

INTER-AMERICAN COURT OF HUMAN RIGHTS

BLAKE CASE

**REPARATIONS
(ART. 63(1) OF THE AMERICAN CONVENTION ON
HUMAN RIGHTS)**

JUDGMENT OF JANUARY 22, 1999

In the Blake Case,

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

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice President
Maximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge
Alfonso Novales-Aguirre, Judge *ad hoc*

also present:

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

pursuant to Articles 29, 55, and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in compliance with its January 24, 1998 Judgment, renders the following judgment on reparations in the present case, brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Guatemala (hereinafter "Guatemala" or "the State").

**I
JURISDICTION**

1. Under the provisions of Articles 62 and 63(1) of the Convention, the Court has jurisdiction to determine reparations and expenses in the present case, inasmuch as Guatemala ratified the American Convention on May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

II BACKGROUND

2. The present case was submitted to the Court by the Inter-American Commission in an application dated August 3, 1995, which was accompanied by Report No. 5/95 of February 15, 1995. The case originated with a petition (No. 11.219) against Guatemala, lodged with the Secretariat of the Commission on November 18, 1993.

3. On April 16, 1997, Guatemala “accept[ed] international human rights responsibility, for delay in the application of justice until the year nineteen hundred and ninety-five (1995).”

4. On January 24, 1998, the Court rendered a judgment on the merits of the case in which:

1. it declar[ed] that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the judicial guarantees set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 96 and 97 of [said] judgment.
2. it declar[ed] that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the right to humane treatment enshrined in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 112, 114, 115 and 116 of [said] judgment.
3. it declar[ed] that the State of Guatemala is obliged to use all the means at its disposal to investigate the acts denounced and punish those responsible for the disappearance and death of Mr. Nicholas Chapman Blake.
4. it declar[ed] that the State of Guatemala is obliged to pay a fair compensation to the relatives of Mr. Nicholas Chapman Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process.
5. it order[ed] that the reparations stage be opened.

III PROCEEDINGS AT THE REPARATIONS STAGE

5. On January 24, 1998, the Inter-American Court, in compliance with its judgment of that date, decided:

1. To grant the Inter-American Commission on Human Rights until March 13, 1998, to submit a brief and any evidence that it may have in its possession for the purpose of determining the compensation and expenses in this case.
2. To grant the family members of Nicholas Chapman Blake or their representatives until March 13, 1998, to submit a brief and any evidence that they may have in their possession for the purpose of determining the compensation and expenses in this case.

3. To grant the State of Guatemala until May 4, 1998, to make its observations about the briefs that the Inter-American Commission on Human Rights, and the relatives or their representatives submit pursuant to the preceding paragraphs.
6. On March 2, 1998, the relatives of Mr. Nicholas Blake asked the Court to extend the deadline set by this Court in its January 24, 1998 Resolution for one month to allow them to submit a brief on reparations.
7. On March 4, 1998, the President of the Court (hereinafter "the President") extended the deadline until March 27, 1998, to permit the relatives of Mr. Nicholas Blake or their representatives and the Commission to submit their briefs on reparations. The President also extended the deadline for the Government to submit its brief on the same topic until May 27, 1998.
8. On March 9, 1998, the Inter-American Commission informed the Court of the designation of Mr. Domingo E. Acevedo to serve with Delegate Claudio Grossman as a delegate in this case.
9. On March 9, 1998, the President summoned the relatives of Mr. Nicholas Blake or their representatives, the Inter-American Commission, and Guatemala to a public hearing on reparations, to be celebrated on June 10, 1998 at the seat of the Court.
10. On March 27, 1998, the Inter-American Commission submitted its brief on reparations in the present case.
11. On that same day the relatives of Mr. Nicholas Blake submitted their brief on reparations in English. On March 30, 1998, the corresponding annexes arrived at the Court. On April 14, 1998, the Spanish translation of the brief on reparations was received.
12. On May 22, 1998, the State requested that the President extend the deadline for its observations on the reparations briefs submitted by the relatives of Mr. Nicholas Blake and the Commission until June 2, 1998. On that same day the Secretariat informed Guatemala that the deadline for it to submit its brief had been postponed until the requested date.
13. On June 2, 1998, Guatemala submitted its observations to the reparations briefs of the relatives of Mr. Nicholas Blake and the Commission.
14. On June 10, 1998, the Court held a public hearing on reparations.

There appeared:

for the relatives of Mr. Nicholas Blake:

Joanne Hoeper;

for the Inter-American Commission:

Domingo E. Acevedo, delegate

for the State of Guatemala:

Dennis Alonzo Mazariegos, agent;
Ambassador Guillermo Argueta Villagrán, counsel; and
Alejandro Sánchez Garrido, assistant.

15. On June 12, 1998, the State submitted a report on the procedural situation of the criminal trial concerning Mr. Nicholas Blake, processed in the Department of Huehuetenango. That report had been requested by the President during the public hearing held in this case.

