as well as the injuries sustained by several persons who were traveling in the truck, exhibit characteristics that fit within the parameters of the conducts described in the context section, that is, the majority are Haitian migrants who are arbitrarily executed within a pattern of abuse of power by State authorities, even though they were unarmed.

128. On the other hand, faced with the use of lethal force by State agents, not only did the Dominican authorities transfer the investigation to the military jurisdiction (which will be analyzed in the chapter concerning Articles 8 and 25 of the Convention) but they have not submitted information on whether they have conducted an analysis to determine whether the use of force met the principles of legality, necessity and proportionality. The authorities have not provided information either on whether they have carried out a forensic analysis of the trajectory of the projectiles.

129. Related to the preceding, in the processing before the IACHR, the State alleged that based on the fact that the members of the patrol “did not have any other means to make the truck stop,” “a legal excuse of provocation applied, which would attenuate whatever punishment may be imposed on the defendants.” Also, according to the articles cited in the decision issued by the military tribunal, the acquittal of the members of the military sentenced to five years in prison for their responsibility in the incident was based on the argument that the homicide they committed was “excusable” due to the fact that the victims executed had “provoked, threatened or gravely assaulted them” and, as a result, the exception of legitimate defense applied. That is to say, in accordance with that analysis, the State considers that, contrary to international standards on the use of force, the members of the military had to stop the vehicle at all costs, including the death of the persons who were traveling in it. In that regard, the IACHR notes that, as it was previously pointed out, the persons who were traveling in the yellow truck did not constitute a danger to the lives of the persons who were traveling in the patrol wagon. Also on that subject, the Commission notes that the State did not provide evidence of the analysis carried out with regard to the principles of necessity and proportionality.

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<sup>150</sup> Note sent on July 19, 2000, by the Attorney General of the Republic to the Secretary of State of the Armed Forces, State document dated September 20, 2010, Annex.

130. The State argued before the IACHR, that the acquittal of the military members involved was due to “the impossibility to carry out the ballistics forensic analysis to identify each firearms from which the projectiles were fired in order to legally assign individual responsibility, given that it was not possible to collect the bullets because they had gone through the bodies of the victims.” In other words, the Dominican State justifies its lack of diligence at the scene of the incident to leave the crimes unpunished. In that regard, the IACHR notes that it is not evident from the case file that the State had determined what had happened the day of the incident based on basic information from the crime scene such as bullets, casings, etc.

131. The Commission considers that, taken together, the preceding elements lead to the conclusion that the Dominican State failed to comply with the obligation to respect the right to life and the right to personal integrity of Jacqueline Maxime, Fritz Alce, Roselene Theremeus, Ilfaudia Dorzema and Máximo Rubén de Jesús Espinal for the fear it is reasonable to infer they felt during the pursuit, the shooting, and for the arbitrary executions carried out by members of the Dominican army. In the specific case of Pardis Fortilus and Nadege Dorzema, that the State failed to respect the same rights, for the fear it is reasonable to infer they felt during the pursuit, the shooting during which several of their companions lost their lives, for continuing to be fired on when fleeing the scene and for the extrajudicial execution at the hands of members of the Dominican Army. The State also failed to comply with the obligation to guarantee those rights by not conducting a serious and diligent investigation in order to determine what had happened, determine the legality of the use of lethal force, and, if applicable, impose the proper sanctions. Consequently, the Commission concludes that the State violated Articles 4.1, 5.1 and 5.2 of the American Convention in connection with Article 1(1) of the same instrument, to their detriment.

132. On the other hand, the Commission would like to emphasize that the situation of danger to life and fear experienced by the survivors and the persons who were detained<sup>151</sup>, is equally applicable to them as it is to those persons who lost their lives. Therefore, the Commission concludes that the Dominican State failed to comply with the obligation to respect the right to personal integrity of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique, for the fear it is reasonable to infer they experienced during the pursuit, the shooting, and for the extra-legal execution and grave injuries sustained by several of their companions at the hands of the members of the Dominican Army and by the injuries they sustained. Consequently, the Commission concludes that, to their detriment, the State violated Article 5.1 and 5.2 of the American Convention in connection to Article 1(1) of the same instrument.

133. With respect to Joseph Devraine, the IACHR notes that he was not include in the Report on Admissibility because he was not alleged as a victim in the original petition. However, after that report was issued, the petitioners included him as an alleged victim and submitted evidence of the alleged violation.<sup>152</sup> That information was made available to the State. In that regard, the IACHR considers that the State failed to comply with the obligation to respect his personal integrity for the same reasons outlined in the preceding paragraph and, thus, the Commission concludes that the State violated Article 5.1 and 5.2 of the American Convention in connection to Article 1(1) of the same instrument to the detriment of this person.

134. The IACHR, on the other hand, notes that the petitioners stated that based on the testimony of the survivors, “other persons [were] seriously injured in addition to Joseph Devraine,” and therefore considered that the State was responsible for violating Article 5 of the Convention with regard to the persons identified in paragraphs 132 and 133, as well as with regard to “other persons.” In that regard, the IACHR notes that although it is evident from the testimony that there were other persons who were injured and who were transported to the hospital, the case file does not include sufficient information to determine their identity or any specific allegations about their situation. Therefore, the Commission will not include them in this report. The lack of sufficient information notwithstanding, the Dominican Republic

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<sup>151</sup> Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, Honorio Winique.

<sup>152</sup> See petitioners’ document dated May 5, 2009.

has obligations with regard to all victims and their relatives, and it is the responsibility of the State to conduct an investigation to locate and identified those persons.

135. Finally, the IACHR notes that in the analysis on the merits, the petitioners submitted a list of injured persons, included among them, were Maudiré Felizor, Noclair Florvilien, Rose Marie Petit-Homme-Estilien, Joseph Dol, Sylvie Felizor, as well as five persons “whose names are unknown.” In that regard, the IACHR does not have information in the case file pertaining to those victims or specific incidents or allegations relating to them. Therefore, the Commission cannot analyze their situation in this report.

2. *Violation of the right to judicial guarantees and to judicial protection (Articles 8<sup>153</sup> and 25<sup>154</sup> of the American Convention), in connection to Article 1(1) of the same instrument*

136. In this chapter the Commission will analyze the transferring of the investigation into the events to military jurisdiction, as well as to the lack of judicial guarantees and judicial protection of the relatives of the victims who were killed in extra-legal executions. In that regard, the Commission reiterates that the State, faced with the use of lethal force by agents of the State as in the instant case, should have conducted an independent and impartial investigation and establish whether the use of force met the standards set by the principles of legality, necessity and proportionality.

137. It has been documented that on June 19, 2000, the Office of the Secretary of State of the Armed Forces ordered a Joint Board of General Officers of the Armed Forces to investigate the involvement of members of the military in the incidents. That authority also determined that the alleged perpetrators of the offense of illicit trafficking in persons be brought before ordinary courts of justice. On July 13, 2000, the Judge Prosecutor of the Joint Armed Forces and National Police Court Martial of First Instance forwarded the case files to the judge with jurisdiction over preliminary proceedings to conduct the preliminary investigation and ordered that the members of the military involved in the incidents be held in prison. On July 24, 2000, the judge with jurisdiction over preliminary proceedings of the Joint Armed Forces and National Police Court of First Instance forwarded the case to the Trial Judge of the Joint Armed Forces and National Police Court-Martial of First Instance, and ordered that the military personnel involved in the incidents remain in prison.

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<sup>153</sup> Article 8.

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

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

- a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or if he does not speak of the tribunal or court;
- b) prior notification in detail to the accused of the charges against him;
- c) adequate time and means for the preparation of his defense;
- d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e) the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g) the right not to be compelled to be a witness against himself or to plead guilty; and
- h) the right to appeal the judgment to a higher court.

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

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

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

<sup>154</sup> Article 25. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

138. On December 30, 2002, the relatives of the Haitian victims executed filed a private constitutional complaint with the Chief Justice with jurisdiction over preliminary proceedings of the Judicial District of Montecristi, whose judicial response is not included in the case file lodged with the IACHR. Later, on March 12, 2003, those relatives lodged an appeal with the Supreme Court of Justice requesting that the investigation into the involvement of the members of the military be transferred to ordinary jurisdiction. .

139. On March 5, 2004, the Special Military Court sentenced military servicemen Santiago Florentín Castilla and Bernardo de Aza Núñez to five years in prison for homicide. The military tribunal also found Lieutenant Colonel Ferison Lagrance Vargas guilty of the same crime, but, in his case, took into account attenuating circumstances, and was therefore sentenced to 30 days suspension from duty. Last, the tribunal found Captain Johannes Paul Franco Camacho not guilty. Military servicemen Florentín Castilla and de Aza Núñez appealed the sentence and the Appellate Joint Armed Forces and National Police Court-Martial decided to nullify the sentence ordering that the convictions be “dismissed” and setting the defendants free, based on articles of the ordinary criminal code relating to the “excusable nature” of homicide in cases of “provocation, threat or serious violence,” as well as on an article no longer in force at the time of the incidents relating to legitimate defense.

140. On January 3, 2005, the Supreme Court of Justice denied the motion lodged by the relatives of the victims executed based on the fact that domestic legislation established that “when two courts of equal rank are competent to hear the same case, [...the second one] must cede jurisdiction in favor of the court where the case was originally heard.” However, the relatives were not notified of the Court’s ruling until they were already engaged in the processing of their petition before the Inter-American Commission in 2006.

141. The State asserted that the facts of the instant case had been duly investigated and those responsible brought to justice, both in ordinary jurisdiction (with regard to the alleged offenders involved in trafficking of persons) as well as in military jurisdiction (with regard to the members of the military involved), and therefore considered that the armed forces had complied with “their duty to empower the competent jurisdiction in order to shed light on such a regrettable incident.” The State also alleged that “military courts are competent to hear offenses committed by military personnel in the performance of their duties regardless of where the offenses were committed.”

142. In that regard, the IACHR notes that Article 3 of the Armed Forces Code of Justice establishes that “military courts are competent to hear offenses committed by military personnel in the performance of their duties regardless of where the offense were committed [and that all] other crimes, offenses or violations committed by military members or attached personnel shall be tried in ordinary courts in accordance with the provisions of the Code of Criminal procedure, the Criminal Code and of general criminal laws.”<sup>155</sup> Article 145 of the Organic Law of the Armed Forces establishes that “crimes and offenses committed by members of the military in active service shall be tried and punished according to the provisions of the Armed Forces Code of Justice.”

143. On the other hand, the Commission notes that Article 382 gives the Supreme Court of Justice the authority to assign judges when “judges with jurisdiction over preliminary proceedings and the correctional or criminal courts as well as police courts, that do not come under the authority of either, are competent to hear the same offense or predicate offenses or the same violation.” Also, Article 28 of Law

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<sup>155</sup> Excerpts of the Armed Forces Code of Justice, State document dated June 29, 2009, Annex.

Article 3:

Military courts are competent to hear special military offenses established in the second volume of this Code, except for those offenses exempted by the Code.

All offenses committed by military or attached personnel in garrisons, encampments or on any other military or naval facility or aboard State vessels or aircraft shall be tried in military courts.

Military courts are also competent to hear any offenses committed by members of the military while in the performance of their duties regardless of where the offenses were committed. [...]

All other crimes, offenses or violations committed by military members or attached personnel shall be tried in ordinary courts according to the provisions of the Code of Criminal Procedure, the Criminal Code and of general criminal laws.

No. 834 of July 15, 1978 establishes that “if the same case is pending before two courts of equal rank and both are competent to hear the case, the second court petitioned in the case must cede to the other if one of the parties so requests.”

144. In the instant case, the Commission observes that, despite having requested the relevant decisions of the military courts, the State never submitted them. In that regard, the IACHR observes that it only has the operative paragraphs of the main decisions issued by the military courts but not the reasoning followed by the courts to reach those conclusions. Nonetheless, the IACHR notes that the reading of other documents indicates –and this was confirmed by the State in its allegations before the Commission—that the crimes committed by members of the military with regard to the instant case were considered by national authorities to be “crimes committed in the exercise of duty.” In fact, the Commission notes that in the proceedings before the Commission, the understanding of the State has been that the Supreme Court had denied the appeal motion for transfer of jurisdiction filed by the relatives of the victims based on the fact that the military courts were competent to hear the offenses because they were “crimes committed in the performance of duty.” In the opinion of the Commission, the reasoning is not evident in the decision of the Supreme Court with regard to the instant case (*supra*)<sup>156</sup>. Notwithstanding the preceding, the IACHR notes that the State has consistently argued that the military courts were the competent jurisdiction because the offenses were committed in the performance of duty. Therefore, in the instant case, the Commission will consider that to be the reasoning of the Dominican authorities to submit the case to the military courts.

145. With regard to military jurisdiction, the IACHR recalls that this must be applied only when there is an attempt against the legal rights of the military with regard to the specific responsibilities for the defense and security of the State,<sup>157</sup> and never to investigate human rights violations. In that regard, the Commission has maintained in various opportunities that:

[M]ilitary justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses, strictly speaking. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal courts. Inverting the jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which in fact call into question the civilian courts and the rule of law.<sup>158</sup>

146. In that regard, the Inter-American Court has established that:

The Tribunal considers it appropriate to state that it has repeatedly established that the military criminal jurisdiction in democratic states, in times of peace, has tended to be reduced and has even disappeared, reason for which, if a State conserves it, its use shall be minimum, as strictly

<sup>156</sup> The decision of the Supreme Court of Justice denied the *amparo* recourse lodged by the relatives of the victims executed to transfer the investigation of the facts to the ordinary jurisdiction based on provisions of the Code of Criminal Procedure in ordinary jurisdiction which establish that when “the same case is pending before two courts of equal rank and equally competent to hear it,” the first jurisdiction to hear the case should conduct the investigation of the facts. That is to say, that reasoning indicates that the incidents in which the military members were involved could have been heard in ordinary courts, which, in the opinion of the Supreme Court, was also competent, but ruled that since the military jurisdiction was the first to hear the facts, the military jurisdiction should continue with the investigation.

In that regard, the Commission notes that according to the evidence included in the case file, in a similar case of jurisdictional conflict between the military and civil jurisdictions –which by analogy was made equal to the military– the Supreme Court of Justice of the Dominican Republic issued a judgment at the end of 2001, in which, contrary to the instant case, it determined the special scope of the military jurisdiction and remitted the investigation to the ordinary jurisdiction. The IACHR ignores the reasons for the different criteria of the Supreme Court. In that regard see, Judgment of December 26, 2001, available at <http://www.suprema.gov.do/novedades/sentencias/tyson.htm>. In that decision, the court considered that military personnel “should not be subtracted from ordinary jurisdiction other than for exceptional circumstances which inescapably leads to the conclusion that during normal times, defined not by a state of war but of peace, military and police tribunals should not hear, in principle, cases other than those of special offenses which are of a purely military or police nature, committed by military or police personnel,” and for all other offenses, such as “those committed in the exercise [...] of their duties regardless of where they were committed [...] military and police tribunals are not competent to hear them in times of peace.” Consequently, the Supreme Court of justice decided to remit the investigation to ordinary jurisdiction.

<sup>157</sup> IA Court H.R., *Case Palamara Iribarne*. Judgment dated November 22, 2005. Series C No. 135, par. 132

<sup>158</sup> IACHR. Report No. 2/06 (Merits). Case 12,130, Miguel Orlando Muñoz Guzmán v Mexico, February 28, 2006, para.

necessary, and shall be inspired on the principles and guarantees that govern modern criminal law. In a democratic state of Law, the military criminal jurisdiction shall have a restrictive and exceptional scope and be directed toward the protection of special juridical interests, related to the tasks characteristic of the military forces. Therefore, the Tribunal has previously stated that only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself.<sup>159</sup>

[...] Likewise, [the] Court has established that, taking into account the nature of the crime and the legal right damaged, military courts are not the competent jurisdiction to investigate and, if appropriate, try and punish the perpetrators of human rights violations<sup>160</sup> but, rather, the prosecution of those persons responsible should always be carried out by ordinary courts.<sup>161</sup>

147. Thus, the offenses committed in the exercise of duties, which are the offenses that military courts can hear, are “punishable act[s] that must be interpreted as an excessive use or abuse of power that occurs within the context of an activity directly linked to the actual role of the armed forces.”<sup>162</sup> Moreover, “the link between the criminal act and the activity related to military service is broken when the crime is extremely serious, as is the case of offenses against humankind. In those circumstances,<sup>163</sup> the case must be remitted to the civil courts.”<sup>164</sup>

148. In that sense, the Commission concludes that arbitrary and extrajudicial executions cannot be considered offenses committed in the exercise of duties and, therefore, the investigation of the facts in the instant case should have been conducted by the ordinary courts.