16. On July 21 and November 9, 1998, the Court asked the family of Nicholas Blake, as evidence to help the Court arrive at a more informed judgment, for certified copies of their birth certificates and the birth certificate of Mr. Nicholas Blake; a certified copy of Nicholas Blake's professional degree or an appropriate document that corroborates his academic degree; a record of his salary or receipts that corroborate his income, and mortality tables for the United States of America for the years 1985, 1987, 1992, as well as the current mortality tables. On November 9, 1998, the Court asked Guatemala, as evidence to help the Court arrive at a more informed judgment, for official certification of the tables for the exchange rate between the Quetzal and the U.S. dollar for the years 1985, 1987, and 1992 and the rate in effect at that time.

17. On August 19 and December 24, 1998, respectively, the family of Mr. Nicholas Blake submitted a copy of the birth certificate of Richard Blake Jr. and certified copies of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake, and the documentation requested by the Court on November 9, 1998.

18. On December 17, 1998, Francis B. Coombs, Jr. submitted a writing concerning the personal and professional characteristics of Mr. Nicholas Blake.

19. On January 12, 1999, the State sent the documentation that was requested on November 9, 1998.

IV PRELIMINARY CONSIDERATIONS

20. For the decision on reparations in the present case, the Court considers it necessary to bear in mind the following points:

a. that in its July 2, 1996 Judgment on Preliminary Objections, the Court declared itself incompetent to decide on the alleged responsibility of the State for the detention and death of Mr. Nicholas Blake, which occurred prior to Guatemala's acceptance of the compulsory jurisdiction of the Court;

b. that in the above cited judgment, the Court also determined that certain effects of the actions of which Mr. Nicholas Blake was a victim continued until June 14, 1992, when his remains were established, a date which is subsequent to

Guatemala's acceptance of the contentious jurisdiction of the Court. Consequently, the Court declared itself competent to rule on possible violations of the Convention resulting from the effects, conduct, and acts which occurred after that acceptance.

c. that in the judgment on the merits in the present case, rendered on January 24, 1998, the Court, in view of the partial acceptance of responsibility on the part of Guatemala, presumed to be true all facts related to the delay of justice until 1995, and determined that all facts relating to the obstruction of justice had effects up to the time the judgment was rendered, inasmuch as the case initiated by the death of Blake was still pending in the domestic courts.

d. that the Court declared in the judgment on the merits, that the judicial guarantees set forth in Article 8(1) of the Convention, in relation to Article 1(1) of the same, were violated to the detriment of the relatives of Mr. Nicholas Blake, inasmuch as those relatives have the right to demand that the disappearance and death of their son and brother be effectively investigated by the Guatemalan authorities, that proceedings be instituted against those responsible for the crimes, that appropriate punishment be imposed on the perpetrators, and that the relatives be compensated for the damages and injuries they sustained; and

e. that the Court also declared in said judgment that the right to humane treatment set forth in Article 5 of the Convention in relation to Article 1(1) of the same was violated by the State to the detriment of the relatives of Mr. Nicholas Chapman Blake, inasmuch as his disappearance caused his family suffering and anguish, a sense of insecurity, and frustration and impotence in the face of the Guatemalan authorities' failure to investigate; and that the burning of the mortal remains of Mr. Nicholas Blake increased their suffering.

21. As the Court already determined that it was not competent to render a decision on the deprivation of liberty and the death of Nicholas Blake (*supra* 20(a)), it will limit itself to decide on reparations within the framework established in the judgment on the merits, which refers exclusively to the violation, by Guatemala, of Articles 5 (Right to Humane Treatment), and 8(1) (Right to a Fair Trial) of the American Convention in conjunction with Article 1(1) of the same, to the detriment of the relatives of Mr. Nicholas Blake.

V EVIDENCE

22. In regard to evidence, when the relations of Mr. Nicholas Blake submitted their brief on reparations, they attached the following documents:

- a. a statement by Samuel W. Blake dated March 26, 1998;
- b. an *affidavit* by Mr. Richard Blake, dated March 26, 1998;
- c. an *affidavit* by public accountant Michael Cohan, dated March 23, 1998, which was attached to a curriculum vitae, several tables of minimum salaries for a journalist

or photographer, and a life expectancy table for the United States for the period 1989-1991.

(cf. Michael Cohan is a Certified Public Accountant with over twenty years of experience as an audit and accounting professional; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1985; average reporter top minimum as of April 1, 1985; Reporter, Photographer Top Minimums in 122 Contracts as of April 1, 1986; average reporter top minimum as of April 1, 1986; Reporter, Photographer Top Minimums in 123 Contracts as of June 1, 1987; average reporter top minimum as of June 1, 1987; Reporter, Photographer Top Minimums in 120 Contracts as of April 1, 1988; average reporter top minimum as of April 1, 1988; Reporter, Photographer Top Minimums in 119 Contracts as of April 1, 1989; average reporter top minimum as of April 1, 1989; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1990; average reporter top minimum as of April 1, 1990; Reporter, Photographer Top Minimums in 122 Contracts as of April 1, 1991; average reporter top minimum as of April 1, 1991; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1992; average reporter top minimum as of April 1, 1992; Reporter, Photographer Top Minimums in 118 Contracts as of April 1, 1993; average reporter top minimum as of April 1, 1993; Reporter, Photographer Top Minimums in 115 Contracts as of June 1, 1994; average reporter top minimum as of June 1, 1994; Reporter, Photographer Top Minimums in 106 Contracts as of June 1, 1995; average reporter top minimum as of June 1, 1995; Reporter, Photographer Top Minimums in 102 Contracts as of December 1, 1996; average reporter top minimum as of December 1, 1997; Reporter, Photographer Top Minimums in 102 Contracts as of April 1, 1997; average salary as of April 1, 1997 and U.S. Decennial life Tables for 1989-91);

d. documents that verify trips to Guatemala and the expenses related to those trips