149. For its part, the Inter-American Court has maintained that “[a]ll entities with essentially jurisdictional responsibilities have the obligation to adopt just decisions based on full respect for judicial guarantees of due process established in Article 8 of the Convention.”<sup>165</sup> Likewise, the principles relating to the investigation of arbitrary and extra-legal executions establish the responsibility of the States to conduct “an exhaustive, immediate and impartial investigation of all cases in which extra-legal, arbitrary or summary executions are suspected,”<sup>166</sup> and “to identify and bring those responsible to trial, and ensuring at the same time the right of every person to a fair and public trial before a competent, independent and impartial tribunal, established by law.”<sup>167</sup>

<sup>159</sup> Corte IDH, *Caso Radilla Pacheco vs. México*. Sentencia de Excepciones preliminares, fondo, reparaciones y costas. 23 de noviembre de 2009, párr. 272; *Caso Castillo Petruzzi y otros Vs. Perú*, *supra* nota 54, párr. 128; *Caso Durand y Ugarte Vs. Perú*. Fondo. Sentencia de 16 de agosto de 2000. Serie C No. 68, párr. 117; *Caso Cantoral Benavides Vs. Perú*. Fondo. Sentencia de 18 de agosto de 2000. Serie C No. 69, párr. 112; *Caso Las Palmeras Vs. Colombia*. Fondo. Sentencia de 6 de diciembre de 2001. Serie C No. 90, párr. 51; *Caso 19 Comerciantes Vs. Colombia*. Fondo, Reparaciones y Costas. Sentencia de 5 de julio de 2004. Serie C No. 109, párr. 165; *Caso Lori Berenson Mejía Vs. Perú*, *supra* nota 54, párr. 142; *Caso de la Masacre de Mapiripán Vs. Colombia*, *supra* nota 129, párr. 202; *Caso Palamara Iribarne Vs. Chile*. Fondo, Reparaciones y Costas. Sentencia de 22 de noviembre de 2005. Serie C No. 135, párrs. 124 y 132; *Caso de la Masacre de Pueblo Bello Vs. Colombia*, *supra* nota 133, párr. 189; *Caso Almonacid Arellano y otros Vs. Chile*, *supra* nota 19, párr. 131; *Caso La Cantuta Vs. Perú*, *supra* nota 51, párr. 142; *Caso de la Masacre de la Rochela Vs. Colombia*, *supra* nota 83, párr. 200; *Caso Escué Zapata Vs. Colombia*, *supra* nota 56, párr. 105, y *Caso Tiu Tojin Vs. Guatemala*, *supra* nota 24, párr. 118.

<sup>160</sup> IA Court H.R., *Case Radilla Pacheco vs. México*. Judgment of Preliminary exceptions, merits, reparations and costs. November 23, 2009, par. 273, *Case of the Massacre de la Rochela vs. Colombia*, *supra* note 83, par. 200, and *Case Escué Zapata vs. Colombia*, *supra* note 56, par. 105.

<sup>161</sup> IA Court H.R., *Case Radilla Pacheco vs. Mexico*. Judgment of Preliminary exceptions, merits, reparations and costs. November 23, 2009, par. 273, *Case Durand y Ugarte Vs. Peru*, *supra* note 274, par. 118; *Case La Cantuta Vs. Peru*, *supra* note 51, par. 142; and, *Case of the Massacre de la Rochela Vs. Colombia*, *supra* note 83, par. 200.

<sup>162</sup> Constitutional Court of Colombia, decision C-358 of August 5, 1997. In that regard see, IACHR, *Third report on the Human Rights situation in Colombia*, par. 30.

<sup>163</sup>

<sup>164</sup> Constitutional Court of Colombia, decisions C-358 of August 5, 1997. In that regard see IACHR. *Third report on the Human Rights situation in Colombia*, par. 30.

<sup>165</sup> IA Court H.R. *Case López Álvarez*. Judgment of February 1, 2006. Series C No. 141. par.148; IA Court H.R., *Case Palamara Iribarne*, Judgment of November 22, 2005. Series C No. 135 par. 164; IA Court H.R., *Case Yatama*. Judgment of June 23, 2005. Series C No. 127, par. 149; IA Court H.R. *Case Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, par. 104.

<sup>166</sup> United Nations Social and Economic Council. Principles regarding the effective prevention and investigation of extra-legal, arbitrary or summary executions. Resolution 1989/65, of May 24, 1989.

<sup>167</sup> United Nations General Assembly. Resolution 59/197. Extra-legal, summary or arbitrary executions (A/RES/59/197), Mrch 10, 2005

150. In that regard, the Inter-American Court has established that:

[...] “[w]hen the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent tribunal and, *a fortiori*, to due process,” which is, at the same time, intimately related to the right to a fair trial.<sup>168</sup> The judge responsible for hearing a case must be competent, as well as independent and impartial.<sup>169 170</sup>

151. For its part, the Commission has maintained and maintains in the instant case that:

The military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that military jurisdiction cannot be considered a real judicial system, as it is not part of the judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context.<sup>171</sup>

152. Contrary to those principles and the established precedent of the Inter-American system, the facts in the instant case were heard by a court that was not competent and which, as it will be demonstrated, was neither impartial nor independent.

153. In that regard, the Commission notes that the military courts cannot be an independent and impartial organ due to the fact that in the armed forces there is a “tradition of *esprit de corps*”, which is sometimes mistakenly interpreted in the sense that they feel obligated to cover up crimes committed by their comrades.<sup>172</sup> The IACHR also considers that whenever military authorities evaluate actions whose active subject is another member of the Army impartiality becomes difficult, because investigations into the conduct of members of security forces carried out by other members of those forces tend to obscure the facts rather than shed light on them.<sup>173</sup>

154. The IACHR recalls that the impartiality of a court depends on its members not having a direct interest, a firm position, a preference for one of the parties or being involved in the case. In the matter at hand, the State did not conduct a separate judicial investigation into the extrajudicial and arbitrary executions different from the investigation conducted under military jurisdiction, although there was a specific request lodged by the relatives of the victims executed to remit the investigation to civil jurisdiction. The IACHR further notes that it took almost two years to resolve the request for a change of jurisdiction lodged by the relatives and more than three years to inform them of the decision; in other words, after the conviction issued by the military court of first instance, and after the acquittal of the members of the military. In that regard, the IACHR notes that the relatives did not have access to the military criminal proceedings of the persons involved in the executions, nor were they able to lodge a motion to challenge the rulings on the case issued by said jurisdiction.

155. The Commission also notes that in the investigation under military jurisdiction, not only were the relatives denied access, but the several survivors of the incidents, some of them seriously injured, who should have been considered victims in the proceedings, were not asked to provide testimony either. The Commission notes that only the military servicemen involved, the driver of the truck and one of the survivors, provided testimony.

<sup>168</sup> IA Court H.R., Case Radilla Pacheco vs. Mexico. Judgment of Preliminary exceptions, merits, reparations and costs. November 23, 2009 par. 273, *Case Castillo Petrucci et al vs. Peru*, supra note 54, par. 128; *Case Palamara Iribarne vs. Chile*, supra note 274, par. 143, and *Case Tiu Tojin vs. Guatemala*, supra note 24, par. 118.

<sup>169</sup> IA Court H.R., *Case Ivcher Bronstein. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, par.112; *Case 19 Comerciantes*, supra note 274, par. 167, and *Case Escué Zapata vs. Colombia*, supra note 56, par. 101.

<sup>170</sup> IA Court H.R., Case Radilla Pacheco vs. México. Judgment of Preliminary exceptions, merits, reparations and costs. November 23, 2009, par. 273, *Case Durand and Ugarte vs. Peru*, supra note 274, par. 118; *Case La Cantuta vs. Peru*, supra note 51, par. 142; and, *Case of the Massacre of la Rochela vs. Colombia*, supra note 83, par. 200.

<sup>171</sup> IACHR. Report N° 2/06 (Merits). Case 12.130, Miguel Orlando Muñoz Guzmán vs. Mexico February 28, 2006, par. 83.

<sup>172</sup> IACHR. *Third Report on the Human Rights Situation in Colombia*, pars. 26-29.

<sup>173</sup> IACHR. *Third Report on the Human Rights situation in Colombia*, par. 19.

156. On the other hand, the Commission points out that the lack of impartiality in the instant case is also demonstrated by the fact that, to date, none of the military servicemen involved is serving time in prison, even though they were fully identified and admitted to firing shots on the day the incidents took place. In that regard, the sentence imposed minimum punishments in relation to the facts; thus, two of the four lower rank servicemen were sentenced to five years in prison and the Lieutenant Colonel in charge of the operation was exonerated of any responsibility, and was sentenced to a minimal punishment of temporary suspension from duty. The IACHR further notes that the servicemen sentenced to five years appealed the sentence and won acquittal based on articles related to legitimate defense.

157. On that point, the IACHR points out that it does not have information on the reasons for the acquittal, despite the fact that the testimony of the members of the patrol involved in the incidents established that the persons who were in the truck never attacked them or fired at them. In that regard, the IACHR reiterates that it does not have that information because the State did not submit the full decisions of the courts even though they were specifically requested.

158. On the other hand, the Commission reiterates that, in its allegations before the IACHR, the State maintained that the acquittal of the military personnel was due to the fact that "it was impossible to carry out the ballistics forensic analysis to identify which firearm shot which projectile in order to be able to legally assign individual responsibility because they were unable to recover the projectiles, given that they had entered and exited the bodies of the victims." That is, the State alleges its own lack of diligence in the recovery of the evidence at the scene as the basis to set the convicted military men free.

159. In any event, the IACHR recalls that it is clear from the evidence in the case, that from an international law perspective, the State agents used excessive and lethal force (*supra*), therefore the Dominican State is responsible for the arbitrary and extra-legal execution of the seven persons already mentioned, as well as for the violation of the personal integrity of several others. Despite that, the incidents remain unpunished.