(cf. receipts for airline tickets on American Airlines Inc., Eastern Airlines Inc., Taca International, and Pan Am World Airways, for trips 7,8,11,15,17,19, 20 and 22 the tickets are in the name of Richard R. Blake Jr., Richard Blake, Douglas Owsley, and John Verson; Hertz Guatemala; Hotel Camino Real de Guatemala; La Trattoria Guatemala; Restaurante Marios, Guatemala and Restaurante Romanello, Guatemala);

e. receipts for supplementary expenses associated with those trips

(cf. January 16, 1997 receipt from Helicópteros de Guatemala issued to Richard Blake; note that assigns the expenses incurred by Michael Shawcross and receipts; contract with Felipe Alva, Military Commissioner of Chiantla in the Department of Huehuetenango dated May 19, 1992; note from Sue H. Patterson, General Counsel of the Embassy of the United States of America, dated October 4, 1990, and a memorandum from Richard and Mary Blake, dated March 22, 1998 to which they attached receipts);

f. March 24, 1998, statement by Doctor Malcolm Owen Slavin

g. March 27, 1998, *affidavit* of Joanne Hoeper

h. expenses of the representatives of the relatives of Mr. Nicholas Blake

(cf. May 21, 1997, note of Joanne Hoeper)

23. Neither the Inter-American Commission nor the State presented any evidence.

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24. In their brief on reparations, the representatives of the relatives of Mr. Nicholas Blake requested that at this stage of the proceedings the Court consider the statements made during the merits of the case by Samuel and Richard Blake Jr., brothers of Nicholas Blake.

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* *

25. On August 19 and December 24, 1998, the relatives of Mr. Nicholas Blake submitted the evidence required by the Court to help it arrive at a more informed judgment

(cf. copy of the birth certificate of Richard Blake, Jr. and a certified copy of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake; copy of the birth certificate of Nicholas Chapman Blake; November 19, 1998 authenticated note from the University of Vermont; December 14, 1998, letter from Rodney G. Doherty, December 9, 1998 note from Francis B. Coombs Jr.; copies of articles written by Nicholas Blake for the Globe & the Mail, Philadelphia Inquirer Daily News, Harper's, The Magazine of the Miami Herald, St. Louis Post Dispatch, and The Progressive; several documents submitted to the IRS showing the income of Nicholas Blake for the years 1981 and 1983, and mortality tables for the United States of America during the years 1985, 1987, 1992, and 1995).

26. On January 12, 1999, the State submitted documents pertaining to the exchange rate between the Quetzal and the United States dollar for the years 1985, 1987, 1992, and 1997, in accordance with information furnished by the Bank of Guatemala.

(cf. January 12, 1999, note from the Bank of Guatemala, and exchange rates from the financial market for the years 1992 and 1998).

27. The documents submitted by the relatives of Mr. Nicholas Blake and by the State were neither contested nor challenged, and therefore the Court accepts them as valid and orders their incorporation into the body of evidence.

28. The body of evidence of a case is unique and indivisible and is made up of the evidence submitted during all stages of the proceedings. For that reason, the statements made by Samuel and Richard Blake Jr., during the public hearing on the merits of the case held before this Court on April 17, 1997, also comprise part of the evidence that will be considered during the present stage, regardless of the request of the representatives of the relatives of Mr. Nicholas Blake.

VI DUTY TO MAKE REPARATIONS

29. In operative paragraph four of the Judgment of January 24, 1998, the Court declared that Guatemala was "obligated to pay a fair compensation to the relatives of Mr. Nicholas Chapman Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process" and in operative paragraph five of the same judgment it ordered that the reparations stage be opened.

30. In the matter of reparations, the applicable provision of the American Convention is Article 63(1) which prescribes that:

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

31. Reparations is a generic term that covers the various ways a State can redress the international responsibility it has incurred (*restitutio in integrum*, payment of compensation, satisfaction, guarantees that the violations will not be repeated, among others). (*Loayza Tamayo Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of November 27, 1998, Series C No. 43, para. 85; *Castillo Páez Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of November 27, 1998, Series C No. 43, para. 48, and *Suárez Rosero Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of January 20, 1999, Series C No. 44, para. 41).

32. The obligation to make reparation established by international courts is governed, as has been universally accepted, by international law in all its aspects: scope, nature, forms, and determination of beneficiaries, none of which the respondent State may alter by invoking its domestic law. (*Garrido and Baigorria Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of August 27, 1998, Series C No. 39, para. 42; *Loayza Tamayo Case, Reparations, supra 31*, para. 86; *Castillo Páez Case, Reparations, supra 31*, para. 49, and *Suárez Rosero Case, Reparations, supra 31*, para. 42)

33. As the Court has stated, Article 63(1) of the American Convention codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law on the responsibility of States. (*Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993, Series C No 15, para. 43, and cfr. *Factory at Chorzów, Jurisdiction*, Judgment No. 8, 1927, P.C.I.J., Series A, No 9, p. 21 and *Factory at Chorzów, Merits*, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p 29; *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 184) This is the sense in which this Court has applied that provision. (*inter alia*, *Garrido and Baigorria, Reparations, supra 32*, para. 40; *Loayza Tamayo, Reparations, supra 31*, para. 84, and *Castillo Páez Case, Reparations, supra 31*, para. 50). When a wrongful act occurs that is imputable to a State, the State incurs international responsibility for the violation of international law, with the resulting duty to make reparation, and the duty to put an end to the consequences of the violation.

34. Reparation involves, therefore, measures that are intended to eliminate the effects of the violation that was committed. Their nature and amount depend on the damage done both at the material and moral levels. Reparations are not meant to enrich or impoverish the victim or his heirs. (cfr. *Garrido and Baigorria Case, Reparations, supra 32* para. 43; *Castillo Páez, Reparations, supra 31*, para. 53, and *del ferrocarril de la bahía de Delagoa Case*, LA FONTAINE, Pasicrisie internationale, Berne, 1902, p. 406)

VII BENEFICIARIES

35. As regards the beneficiaries of the reparations, in their March 27, 1998 brief, the parents and brothers of Mr. Nicholas Blake asserted that they had been directly injured by the violations of the fundamental rights of their son and brother.

36. In this respect, the Commission stated in its brief of the same day, that the Court has construed the concept of family in a flexible and broad manner, and that the Court's jurisprudence coincides with the jurisprudence of other international organs. For that reason, it deemed that Richard Blake, Mary Blake, Richard Blake Jr. and Samuel Blake should be entitled to the reparations in the present case.

37. The State maintains that the relatives of Mr. Nicholas Blake may not receive reparations in their own right, since the parents and brothers of the victim have not demonstrated that they had a relationship of dependence on him.

38. This Court already recognized, in operative paragraphs 1 and 2 of the January 24, 1998 Judgment, that violations of Articles 8(1) and 5 of the Convention, in conjunction with Article 1(1), were to the detriment of the relatives of Nicholas Blake. Therefore, for the purpose of reparations, the Court determines that these relatives constitute the *injured party* within the meaning of Article 63(1) of the American Convention. The Court determines that Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake may receive reparations in their own right as the injured party in the present case.

39. The injured party has been represented in the proceedings before the Inter-American system by attorneys Joanne Hoeper, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller of San Francisco, California, and by the attorneys of the "International Human Rights Law Group," of Washington D.C., United States of America.

VIII PROVEN FACTS

40. To determine the reparations called for in the instant case, the Court will rely upon the facts established in the Judgment of January 24, 1998. However, in the present stage of the proceedings the parties have introduced evidence to the file to demonstrate the existence of additional facts that are relevant to the determination of the measures of reparations. The Court has examined the evidence and the arguments of the parties, and declares the following facts to be proved:

A. concerning Mr. Nicholas Blake:

- a. that he was 27 years old when the acts occurred that resulted in the present case

(cf. copy of the birth certificate of Nicholas Chapman Blake);

b. that he had graduated from the university with a “Bachelor of Science Degree in History” and worked as an independent journalist.

(cf. official note from the University of Vermont, dated November 19, 1998; December 14, 1998 letter from Rodney G. Dogherty; December 9, 1998 note from Francis B. Coombs Jr.; copies of articles that Nicholas Blake wrote for The Globe and The Mail, Philadelphia Inquirer Daily News, Harper's, The Magazine of the Miami Herald, St. Louis Post Dispatch, and The Progressive); and

c. that his parents are Richard and Mary Blake and his brothers are Samuel and Richard Blake Jr.

(cf. copy of the birth certificate of Richard Blake Jr., and certified copies of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake).

B. concerning the injured party:

a. that they incurred a series of expenses in relation to trips to Guatemala

(cf. receipts of airline tickets on American Airlines Inc., Eastern Airlines Inc., Taca International, and Pan Am World Airways, for trips 11, 15, 17, 19, 20, and 22, the tickets are in the name of Richard R. Blake Jr., Richard Blake, Douglas Owsley, and John Verson; Hertz Guatemala, and the March 26, 1998 affidavit of Richard R. Blake Jr.);

b. that they had various expenses for lodging, food, and telephone calls

(cf. receipts from the Hotel Camino Real of Guatemala; La Trattoria, Guatemala; Restaurante Marios, Guatemala, and Restaurante Romanello, Guatemala, the March 22, 1998 memorandum of Richard and Mary Blake and attached receipts, and the March 26, 1998 affidavit of Richard R. Blake Jr.);

c. that they incurred various expenses in the search and discovery of the mortal remains of Nicholas Blake

(cf. note that consigned the expenses incurred by Mike Shawcross and receipts; May 19, 1992 contract with Felipe Alva, Military Commissioner Of Chiantla in the Department of Huehuetenango; October 4, 1990 note from Sue H. Patterson, General Counsel of the Embassy of the United States of America; airline tickets in the name of Douglas Owsley and John Verson; the March 22, 1998 memorandum from Richard and Mary Blake, and attached receipts; and the March 26, 1998 affidavit of Richard R. Blake Jr.); and

d. that those who comprise the injured party have received medical treatment, and that Samuel Blake continues receiving it.