160. The facts described above are a clear example of what the Commission has previously stated in the sense that, "whenever the State allows investigations to be conducted by the entities that are potentially implicated, independence and impartiality are clearly compromised [...] This type of arrangement results in the alleged perpetrators of the offense being isolated from the normal course of the justice system."<sup>174</sup> In that regard, the IACHR bears in mind that when the military courts hear grave violations of human rights, as in the instant case, it constitutes a violation, among others, of the rights established in articles 8 and 25<sup>175</sup> of the American Convention.

161. Last, the Commission recalls that once the State learns that its security forces have used firearms and that, as a result, a person has lost his life, it is obligated to initiate, of its own initiative and without delay, a serious, independent, impartial and effective investigation. This stems from the obligation States have "to be vigilant that its security forces, who have been given the authority to legally use force, respect the right to life of those who come under their jurisdiction."<sup>176</sup> Moreover, in cases in which there are allegations of extra-legal executions,

[...]it is essential that the States investigate effectively the deprivation of the right to life, and, if appropriate, punish all responsible individuals specially when State agents are involved, otherwise, it would create the conditions for this type of incident to happen again within an environment of impunity, which is contrary to the State's obligation to respect and guarantee the right to life.

<sup>174</sup> IACHR, Report N° 10/95, Case 10.580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996 par. 48.

<sup>175</sup> IACHR. *Annual Report 1993*. OEA/Ser.L/V/III.85. February 11, 1994.

<sup>176</sup> IA Court H.R., *Case Zambrano Vélez et al vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 81; IA Court H.R. *Case Montero Aranguren et al (Retén de Catia) vs. Venezuela*. Judgment of July 5, 2006. Series C No. 150, par. 66. Also see IA Court H.R., *Case of the Miguel Castro Castro Prison Vs. Perú*. Judgment of November 25, 2006. Series C No. 160, par. 238, and IA Court H.R., *Case Servellón García et al vs. Honduras*. SJudgment of September 21, 2006. Series C No. 152, par. 102.

Furthermore, if violations of human rights are not seriously investigated, they would be, in a sense, aided by law enforcement which would compromise the international responsibility of the State.

162. Thus, as evidenced in the present case in which deaths and serious injuries occurred as a result of the excessive use of force, contrary to its international obligations<sup>177</sup> the State has not carried out a serious, independent, impartial and effective investigation, it has not provided a satisfactory and compelling explanation of the facts, and it has not provided evidence to discredit the allegations regarding its responsibility. On the contrary, the IACHR notes that the State remitted the case to the military jurisdiction where the relatives of the victims executed were denied access, where the majority of the survivors were not asked to provide testimony, and where the military personnel involved were acquitted and the offenses remain unpunished.

163. Based on the preceding, the Commission considers that in the instant case, the Dominican State exceeded the scope of military jurisdiction in violation of the parameters of a special and restricted jurisdiction that characterize military criminal jurisdiction and extended the competence of the military courts to offenses that bear no direct relation to military discipline or to the legal rights of the military forces; it set free the military servicemen involved in the incidents and prevented the relatives of the victims from having access to justice. Therefore, the Commission concludes that the Dominican Republic violated the rights enshrined in Articles 8.1 and 25 of the American Convention in connection to Article 1(1) of the same instrument, to the detriment of the relatives of the victims executed who are identified in paragraph 103.

3. *Failure to comply with the obligation to adopt domestic remedies (Article 2 of the American Convention), in connection to Articles 8 and 25 of the same instrument.*

164. Article 2 of the American Convention establishes the general obligation of each State Party to adopt the necessary domestic legislative or other measures in accordance with the provisions of the Convention in order to guarantee the rights recognized by it, which implies that the domestic remedies must be effective (principle of *effet utile*)<sup>178</sup>.

165. The Commission considers that Article 3 of the Armed Forces Code of Justice, which in relevant part establishes that “military courts are competent to hear offenses committed by military personnel in the exercise of their duties, regardless of where the offenses were committed” operates as a rule rather than an exception, of military jurisdiction.<sup>179</sup> Furthermore, the IACHR observes that the content of that article is broad and prevents the determination of the link between offenses in the civil jurisdiction and those in the military jurisdiction. The Commission specifically emphasizes the section of the article that establishes that all “other crimes, offenses or violations committed by military or attached personnel shall be tried in ordinary courts, in accordance with the provisions of the Code of Criminal Procedure, the Criminal Code, and general criminal laws.”

166. In that regard, the Inter-American Court has established that:

<sup>177</sup> IA Court H.R., *Case Zambrano Vélez et al vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 108 and 88; IA Court H.R. *Case Montero Aranguren et al (Retén de Catia)*, Judgment of July 5, 2006. Series C No. 150. Par. 80; IA Court H.R. *Case Baldeón García*. Judgment of April 6, 2006. Series C No. 147. Par. 120. IA Court H.R., *Case Servellón García et al vs. Honduras*. Judgment of September 21, 2006. Series C No. 152, par. 123; IA Court HR, *Case Baldeón García vs. Peru*. Judgment of April 6, 2006. Series C No. 147, par. 91; IA Court H.R., *Case of the Pueblo Bello Massacre vs. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 145; IA Court H.R. *Case of the “Mapiripán Massacre” vs. Colombia*. Judgment of September 15, 2005. Series C No. 134, pars. 137 and 232. IA Court H.R., *Case Juan Humberto Sánchez vs. Honduras*. Judgment of June 7, 2003. Series C No. 99, par. 112. Also see *Case of the Miguel Castro Castro Prison vs. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 256, and IA Court H.R., *Case Vargas Areco vs. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 77. In similar sense see also ECHR, *Erdogan and Others v. Turkey*, supra note 66, pars. 122-123, and ECHR, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98 paragraphs 111-112, 6 July 2005.

<sup>178</sup> IA Court H.R., *Case Radilla Pacheco vs. Mexico*. Judgment of Preliminary Exceptions, merits, reparations and costs. November 23, 2009, par. 288, *Case Garrido and Baigorria vs. Argentina*, supra note 283, par. 68; *Case Zambrano Vélez et al vs. Ecuador*, supra note 51, par. 55, and *Case Heliodoro Portugal Vs. Panamá*, supra note 24, par. 179.

<sup>179</sup> IA Court H.R., *Case Radilla Pacheco vs. Mexico*. Judgment of preliminary exceptions, merits, reparations and costs. November 23, 2009, *Case Las Palmeras vs. Colombia*, supra note 274, par. 51; *Case La Cantuta vs. Peru*, supra note 51, par. 142, and *Case of the la Rochela Massacre vs. Colombia*, supra note 83, par. 200.

[...] as regards military criminal rules, [...] such rules shall establish clearly and without ambiguities, *inter alia*, any typical criminal behaviors particular to the military forum and shall determine the nature of any illicit behavior by describing the damage or how it jeopardizes the military juridical benefits that have been seriously attacked, so that the exercise of a military punitive power is justified, as well as specifying the corresponding sanction. <sup>180</sup>.

167. The IACHR observes that it is so difficult to determine the limit between the offenses that can be heard by the military or the ordinary jurisdiction, that on the one hand, Article 382 of the Code of Criminal Procedure empowers the Supreme Court of Justice to designate judges when “the judges of the preliminary hearing and the correctional or criminal courts, as well as police courts that do not come under the jurisdiction of either, are considering the same offense, or related offenses or the same violation.” Likewise, Article y 28 of Law No. 834 of July 15, 1978, establishes that “if the same case is pending in two courts of equal rank and equally competent to hear it, the second court to be petitioned must cede to the other if one of the parties so requests”.

168. In that regard, the Inter-American Court has established that:

The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted due to the mere circumstance of being a soldier. In that sense, even when the crime is committed by soldiers while they are still in service or based on acts of the same, this is not enough for their knowledge to correspond to the military criminal justice. <sup>181</sup>

169. Last, the IACHR observes that the Supreme Court of Justice would be empowered to interpret the scope of Article 3 of the Armed Forces Code of Justice as it has done with regard to other similar provisions (*supra*)<sup>182</sup>. However, the evidence in the case file does not indicate that, to date, said tribunal has made such interpretation.

170. Therefore, the Commission concludes that the Dominican State failed to comply with the obligation established in Article 2 of the American Convention in connection with Articles 8 and 25 of the same instrument, in extending the competence of the military jurisdiction to offenses that do not bear any direct relation to military discipline or to the legal rights of the armed forces.