(cf. March 26, 1998 statement of Samuel W. Blake; March 26, 1998 affidavit of Richard R. Blake Jr., and March 24, 1998 statement by Dr. Malcolm Owen Slavin).

e. that the injured party has been represented by attorneys Joanne Hoepfer, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller, of San Francisco, California, and by the attorneys of the “International Human Rights Group,” of Washington D.C., United States of America.

(cf. May 21, 1997 note from Joanne Hoepfer; March 27, 1998 affidavit of Joanne Hoepfer, and March 26, 1998 affidavit of Richard R. Blake Jr.);

f. that the attorneys who represented them have done so gratuitously or pro bono

(*cf.* March 27, 1998 affidavit of Joanne Hoeper, and March 26, 1998 affidavit of Richard R. Blake Jr.); and

g. that the injured party has incurred a series of expenses for the preparation and submission of their petition before the Inter-American system

(*cf.* May 21, 1997 note from Joanne Hoeper; March 27, 1998 affidavit of Joanne Hoeper, and March 26, 1998 affidavit of Richard R. Blake Jr.)

41. As previously stated, for the purpose of a decision on reparations in the present case, only those proven facts that are relevant within the legal framework indicated by the Court will be taken into consideration (*supra* 21), which is to say, those that refer to the violation of Articles 5 and 8(1) of the American Convention in relation to Article 1(1) of the Convention.

IX REPARATIONS

42. While the rule of *restitutio in integrum* is one form of reparation for an international wrongful act (*cf.* *Factory at Chorzów, Merits, supra* 33, p. 48), it is not the only form of reparation. There may be cases in which *restitutio in integrum* is impossible, insufficient, and inadequate. Compensation is the primary remedy for damages suffered by the injured party, and includes, as this Court has held previously, both material and moral damages. (*Garrido and Baigorria Case, Reparations, supra* 32, para. 41; *Loayza Tamayo Case, Reparations, supra* 31, para. 124, and *Castillo Páez Case, supra* 31, para. 69; *cf.* *Chemin de fer de la baie de Delagoa*, sentence, 29 mars 1900, Martens, Nouveau Recueil Général de Traités, 2ème Série, t. 30, p. 402; *Case of Cape Horn Pigeon*, 29 November 1902, Papers relating to the Foreign Relations of the United States, Washington, D.C.: Government Printing Office, 1902, Appendix I, p. 470); *Traité de Neuilly, article 179, annexe, paragraphe 4 (interprétation)*, arrêt No 3, 1924, P.C.I.J., series A, No. 3, p.9. *Maal Case*, 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732 and 733, and *Campbell Case*, 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158.)

A) MATERIAL DAMAGES

43. The injured party stated that Mr. Nicholas Blake disappeared when he was 27 years old, a journalist, single, and childless. The injured party requested a minimum of US\$1,161,949.00 (one million one hundred sixty-one thousand, nine hundred forty-nine dollars of the United States of America) or US\$1,329,367.00 (one million three hundred twenty-nine thousand three hundred sixty-seven dollars of the United States of America), the amount that Nicholas Blake would have earned “if he had continued to live and work as a journalist [...] until he retired at age 65.”

44. Moreover, the injured party requested the payment of US\$299,577.70 (two hundred ninety-nine thousand, five hundred seventy-seven dollars of the United States of America and seventy cents), as reimbursement for expenses. However, during the public hearing on

reparations, they clarified that the correct amount is US\$289,469.00 (two hundred eighty-nine thousand, four hundred sixty-nine dollars of the United States of America), an amount with includes;

a. expenses for the twenty-two trips made by members of the Blake family to Guatemala and to Central America until they recovered the mortal remains of Mr. Nicholas Blake in the month of June 1992, which amount to US\$112,108.00 (one hundred and twelve thousand hundred and eight dollars of the United States of America). This amount includes expenses for airline tickets, lodging, and meals.

b. other expenses, listed as extraordinary, connected with the search for Mr. Nicholas Blake, such as the rental of helicopters, contract with a forensic anthropologist, and payments made to Felipe Alva, Military Commissioner and leader of the Civil Defense Patrols of the region of Chiantla, in the Department of Huehuetenango, Guatemala, which amount to US\$8,023.00 (eight thousand, twenty-three dollars of the United States of America)

c. expenses of approximately US\$21,374.58 (twenty-one thousand, three hundred seventy-four dollars of the United States of America and fifty-eight cents) for telephone calls to Guatemala City and other places in that country during the search for Mr. Nicholas Blake. The expenses are broken down in the following manner: US\$19,200.00 (nineteen thousand, two hundred dollars of the United States of America) in long distance charges to an ATT credit card from 1985 to 1993 and US\$2,174.58 (two thousand, one hundred seventy-four dollars of the United States of America and fifty-eight cents) for other telephone expenses; and

d. the expenses for the treatment of Samuel Blake, incurred by the family, which to this date total US\$96,470.00 (ninety-six thousand, four hundred seventy dollars of the United States of America, as well as US\$30,000.00 (thirty thousand dollars of the United States of America) to cover his future treatment. They also stated that Samuel Blake received psychiatric treatment and he was prescribed medications for the acute depression that he suffered, for which they spent approximately US\$12,000.00 (twelve thousand dollars of the United States of America). Likewise, the family procured the assistance of specialists to treat the trauma that they suffered as a result of the death of Mr. Nicholas Blake. Consequently, they requested the amount of US\$138,470.00 (one hundred thirty-eight thousand, four hundred seventy dollars of the United States of America) for medical treatment.