4. *Right to personal integrity (Article 5 of the Convention), in connection to Article 1(1) of the same instrument to the detriment of the relatives of the victims*

171. With regard to the relatives of Jacqueline Maxime, Fritz Alce, Roselene Theremeus, Ilfaudia Dorzema, Pardis Fortilus y Nadege Dorzema and Máximo Rubén de Jesús Espinal, the Commission would like to reiterate that on several occasions, the inter-American Court has stated that “the relatives of the victims of human rights violations may be victims themselves.”<sup>183</sup>

172. With regard to arbitrary and extra-legal executions specifically, the Court has said that “no proof is needed to demonstrate the serious impact to the psychic integrity of the relatives of the victims executed.”<sup>184</sup> Based on the preceding, with regard to the pain and suffering experienced by the relatives killed in extra-legal executions, the Commission, consistent with the jurisprudence of the Inter-American

<sup>180</sup> IA Court H.R. *Case Usón Ramírez vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, par. 55 and IA Court H.R., *Case Palamara Iribarne vs. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, par. 126.

<sup>181</sup> IA Court H.R., *Case Radilla Pacheco vs. Mexico*. Judgment of Preliminary Exceptions, merits, reparations and costs. November 23, 2009, par. 286.

<sup>182</sup> Judgment of December 26, 2001, available at <http://www.suprema.gov.do/novedades/sentencias/tyson.htm>

<sup>183</sup> IA Court H.R., *Case Castillo Páez. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, par. 88. Also see IA Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 154.

<sup>184</sup> IA Court H.R., *Case of the Ituango Massacres vs. Colombia*. Preliminary Exception, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, par. 262. Also see IA Court H.R., *Case of the Mapiripán Massacre vs. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, par.146.

system on human rights on this matter, considers that the relatives were themselves victims of a violation of their personal integrity.

173. Moreover, the Commission observes that, on the one hand, the press establishes that the remains of the victims executed were buried in a common grave in the Dominican Republic; on the other hand, a document issued by a military authority asserts that the remains were turned over to the relatives. The IACHR notes that the representatives allege that the victims were buried in a Dominican common grave<sup>185</sup> and the State does not refute the facts in its allegations. In that regard, the IACHR considers that the State has not provided sufficient evidence that would help determine that the victims executed were turned over to their relatives. Based on the foregoing, and assuming that the remains were not turned over to their relatives, the Commission considers that to be additional suffering for the relatives, for having been denied the opportunity to bury the remains in a place of their choosing and according to their beliefs.

174. Last, as it has been demonstrated, the State is responsible for having failed to seriously investigate the arbitrary and extra-judicial execution of the aforementioned victims, and because the incidents remain unpunished. In that regard, the Court has established that the absence of effective recourse constitutes a source of additional suffering and anxiety for the relatives of the victims<sup>186</sup>, who, in the instant case, more than ten years after the incidents, are still waiting for justice to be done.

175. The Commission further points out, that it requested that the petitioners provide a complete list of relatives of the deceased persons that they considered victims. In their response, the petitioners provided the names of some of the relatives but stated that, on the one hand, some of the victims and their relatives had been illegally repatriated to Haiti which placed them in a vulnerable situation and they were forced to move frequently, and on the other hand, the earthquake of 2010 created technical difficulties to locate the victims and their relatives. Therefore, they said that they reserved the right to submit an updated list of victims and relatives in the future. Based on the foregoing and on the evidence in the case file, the Commission includes as victims the relatives that have been identified at the time this report is issued. The Commission also takes note of the reasons presented by the petitioners regarding the complexity of the situation and recalls that the Dominican Republic has obligations with regard to all victims and their relatives, and it is therefore the responsibility of the State to carry out an investigation to find them and identify them.

176. Consequently, the IACHR concludes that the State violated Article 5 of the Convention in connection to Article 1(1) of the same instrument to the detriment of the relatives of the victims who were executed and identified in paragraph 103.

*With regard to the detainees*

*Right to personal liberty, to personal integrity, to judicial guarantees and to judicial protection (Articles 7<sup>187</sup>, 5, 8 and 25 of the American Convention), in connection to Article 1(1) of the same instrument*

<sup>185</sup> Petitioners' document dated May 5, 2009 and December 8, 2009.

<sup>186</sup> IA Court H.R., Case *Montero Aranguren et al (Retén de Catia) vs. Venezuela*. Preliminary Exception, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par. 104; IA Court H.R., Case of the *Ituango Massacres. Judgment of July 1, 2006*. Series C No. 148, par. 261. Also see, IA Court H.R., Case of the *"Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, par. 145; IA Court H.R., Case of the *Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 145; IA Court H.R. Case of the *Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, par. 94.

<sup>187</sup> Article 7:

1. Every person has the right to personal liberty and security. [...]
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detainee shall be brought promptly before a judge or other office authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice

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177. It has been proven in the present case, that following the pursuit and collision of the truck in which six Haitian nationals and one Dominican national lost their lives and several more Haitians were seriously injured, the survivors were taken by State agents to Montecristi and, afterwards, to a military prison in Dajabón, where agents demanded money in order to return them to Haiti or, otherwise, they would have to work in the fields planting bananas and rice. Also, their testimony is consistent in asserting that they collected money amongst themselves in order to pay the agents the bribe and were then returned to Haiti. .

178. First, the IACHR recalls that, in general terms, with regard to the right to personal liberty the reigning principle is that deprivation of liberty is an exceptional measure.<sup>188</sup> Moreover, in the case of detention for migration issues, the standard regarding the exceptional nature of deprivation of liberty measures is even higher due to the fact that migration violations should not be of a criminal nature.<sup>189</sup> In that sense, the Commission considers that the States must establish migration laws and policies based on a presumption of innocence and not on a presumption of detention.<sup>190</sup> Thus, detention is permissible only when, after an individual analysis and a decision is made based on the law, this is considered a necessary measure to comply with a legitimate interest of the State, such as to ensure that a person is present during the process of determining their migration status and possible deportation.<sup>191</sup>

179. On the other hand, the IACHR recalls that the Inter-American Court has stated that “any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessary entails the violation of Article 7(1) thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person’s right to liberty.”<sup>192</sup>

180. As the Court has reiterated in its jurisprudence, in accordance with Article 7(3) “no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.”<sup>193</sup> In a similar sense, in referring to the arbitrariness of detention, the Court has established that “[A]rbitrariness is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice lack of predictability as well as due process of law.”<sup>194</sup>

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to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful [...]

<sup>188</sup> IACHR. Report No. 86/09. Case 12.553. Merits. Jorge, José and Dante Peirano Basso. Uruguay. August 6, 2009. Para. 93 and ss.

<sup>189</sup> United Nations, Report of the United Nations Special Rapporteur on the Human Rights of Migrants, Gabriela Rodríguez Pizarro, E/CN.4/2003/85 (November 30, 2002), available in English at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/3ff50c339f54a354c1256cde004bfd8/\\$FILE/G0216255.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/3ff50c339f54a354c1256cde004bfd8/$FILE/G0216255.pdf).

<sup>190</sup> IACHR, Rafael Ferrer-Mazorra, et al. vs. United States, Report No. 51/01 (merits), Case No. 9903, par. 219 (April 4, 2001), available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/EEUU9903.htm>; also see IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle III(2) (2008), available at <http://www.cidh.oas.org/Basicos/Basicos.Principios%20y%20Buenas%20Prácticas%20para%20PPL.htm>.

<sup>191</sup> IACHR, Rafael Ferrer-Mazorra, et al. vs. United States, Report No. 51/01 (merits), Case No. 9903, par. 242 and 221 (April 4, 2001), available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/EEUU9903.htm>; Also see IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle III (2008), available at <http://www.cidh.oas.org/Basicos/Basicos.Principios%20y%20Buenas%20Prácticas%20para%20PPL.htm>. Principle III of the Inter-American Principles on Detention states that “Preventive deprivation of liberty, is a precautionary measure not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need and proportionality, to the extent strictly necessary in a democratic society.”

<sup>192</sup> IA Court H.R., Case *Chaparro Álvarez and Lapo Íñiguez. vs. Ecuador*. Preliminary exceptions, merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 54.

<sup>193</sup> IA Court H.R., Case *Gangaram Panday vs. Surinam*. Judgment of January 21, 1994. Series C No. 16, par. 47; and IA Court H.R., Case *López Álvarez vs. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 66.

<sup>194</sup> IA Court H.R., Case *Chaparro Álvarez and Lapo Íñiguez. vs. Ecuador*. Preliminary exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 92.

181. On the other hand, the Inter-American Court has established that Article 7(4) of the American Convention “sets forth a mechanism to avoid unlawful or arbitrary conduct from the very act of deprivation of liberty on, and to ensure defense of the detainee. Both the detainee and those representing him or with legal custody over him have the right to be informed of the motives of and reasons for the detention and about the rights of the detainee.”<sup>195</sup> Likewise, in analyzing the violation of Article 7(4) of the American Convention in another case, the Court described the content of that provision in the following terms:

[...] when the detainee is deprived of his liberty and before making his first statement before the authorities, the detainee must be informed of his right to establish contact with another person, for example, a next of kin, an attorney, or a consular official, as appropriate, to inform this person that he has been taken into custody by the State. Notification to a next of kin or to a close relation is especially significant, for this person to know the whereabouts and the circumstances of the accused and to provide him with the appropriate assistance and protection. In case of notification to an attorney, it is especially important for the detainee to be able to meet privately with him, which is inherent to his right to benefit from a true defense. In case of consular notification, the Court has pointed out that the consul “may assist the detainee in various acts of defense, such as granting or hiring legal counsel, obtaining evidence in the country of origin, corroborating the conditions under which legal assistance is provided, and observing the situation of the accused while he is in prison.”<sup>196</sup>

182. In that sense, the IACHR recalls that in accordance with the Inter-American Principles on Detention, if a detained migrant is transferred to another facility, he has the right to “notify or request that the competent authority notify his family or other appropriate persons designated by him” of the transfer and where he is located<sup>197</sup> and must be informed “promptly of his right to communicate through appropriate means with a consular office or the diplomatic mission of the State of his nationality.”<sup>198</sup>

183. With regard to Article 7(5) of the American Convention, the Court has underscored that to be brought before a judge “is essential to the protection of the right to personal liberty and to the protection of other rights, such as the right to life and to personal integrity.”<sup>199</sup> Immediate judicial control is a measure aimed at preventing arbitrary or illegal detentions, taking into account that under the Rule of Law, it is the responsibility of the judge to guarantee the rights of the detainee, to authorize the adoption of precautionary measures or coercion when strictly necessary, and, in general, to ensure that the detainee’s treatment is consistent with the presumption of innocence.<sup>200</sup>

184. For its part, the State, in accordance with Article 7(6), must guarantee that every person deprived of liberty has access to judicial remedies to challenge the legality of his arrest or detention. The Inter-American Court has emphasized that “it is not enough for the resources to exist formally, but, rather, they must be effective, in other words, the individual must have an effective possibility of filing a simple and prompt remedy that enables attainment, if appropriate, of the judicial protection requested.”<sup>201</sup> In that sense, the Commission recalls that the detainee must be granted access to a judicial review of his

<sup>195</sup> IA Court H.R., *Case Tibi vs. Ecuador*. Judgment of September 7, 2004. Series C No. 114, par. 109.

<sup>196</sup> IA Court H.R., *Case Tibi vs. Ecuador*. Judgment of September 7, 2004. Series C No. 114, par. 112; see, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principio V, available at <http://www.cidh.oas.org/Basicos/Basicos.Principios%20y%20Buenas%20Prácticas%20para%20PPL.htm>.

<sup>197</sup> See also UN, Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 16(1) (1988), available at: <http://www2.ohchr.org/spanish/law/detencion.htm>.

<sup>198</sup> See also UN, Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, Principle 16(2) (1988), available at: <http://www2.ohchr.org/spanish/law/detencion.htm>; and Principle 16(3) (1988), available at: <http://www2.ohchr.org/spanish/law/detencion.htm>.

<sup>199</sup> IA Court H.R. *Case Tibi vs. Ecuador*. Judgment of September 7, 2004. Series C No. 114, par. 118.

<sup>200</sup> IA Court H.R., *Case Chaparro Álvarez and Lapo Ñiquez vs. Ecuador*. Preliminary exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 81; *Case Maritza Urrutia vs. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, par. 66, and *Case Bulacio vs. Argentina. Merits, Reparations, and Costs*. Judgment of September 18, 2003. Series C No. 100, par. 129.

<sup>201</sup> IA Court H.R., *Case Tibi vs. Ecuador*. Judgment September 7, 2004. Series C No. 114, par. 131.

detention in order to “provide real guarantees that the detainee is not exclusively at the mercy of the authority that placed him in custody.”<sup>202</sup>.

185. The Commission notes that although the State does not make any allegations with regard to the detention and expulsion of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique, the evidence in the case file indicates that the Director of Intelligence reported that, on the day of the incidents, there were eleven detainees. For his part, the Commander of the 10<sup>th</sup> Infantry Battalion confirmed the information on the same date, adding that one of them was under age, and stated that the detainees “had been sent to the Migration Office [...] to be returned to their territory.” However, the State did not provide any evidence with regard to the detention or the alleged transfer of the detainees to the Migration Office.

186. In that regard, the Commission observes that even assuming that the detainees were taken to the Migration Office, officials in that office cannot be considered judges or officers legally authorized to discharge judicial responsibilities. Furthermore, the information in the case file does not provide any evidence that the authorities provided the detainees the guarantees established in Article 7 of the American Convention.

187. Likewise, based on the evidence in the case file, the IACHR observes, first of all, that there is no record that the detention was even registered or that proceedings were initiated. Second, the Commission notes that there is no evidence that the detainees were ever informed of the reasons for the detention, of the charges against them, of their legal rights, that they were brought before a judge or another official authorized by law to discharge judicial responsibilities, or notified of the date in which they would be tried. They were not allowed to make contact with any person either, including the Haitian Consul. Third, the IACHR notes that there is no evidence that the detainees were made aware of the legal remedies available to them, or that they were allowed to explain their situation as to whether they were seeking asylum, refuge, or the reasons for entering Dominican territory.

188. On the contrary, the IACHR observes that the detainees were transported to two prisons where they were threatened with field work or pay a bribe in order to be taken back to Haiti, and once the payment was made, they were expelled from the country without being provided even minimum guarantees, which fits within the pattern of expulsions of Haitian nationals described in the context section. The State did not refute these facts.

189. Along the same lines, the IACHR points out that the United Nations Working Group on Arbitrary Detentions has established that “in cases where individuals have been detained, expelled or returned without having been afforded judicial guarantees, their detention and later expulsion shall be considered arbitrary.”<sup>203</sup> On the other hand, the United Nations Special Rapporteur on the Human Rights of Migrants has urged States to avoid the use of detention centers and legal mechanisms, and methods to intercept and/or deport migrants that restrict judicial control over the legality of detentions and other rights.<sup>204</sup>

190. Likewise, the Commission recalls that although many of the judicial guarantees established in Article 8 of the American Convention incorporate language characteristic of criminal procedures, similarly, and due to the consequences that may result from migration proceedings, those guarantees should be strictly applied in these proceedings as well.<sup>205</sup> In that sense, in considering a

<sup>202</sup> IACHR, Rafael Ferrer-Mazorra, et al. vs. United States, Report No. 51/01 (merits), Case No. 9903, par. 232 (April 4, 2001), available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/EEUU9903.htm>

<sup>203</sup> Working Group on Arbitrary Detentions, Conclusions and Recommendations, E/CN.4/2004/3, par. 86 (December 15, 2003), available at <http://www.acnur.org/biblioteca/pdf/3295.pdf>.

<sup>204</sup> United Nations, Report of the United Nations Special Rapporteur on the Human Rights of Migrants, Gabriela Rodríguez Pizarro, E/CN.4/2003/85, par. 75(h) (December 30, 2002), available in English at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/3ff50c339f54a354c1256cde004bfd8/\\$FILE/G0216255.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/3ff50c339f54a354c1256cde004bfd8/$FILE/G0216255.pdf).

<sup>205</sup> IACHR, Second Progress Report of the Special Rapporteur on Migrant Workers, Annual Report 2000, par. 90 (April 16, 2001), available at <http://www.cidh.oas.org/annualrep/2000sp/cap.6.htm>; see IACHR, Wayne Smith vs.. United States, Report No. Continúa...

proceeding regarding immigration, the Commission has established that although Article 8 of the Convention “does not specify minimum guarantees in matters relating to the determination of civil, labor, fiscal, or any other type of rights or obligations, the minimum guarantees established in subparagraph 2 of the same article also apply in those areas and, therefore, in those areas, the individual has the right to due process in the same terms as if it were a criminal matter as long as it applies to the proceedings.”<sup>206</sup> Furthermore, the Inter-American Court has considered that migrants are in a situation of true inequality<sup>207</sup> that could affect due process unless special measures are adopted to compensate for their situation of vulnerability. In the instant case, the State has not provided any evidence to establish that the guarantees enshrined in Articles 8 and 25 of the American Convention have been applied.

191. On the other hand, the Commission considers that the incidents that occurred immediately following the pursuit lead to the conclusion that the Dominican State, in addition to having violated the right to personal liberty of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique, also violated their right to personal integrity for the fear, it is reasonable to infer, they felt when after having survived the pursuit and the shooting, they were forced to pick up the dead and the critically injured; also, for having been detained by State agents not knowing where they were going; for being taken to two jails without being informed of their rights or what was awaiting them, and for being threatened with forced labor and for not being afforded minimum judicial guarantees.

192. Based on the foregoing considerations, the Inter-American Commission concludes that the Dominican State violated the right to personal liberty, to personal integrity, to judicial guarantees, and to judicial protection established in Articles 7, 5.1 and 5.2, and 8 and 25 of the American Convention in connection to Article 1(1) of the same instrument to the detriment of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique.