To these expenses are added the expenses related to the proceedings before the Inter-American system, which will be referred to in the respective chapter (*infra* 66).

The Court observes that the total of the amounts listed does not concur with the total amount initially requested by the injured party in its brief on reparations, nor with the amount indicated in the public hearing; nevertheless, this mathematical error is irrelevant to the judgment, for which the Court will separately consider each of the types of expenses mentioned above.

45. The Commission asserted that Guatemala should make reparation to the injured party by the payment of adequate compensation for the irreversible injury they suffered as a consequence of the violation of their rights. It also argued that this compensation should include material damages resulting as a direct consequence of the facts proved in chapter VII of the judgment on the merits, and the damages included in Nicolas Blake's relatives' brief on reparations. The Commission referred the Court to the calculations and totals requested by the representatives of the injured party, as well as to the evidence that accompanied them.

46. For its part, Guatemala stated that the claims for material injury can not go forward, because the Court did not declare that there was a violation of Article 4 of the Convention, and it has not been proved that there are persons who depended economically on Mr. Nicholas Blake who could have suffered economic detriment. It added that the reparation of material injury is the right of the victim and of the dependents, and that, consequently, it can not be extended to other persons who do not have the status of victim or dependent, and that neither the parents nor the brothers of Mr. Nicholas Blake proved a dependent economic relationship to him.

47. The Court rejects the injured party's claim that the Court order the payment of US\$1,161,949.00 (one million one hundred sixty-one thousand, nine hundred forty-nine dollars of the United States of America) or US\$1,329,367.00 (one million three hundred twenty-nine thousand, three hundred sixty-seven dollars of the United States of America), since, as a consequence of the holding in the judgment on the merits, the amount of reparations in the present case must be limited to those corresponding to the violation of Articles 5 and 8(1) of the American Convention in relation to Article 1(1) of the Convention to the detriment of the injured party.

48. The Court has taken into consideration that the injured party made several trips, principally to Guatemala City, for the purpose of ascertaining the whereabouts of Mr. Nicholas Blake from the time of his disappearance until the discovery of his mortal remains, due to the cover up of what occurred and the Guatemalan authorities' failure to investigate the facts, and that this situation gave rise to expenses in the form of airline tickets, lodging, meals, payments for telephone calls, etc.

49. The Court further considers that these expenses are of an extrajudicial nature, since, as has been proved, the family of Nicholas Blake did not resort to the domestic tribunals. For that reason, the Court holds that it is appropriate to order the State to pay the reasonable expenses incurred by the injured party from March 9, 1987 (the date of Guatemala's acceptance of the contentious jurisdiction of the Court), which are equitably estimated to be the amount of US\$16,000 (sixteen thousand dollars of the United States of America), taking into account for this purpose that the judgment on the merits referred solely to the violation of Articles 5 and 8 of the American Convention.

50. As to the request that the Court order Guatemala to pay the amount of US\$138,470.00 (one hundred thirty-eight thousand, four hundred seventy dollars of the United States of America) for the medical treatment received and to be received by Samuel Blake, the Court holds that it has been proved that his ailments occurred due to the situation of the disappearance of his brother, the uncertainty as to his brother's whereabouts, the

suffering on learning of his brother's death, and his frustration and impotence in the face of the lack of results of the factual investigations by the Guatemalan public authorities and their later cover up. For those reasons, this Tribunal determines that it is appropriate to grant to Samuel Blake, in equity, the amount of US\$15,000 (fifteen thousand dollars of the United States of America) in his capacity as one of the injured parties.

B) MORAL DAMAGES

51. The injured party referred to the "emotional injury" they incurred due to the disappearance and the death of Mr. Nicholas Blake and the cover up of those facts. They added that Richard and Samuel Blake dedicated part of their lives to the search for their brother. They requested, for moral damages to the family, the total sum of US\$500,000.00 (five hundred thousand dollars of the United States of America).

52. The Commission stated that, as to moral damages, the suffering of the injured party derived, *inter alia*, from the circumstances of the forced disappearance of Mr. Nicholas Blake; the incineration of his mortal remains in order to destroy all traces that could reveal his whereabouts, and the Guatemalan authorities' failure to assist from March 1985 to the present.

53. The State alleges that the amount claimed bears no equitable relationship to the prevailing conditions in Guatemala and to the context in which the event occurred.

54. The Court is of the opinion that while its jurisprudence may establish precedents in this regard, it cannot be invoked as an absolute criterion, as each case must be examined individually. (*Neira Alegria Case et al., Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 19, 1996, Series C. No. 29, para. 55, and *Castillo Páez Case, Reparations, supra* 31, para. 83).