193. On the other hand, with regard to the injured Joseph Devraine, the IACHR observes that although the petitioners allege that he was included in the group of persons detained, the testimony in the case file states that “he was not in the group of persons sent to Dajabón,” because he was injured and he was taken to the hospital from where “he was able to fle[er].” The evidence in the case file also shows that Francois Michel was also taken to the hospital and, days later, gave testimony under military jurisdiction.<sup>208</sup> Based on the foregoing, the IACHR notes that there is not enough information in the case file about what may have happened with both persons after they were taken to the hospital, therefore, the Commission will not address the rights protected in Articles 7, 8 and 25 of the American Convention in reference to them.

#### 6. *Right to equality before the law and to non discrimination (Articles 24<sup>209</sup> and 1(1))*

194. The American Convention prohibits discrimination of any kind, a concept that includes unjustified distinctions based on race, color, social or national origin, economic status, birth or any other social condition. In that regard, the Commission has stated that “non discrimination, together with equality

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56/06 (admissibility), Case No. 12.562, par. 51 (July 20, 2006), available at <http://www.cidh.oas.org/annualrep/2006sp/EEUU8.03sp.htm>; IACHR, Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Randolph Izal Elorz vs. Mexico, Report No. 49/99, (merits), Case No. 11.610, par. 46 (April 13, 1999), available at <http://www.cidh.oas.org/annualrep/98span/Fondo/Mexico%2011.610.htm>.

<sup>206</sup> IA Court H.R., *Case Ivcher Bronstein vs. Peru*. Judgment of February 6, 2001. Series C No. 74, par. 103.

<sup>207</sup> Inter-American Court of Human Rights, *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, par.121 (September 17, 2003), available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_esp.pdf).

<sup>208</sup> Medical certificate of June 23, 2000 of Francois Michel, who exhibited “Dx. Open fracture type (III) left tibial region.” State document dated September 20, 2010. Annex. Said person provided testimony in the investigation under military jurisdiction on June (illegible), 2000. State document dated September 20, 2010 Annex. Interrogation of Michel Frances, in preliminary proceedings of the Court Martial of First Instance, July 17, 2000, Petitioners’ document dated May 5, 2009, Annex 12.

<sup>209</sup> Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

before the law and equal protection of the law for all persons, are the building elements of a basic and general principle regarding the protection of human rights.”<sup>210</sup>

195. A specific expression of the right to equality is the right of every person to not be the victim of racial discrimination. This type of discrimination constitutes an attempt against the fundamental equality and dignity of all human beings and has been the object of unanimous criticism by the international community,<sup>211</sup> as well as being specifically prohibited by Article 1(1) of the American Convention.

196. For its part, Article 24 of the Convention, which establishes the right to equality before the law and to equal judicial protection, without discrimination, has been defined in its scope by the Inter-American Court in the following terms:

[The] prohibition against discrimination so broadly proclaimed in Article 1(1) with regard to the rights and guarantees enumerated in the Convention thus extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations.<sup>212</sup>

197. In the instant case, the Commission considers it necessary to make an extensive interpretation of the rights established in the American Convention based on other relevant international instruments, under the provisions of the clause enshrined in Article 29(b) of the same instrument that will help provide a more comprehensive characterization of the facts.<sup>213</sup>

198. In that regard, both the Inter-American Court and the European Court of Human Rights have underscored the live nature of the international human rights instruments and the need to interpret them in a manner coherent “with the evolution of time and current living conditions.”<sup>214</sup> Similarly, the Inter-American Court has concluded that “certain acts and omissions that violate human rights, pursuant to the treaties that they do have competence to apply, also violate other international treaties for the protection of the individual.”<sup>215</sup> Based on the foregoing and taking into account the nature of the facts denounced, as well as the socio-political context in which they occurred, the Commission considers it necessary to keep in mind other international instruments of International Law which contain the principle of non-discrimination and which the Dominican State has ratified, and, in that way, provide a full interpretation and application of the contents and scope of the rights protected in the American Convention.<sup>216</sup>

199. In that sense, the IACHR recalls that the United Nations International Covenant on Civil and Political,<sup>217</sup> the Inter-American Democratic Charter,<sup>218</sup> and the American Declaration of the Rights

<sup>210</sup> IA Court., *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A. No. 18, par. 83. In identical terms, the Committee on Human Rights has said that “[n]on discrimination, together with equality before the law and the protection of the law for all persons, constitutes a basic and general principle regarding the protection of human rights.” Committee on Human Rights. General Observation No. 18: Non discrimination, November 11, 1989, par.

<sup>211</sup> See, among others, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of November 20, 1963 [resolution 1904 (XVIII) of the General Assembly], which solemnly affirms the need to quickly eliminate all forms and expressions of racial discrimination everywhere in the world and to ensure the understanding of and respect for the dignity of the human being.

<sup>212</sup> IA Court H.R., *Proposed Amendment to the Constitution of Costa Rica regarding naturalization*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, par. 54. In the same sense, see IACHR Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District v. Belize*, October 12, 2004, paras. 162 and ss.

<sup>213</sup> Article 29(b) establishes that no provision of the Convention shall be interpreted as “restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.”

<sup>214</sup> IA Court H.R., *Case of the “Street Children” (Villagrán Morales et al) vs. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 192-193.

<sup>215</sup> IA Court H.R., *Case Bámaca Velásquez vs. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, par. 208.

<sup>216</sup> See, *inter alia*, IACHR, Report 57/97, Case 11(1)37, of November 18, 1997, par. 167.

<sup>217</sup> Article 2, paragraph 1, of the International Covenant of Civil and Political Rights establishes the obligation of each State Party to respect and guarantee to all individuals within its territory and subject to its jurisdiction, the rights recognized in the Covenant, without distinction as to race, sex, language, creed or any other factor ind, such s rce, color, sx, language, religion, Continúa...

and Duties of Man,<sup>219</sup> among others, contain the principle of non-discrimination. Specifically, the International Convention on the Elimination of all forms of Racial Discrimination—to which the Dominican State is Party<sup>220</sup>- defines discrimination as “any distinction, exclusion, restriction or preference based on race, color, heritage or national or ethnic origin whose purpose or result is to annul or damage the recognition, enjoyment or exercise, in equal conditions, the fundamental human rights and liberties in the political, economic, social, cultural or any other area of public life.”

200. The aforementioned International Convention on the Elimination of All forms of Racial Discrimination commits the State Parties, among other things, to not incur in or encourage any act or practice of racial discrimination but, rather, to prohibit and eliminate racial discrimination, specially with regard to “the right to personal security and to the protection of the State against all acts of violence or attempts against personal integrity by public officials or by any individual, group or institution,” and to the right of “equal treatment in the courts and in all other entities that administer justice.”

201. Thus, under applicable international law, individuals have a fundamental right not to be victims of discrimination because of their ethnic or racial origin. Likewise, the States are internationally obligated to refrain from incurring in acts of racial discrimination, and to prohibit such acts of discrimination from being carried out. Moreover, in addition to the international obligation of the States to investigate violations of human rights and sanction those responsible,<sup>221</sup> they have an international obligation to provide individuals with effective judicial remedies that protect them from discriminatory acts and provide just reparation when such acts do occur.<sup>222</sup>

202. Furthermore, the IACHR emphasizes that the close link between violence, discrimination and human rights violations is widely recognized in international instruments for the protection of the rights of groups in situations of special vulnerability to violations of their human rights.<sup>223</sup> Thus, violence against those groups constitutes a form of discrimination that greatly prevents the members of the groups from enjoying the rights and freedoms in equal footing with all other individuals.<sup>224</sup> The Commission also notes that there is a close link between violence, discrimination and due diligence.<sup>225</sup> In that regard, the

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political or other opinion, national or social origin, property, birth or other status. In the same regard, paragraph 5 of General Observation No. 17 (April 7, 1989) of the Committee on Human Rights of the United Nations, relating to Article 24 of the International Covenant on Civil and Political Human Rights which recognizes the rights of children establishes the following: “In this regard the Committee observes that, while non-discrimination in the enjoyment of the rights established in the Covenant also apply to children, of Article 2 and their equality before the law, of Article 26, the non-discrimination clause of Article 24 specifically addresses the protection measures established in this provision. The reports of States Parties should indicate the manner in which legislation and enforcement guarantee that the purpose of the protection measures is to eliminate discrimination in all areas, including the legacy right, particularly between national and foreign children or between legitimate children and extramarital children.”

<sup>218</sup> The preamble to the inter-American Democratic Charter states that the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights include the values and principles of liberty, equality and social justice which are inherent to democracy. On the other hand, Article 9 of the Charter establishes that: “The elimination of all forms of discrimination, especially sex, ethnic and racial discrimination and of the various forms of intolerance, as well as the promotion and protection of the human rights of indigenous peoples and migrants and the respect for ethnic, cultural and religious diversity in the Americas contribute to the strengthening of democracy and citizen participation.”

<sup>219</sup> The preamble to the American Declaration of the Rights and Duties of Man states that “[a]ll men are born free and equal in dignity and rights,” and in Article II establishes that “all persons are equal before the law and have the rights and duties enshrined in this declaration regardless of race, sex, language, beliefs or any other difference.”

<sup>220</sup> The Dominican Republic ratified it on May 25, 1983.

<sup>221</sup> IA Court H.R., *Case El Amparo vs. Venezuela*. Reparations (Article 63(1) American Convention on Human Rights). Judgment of September 14, 1996, Series C No. 28, pars. 53-55 and 61. IACHR, *Report on Terrorism and Human Rights*. OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, par. 33.

<sup>222</sup> In this sense, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination makes the State Parties responsible for assuring all individuals under their jurisdiction “effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

<sup>223</sup> United Nations, Committee on the Elimination of discrimination against women, General Comment No. 19, 1992. Committee on the Elimination of Racial Discrimination, General Comment No. 30, 2004.

<sup>224</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Section II, *Administration of Justice: ineffectiveness and impunity in cases of violence against women*, par. 65.

<sup>225</sup> United Nations, CEDAW, General Recommendation 19.

Inter-American Court has maintained that the lack of due diligence that leads to impunity reproduces the violence that it intends to attack, without prejudice to the fact that it alone constitutes discrimination regarding access to justice and respect of the right to guarantees.<sup>226</sup>

203. The IACHR has accepted as fact that during the time when the facts in the instant case took place, a context of racism, racial discrimination and “anti-Haitian” practices existed in the Dominican Republic. In that setting, the Haitian immigrants were “victims of all kinds of abuse by the authorities, from assassinations to mistreatment, massive expulsions, and deplorable living conditions.”<sup>227</sup> With regard to the extra-legal executions carried out by State agents, it has been proven that the agents crossed the line in discharging their duties and abused their power in actions that resulted in the death of the victims, most of them unarmed and defenseless. Furthermore, it has been proven that the State left the incidents go unpunished. Last, in the context of the expulsions of Haitians or persons of Haitian origin, the Commission considered that the evidence proved that these were carried out by Dominican authorities violently and in a rush, without affording them judicial guarantees, without affording them the opportunity to show that they were legal residents in the country, and without providing equal access to effective remedies.

204. The Commission considers that in the instant case there are examples of specific actions that fall within the context mentioned above. Throughout this report, the evidence has proved that near the border between Haiti and the Dominican Republic, the Dominican armed forces used exercise and lethal force against a group of unarmed and defenseless Haitians causing the death of several of them with multiple gunshots and critically injuring several more. Moreover, the Commission takes special note that the military patrol extra-legally executed, at least, two defenseless Haitian nationals by shooting each, six times in the back. The IACHR considers that the violence used by the State agents against the Haitian individuals, as well as the lack of punishment of those responsible for the incidents, are another example of the pattern of discrimination. Likewise, the IACHR has proven that the Haitian survivors were detained and expelled from the country without being afforded minimum judicial guarantees.

205. The Commission would also like to point out that there is no evident in the case file to indicate that the authorities ever requested information regarding the national origin or the legal status of the victims. On the contrary, base on the context in which the incidents took place, the Commission considers that it is reasonable to think that the State agents presumed that information based on the race of the persons of Haitian origin. In that regard, the IACHR recalls that, as it has done previously in another case against the Dominican Republic, not only does international human rights law prohibit policies and practices that are deliberately discriminatory, but also those whose impact is discriminatory against a certain category of individuals even if the discriminatory intent cannot be proven.<sup>228</sup>

206. Last, the Commission notes that the State has not refuted the allegations of the petitioners regarding the violation of the right to non-discrimination.

207. The Commission recalls that the Inter-American Court has pointed out that the States must combat discriminatory practices at all levels, especially in public entities and lastly, it must adopt the necessary measures to ensure effective equality before the law for all persons.<sup>229</sup> Moreover, the Court has stated:

[...] the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of a person’s migratory status in a State. In other words, States have

<sup>226</sup> IA Court H.R., *Case González et al (“Cotton Field”)* vs. México. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, pars. 400 and 402. Also see European Court of Human Rights, *Case Opuz vs. Turkey*, Application No. 33401/02 of June 9, par. 191.

<sup>227</sup> IACHR. Report on the human Rights situation in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, par. 317. Also see *Human Rights Watch*, “Illegal persons: Haitians and Dominica-Haitians in the Dominican Republic,” vol. 14, no 1(B), April 2002, Petitioners’ document dated May 5, 2009. Annex 27

<sup>228</sup> IACHR. Complaint in the Case of the Girls Yean and Bosico vs. Dominican Republic, par. 116.

<sup>229</sup> IA Court H.R., *Case of the Girls Yean and Bosico vs. Dominican Republic*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, par. 141.

the obligation to ensure this fundamental principle to its citizens and to any foreigner who is in its territory without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause.<sup>230</sup>

208. On the other hand, although it is true that in the context of the application of migration laws it has been broadly recognized that “States may establish mechanisms to control the entry and exit of undocumented migrants into their territory,”<sup>231</sup> the IACHR recalls that international human rights laws require that migration laws be applied in a non-discriminatory manner. On this point, the Inter-American Court has pointed out:

States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.

In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.<sup>232</sup>

209. In this regard, the Commission considers that in the context of the application of migration laws, the fundamental right to equal protection and to non-discrimination obligates the States to ensure that its policies and enforcement of the law are not unjustifiably aimed at certain individuals based on their ethnic or racial features such as color of the skin, accent, ethnicity, or particular area of residence know for having a specific ethnic populating. As previously pointed out, international human rights law not only prohibits deliberately discriminatory policies and practices, but also those whose impact discriminates against a certain category of persons even when the discriminatory intent cannot be proven.

210. Based on the foregoing, the IACHR considers that the use of excessive force by State agents which resulted in the extra-legal executions and injuries to the Haitian victims and the absolute impunity of those responsible for the incidents, as well as the expulsion of Haitian victims from the country without affording them access to judicial guarantees and judicial protection are, themselves, violations of Articles 24 and 1(1) of the American Convention.

## V. CONCLUSIONS

211. Based on the considerations of fact and of law, the Inter-American Commission concludes that the Dominican Republic is responsible for:

a) The violation of the right to life and the right to personal integrity enshrined in Articles 4.1 and 5.1 and 5.2 of the American Convention in connection to Article 1(1) of the same instrument, to the detriment of Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema.

<sup>230</sup> IA Court H.R., Case of the Girls Yean and Bosico vs. Dominican Republic. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, par. 155. *Legal Status and Rights of Undocumented Migrants*, *supra* note 95, par. 118

<sup>231</sup> IA Court H.R., *Legal Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, par. 119 (September 17, 2003), available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_esp.pdf).

<sup>232</sup> IA Court H.R., *Legal Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, pars.103-104 (September 17, 2003), available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_esp.pdf).

b) The violation of the right to judicial guarantees and the right to judicial protection enshrined in Articles 8 and 25 of the American Convention, in connection with the obligations established in Article 1(1) of the same instrument, to the detriment of the victims executed who are identified in paragraph 103. Likewise, the failure to comply with Article 2 of the American Convention in connection with Articles 8 and 25 of the same instrument.

c) The violation of the right to personal liberty, to personal integrity, to judicial guarantees and to judicial protection enshrined in Articles 7.1, 7.3, 7.4, 7.5 and 7.6, as well as 5.1 and 5.2, and 8 and 25 of the American Convention, in connection with Article 1(1) of the same instrument to the detriment of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat and Honorio Winique.

d) The violation of the right to personal integrity enshrined in Article 5.1 and 5.2 of the American Convention, in connection with Article 1(1) of the same instrument to the detriment of Joseph Desravine and Michel Frances.

e) The violation of the right to non-discrimination enshrined in Article 24 of the American Convention, in connection with Article 1(1) of the same instrument, to the detriment of the Haitian victims executed, the Haitian survivors, and the relatives of the victims executed.

## **VI. RECOMMENDATIONS**

A. Based on the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RECOMMENDS THAT THE STATE OF THE DOMINICAN REPUBLIC,**

1. Make adequate reparations of the human rights violations declared in this report both in moral and in material terms, including the implementation of a suitable psycho-social care program for the survivors.

2. Conduct an investigation under ordinary jurisdiction of the facts relating to the human rights violations declared in this report, and to conduct impartial and effective investigations within a reasonable period of time for the purpose of bringing the facts to full light, identifying the intellectual and material authors and imposing appropriate sanctions.

3. Impose appropriate administrative, disciplinary or criminal sanctions for the acts or omissions of state officials that contribute to the denial of justice and impunity regarding the facts in the case.

4. Take the necessary measures to make Article 3 of the Military Code compatible with the American Convention and with inter-American jurisprudence.

5. Guarantee that domestic migration laws and their application are compatible with the minimum judicial guarantees established in Articles 7 and 8 of the American Convention.

6. Adopt the necessary measures to prevent similar incidents from occurring in the future in accordance with the obligation to protect and guarantee the rights recognized in the American Convention. Specifically, implement permanent human rights programs in the Armed Forces and National Police academies.