55. As for moral damages, the Court has previously held that there are numerous cases in which other international tribunals have determined that a judgment of condemnation constitutes adequate reparation *per se* for moral damages (for an example from the case law of the European Court of Human Rights; cfr., v.g. *arrêt Ruiz Torija c. Espagne du 9 décembre 1994. Serie A no.303-A p. 13, pára.33*). Nevertheless, in the grave circumstances of the present case, it is the view of the Court that it is not sufficient; for which reason the Court deems it necessary to award compensation for moral damages. (cfr. in this regard, *El Amparo Case, Reparations, (Art. 63(1) American Convention on Human Rights)*, Judgment of September 14, 1996, Series C No. 28, para. 35, and *Castillo Páez Case, Reparations, supra* 31, para. 84). This same criteria has been applied by the European Court (*Cour eur. D.H., arrêt Wiesinger du 30 octobre 1991, séries A No. 213, para. 85; Cour eur D.H., arrêt Kemmache c. France (article 50) du 2 novembre 1993, série A No. 270-B, para. 11; Cour eur. D.H., arrêt Mats Jacobsson du 28 juin 1990, série A No. 180-A, párr. 44; Cour eur. D.H., arrêt Ferraro du 19 février 1991, série A No. 197-A, para. 21*).

56. In the present case, the Court itself cited the violation of Article 5 of the Convention in the context of the special gravity of the forced disappearance of a person, on finding that the circumstances of the forced disappearance of Mr. Nicholas Blake "generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the

public authorities' failure to investigate." (*Blake Case*, Judgment of January 24, 1998, Series C No. 36, para. 114.)

57. In effect, the forced disappearance of Mr. Nicholas Blake caused his parents and brothers suffering, intense anguish, and frustration in the face of the Guatemalan authorities' failure to investigate and the cover up of what occurred. The suffering of the family members, in violation of Article 5 of the Convention, can not be disassociated from the situation created by the forced disappearance of Mr. Nicholas Blake that lasted until 1992 when his mortal remains were located. The Court, in conclusion, holds that the grave moral damage suffered by the four family members of Mr. Nicholas Blake is completely proved.

58. For the reasons set forth above, the Court considers it equitable to award US\$30,000 (thirty thousand dollars of the United States of America) to each one of the four family members of Mr. Nicholas Blake.

X

THE DUTY TO TAKE DOMESTIC MEASURES

59. In its brief on reparations, the Commission requested that the Court order Guatemala to take the following measures relative to the reparation of the damages suffered: that the State investigate, both administratively and judicially, the criminal acts related to the illegal detention and subsequent forced disappearance of Mr. Nicholas Blake, and the cover up of the facts; that it identify, prosecute, and punish the perpetrators and accomplices; that it adopt the domestic legal measures necessary to avoid a recurrence of such violations, and that it inform the Court within a reasonable period as to the measures taken, among which the Commission believes should include, *inter alia*, those that oblige the State to comply in an effective way with the provision of the Convention which establishes that judicial proceedings must take place within a reasonable time.

60. The State, for its part, argued in its brief that it had taken steps directed toward the reparation of the human rights violations that resulted from the armed conflict, such as the cessation of the conflict through dialog, the assurance of effective control over the armed forces and security for civil authority, the training of the armed forces in human rights, the strengthening of the judicial power, and other measures adopted within the framework of the Accord of Firm and Lasting Peace, of December 29, 1996. The State also pointed to Guatemala's acceptance of international responsibility for the unjustified delay in the administration of justice in the present case, and it stated that that acceptance should be considered to be part of the non pecuniary reparations. It added that the criminal trial concerning the acts that are being examined in the present judgment has taken its course, an "accused has been captured and efforts are being made to comply with two judicial arrest warrants for the others."

61. The American Convention guarantees every person's right of access to justice to assert his rights, and provides that the States Parties have the duty to prevent, investigate, identify, and punish the perpetrators of human rights violations and the accessories after the fact.

62. In the judgment on the merits, the Court stated that Article 8(1) of the American Convention, which sets forth the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal for his rights of any nature, also includes the right of the victim's relatives to judicial guarantees. The Court recognizes that

Article 8.1 of the American Convention recognizes the right of Mr. Nicholas Blake's relatives to have his disappearance and death effectively investigated by the Guatemalan authorities; to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment meted out where appropriate; and to be compensated for the damages and injuries they sustained. (*Blake Case, supra* 56, para.97)

63. Article 8(1) of the American Convention bears a direct relation to Article 25 in conjunction with Article 1(1) of the Convention, which guarantees to all persons a simple and rapid recourse so that, among other things, those responsible for human rights violations will be tried and reparations may be obtained for the damages suffered. As the Court has stated, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention" inasmuch as it contributes decisively to assure access to justice. (*Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 65; *Paniagua Morales et al. Case*, Judgment of March 8, 1998. Series C No. 37, para. 164; *Loayza Tamayo Case, Reparations, supra* 31, para. 169, and *Castillo Páez Case, Reparations, supra* 31, para. 106).

64. The State has the duty to prevent and combat impunity, which the Court has defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention." (*Paniagua Morales et al. Case, supra* 63, para. 173) In this respect, the Court has advised that

...the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives. (*Paniagua Morales et al. Case, supra* 63, para. 173)

65. Consequently, the State has a duty to investigate the acts that resulted in violations of the American Convention in the present case, to identify and punish those responsible and to adopt the internal legal measures necessary to ensure compliance with this obligation. (Articles 1(1) and 2 of the American Convention)(*Loayza Tamayo Case, Reparations, supra* 31, para. 171 and *Suárez Rosero Case, Reparations, supra* 31, para. 80).

XI EXPENSES

66. In relation to expenses, the injured party stated that it was represented by attorneys Joanne Hoeper, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller, of San Francisco, California, and by the International Human Rights Law Group of Washington D.C., who have assisted the family gratuitously or *pro bono* and have not received compensation for their professional services. Nevertheless, the injured party observed that the family had incurred expenses such as trips, translations, telephone calls, photocopies, and

postal services. The Blake family requested, for this reason, the amount of US\$22,802.12 (twenty-two thousand eight hundred and two dollars of the United States of America and twelve cents).

67. The Inter-American Commission adopted the calculation of expenses set forth by the injured party in its brief on reparations. It also requested that the Court order Guatemala to pay the expenses incurred by the injured party in the proceedings and motions before the Commission and the Court, based on that stated by the injured party in its brief.

68. Guatemala observed that the expenses claimed by the Blake family are not related to the State's obligation to investigate, as set forth in the judgment on the merits, inasmuch as the Court ordered the reimbursement of "the expenses incurred by [the injured party] in their representations to the Guatemalan authorities in connection with this process;" and that from the facts proved it shows that the injured party conducted an investigation independent of the Guatemalan authorities, who were responsible for carrying out the judicial investigation. It added that, from the evidence put forth, it can not be deduced that the expenses correspond to those spent in actions before the public authorities, as set forth by the Court in operative paragraph four of the Judgment on the merits of this case. In light of the above, it requested that the Court reject the claims of the injured party and the Commission.

69. After examining the expenses for which the injured party requests reimbursement, the Court observes that they arise from trips to Guatemala to gather information relating to the processing of the case before the Commission; trips made by the attorneys for the Blake family for appearances before the Commission and the Court, including meals and lodging, and various expenses for translations, telephone calls, photocopies and correspondence, all of which were generated by the presentation of the case before the organs of the Inter-American system for the protection of human rights.

70. It falls to the Court to carefully assess the specific scope of those expenses, for even though the attorneys for the injured party worked gratuitously, the Tribunal understands that they had to incur certain expenses to process the present case before the Inter-American system for the protection of human rights, for which reason the Court considers it equitable to grant to the injured party indemnization of US\$10,000 (ten thousand dollars of the United States of America) as compensation for the expenses resulting from its actions before this system.

XII MODE OF COMPLIANCE

71. To comply with this Judgment, the State is to pay the compensation ordered, within six months from the date of its notification, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake as the injured party. If any one of them has died, the compensation shall be paid to the heirs. The State may fulfill its obligations through payments to the beneficiaries or their duly accredited representatives in US dollars or the equivalent in Guatemalan currency. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Guatemalan currency in the market of New York, USA on the day prior to the date of the payment.

72. If, for any reason, it is not possible for the beneficiaries of the compensation to receive it within the specified six month period, the State is to place the amounts in question in an account or a certificate of deposit in the beneficiary's name, with a solvent and secure financial institution, either in United States dollars or its equivalent in Guatemalan currency, under the most favorable financial terms that banking law and practice permit. If at the end of ten years the compensation is not claimed, the sum shall be returned, with interest, to the State.

73. The compensation specified in this Judgment shall be exempt from any existing or future national, provincial or municipal tax or duty.

74. Should the State be in arrears with its payments, it shall pay interest on the amount owed at the interest rate in effect in Guatemala.

XII OPERATIVE PARAGRAPHS

75. Now therefore,

THE COURT

DECIDES:

Unanimously

1. To order the State of Guatemala to investigate the facts of the present case, identify and punish those responsible, and adopt the measures in its domestic law that are necessary to assure compliance with this obligation (in conformance with operative paragraph three of the judgment on the merits), of which it will inform the Court, semiannually, until the end of the corresponding actions.

2. To order the State of Guatemala to pay:

a. US.\$151,000.00 (one hundred fifty-one thousand dollars of the United States of America) or its equivalent in Guatemalan national currency, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake, as the injured party, as reparations, to be distributed in the manner indicated in paragraphs 58, 50, and 49 of this judgment:

i. US\$30,000.00 (thirty thousand dollars of the United States of America) as moral damages to each of the following persons: Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake;

ii. US\$15,000.00 (fifteen thousand dollars of the United States of America) as medical expenses to Samuel Blake; and

iii. US\$16,000.00 (sixteen thousand dollars of the United States of America) as expenses of an extrajudicial nature.

b. Also, US\$10,000.00 (ten thousand dollars of the United States of America) or its equivalent in Guatemalan national currency, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake, as the injured party, for reimbursement of the expenses incurred in the processing of the case before the Inter-American system for the protection of human rights, in accordance with paragraph 70 of this Judgment.

3. To order that the State of Guatemala make the payments indicated in operative paragraph 2 within six months of the notification of this Judgment.

4. To order that the payments ordered in this Judgment shall be exempt from any existing or future tax or duty.

5. To supervise fulfillment of this Judgment.

Judge Cançado Trindade advised the Court of his Concurring Opinion and Judge *ad hoc* Novales-Aguirre of his Reasoned Concurring Opinion, both of which are attached to this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, this twenty-second day of January, 1999.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Alfonso Novales-Aguirre
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary