

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF CONTRERAS *ET AL.* v. EL SALVADOR**

**JUDGMENT OF AUGUST 31, 2011  
(*Merits, Reparations and Costs*)**

In the case of *Contreras et al.*,

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

Diego García-Sayán, President  
Manuel E. Ventura Robles, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary,\*\*

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 31, 32, 62, 64, 65, and 67 of the Rules of Procedure of the Court\*\*\* (hereinafter “the Rules of Procedure”), delivers this judgment, structured as follows:

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\* Judge Leonardo A. Franco advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation of this judgment.

\*\* Deputy Secretary Emilia Segares Rodríguez informed the Court that she would not be present during the deliberations on this Judgment for reasons of *force majeure*.

\*\*\* Rules of Procedure applied in this case are those approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, that entered into force on January 1, 2010, in keeping with the provisions of Article 78 of the Rules of Procedure. This is notwithstanding Article 79(2) of the Rules of Procedure, which stipulates that, “[i]n cases in which the Commission has adopted a report under Article 50 of the Convention before these Rules of Procedure come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim’s Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply.” The Report on Merits in this case was issued by the Inter-American Commission on Human Rights on September 8, 2009 (*infra* para. 1).

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## I

**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. On June 28, 2010, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) lodged an application before the Court against the Republic of El Salvador (hereinafter “the State” or “El Salvador”) concerning cases 12,494, 12,517 and 12,518, in accordance with Articles 51 and 61 of the Convention. The initial petitions were submitted to the Commission on November 16, 2001, by the *Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos* [Association for the Search for Disappeared Children] (hereinafter “the Search Association”) and the Center for Justice and International Law (hereinafter “CEJIL”) with regard to Ana Julia and Carmelina Mejía Ramírez and José Rubén Rivera; and on September 4, 2003, by the Search Association with regard to Gregoria Herminia, Serapio Cristian and Julia Inés Contreras. The Commission declared the petitions admissible in Admissibility Reports Nos. 11/05 of February 23, 2005, 56/05 of October 12, 2005, and 53/05 of October 12, 2005. On March 3, 2009, the Commission ruled to combine the three cases<sup>1</sup> and on September 8, 2009, it approved Report on the Merits No. 95/09<sup>2</sup> under Article 50 of the Convention. On September 28, 2009, the State was notified of the said report and granted two months to provide information on the measures taken to comply with the Commission’s recommendations. After granting two extensions and in view of the State’s failure to submit information, the Commission decided to submit this case to the jurisdiction of the Court. The Commission appointed Paulo Sérgio Pinheiro, Commissioner, and Santiago A. Canton, Executive Secretary, as its delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Isabel Madariaga and Silvia Serrano Guzmán, lawyers with the Executive Secretariat, as legal advisors.

2. The application relates to the alleged forced disappearance between 1981 and 1983 of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera Rivera, who were all children at the time, perpetrated by members of different military units in the context of “counterinsurgency operations” during the armed conflict in El Salvador. The whereabouts of Gregoria Herminia Contreras were established in 2006, and she is “in the process of reconstructing her identity and relationship with her biological family.” According to the Commission, “[t]he circumstances surrounding the six [alleged] disappearances have still not been clarified; those responsible have not been identified or punished and, in brief, after almost 30 years, the facts remain in impunity.”

3. The Commission asked the Court to declare the State of El Salvador responsible for violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 17 (Rights of the Family), 18 (Right to a Name), 19 (Rights of the Child), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), all with regard to the obligations established in Article 1(1) of the American Convention, to the detriment of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and

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<sup>1</sup> To this end, it found that “[t]he cases in question relate to the same period of internal conflict in El Salvador and involve similar alleged facts.” Cf. Notes of the Executive Secretariat of the Inter-American Commission dated March 3, 2009 (evidence file, volume I, attachment 3 to the application, folios 679 and 681).

<sup>2</sup> In that report, the Commission concluded that the Salvadoran State was responsible for violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 18 (Right to a Name), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof. Cf. Report on Admissibility No. 95/09 issued by the Inter-American Commission on Human Rights on September 8, 2009 (evidence file, volume I, attachment 2 to the application, folio 101).

Carmelina Mejía Ramírez, and José Rubén Rivera and their corresponding next of kin.<sup>3</sup> Lastly, the Commission asked the Court to order the State to adopt various measures of reparation, as well as to pay the costs and expenses.

4. The State was notified of the application on August 17, 2010, and the representatives on August 13, 2010.

5. On October 13, 2010, Ester Alvarenga, Elsy Flores and Marina Cubías of the Search Association and Viviana Krsticevic, Alejandra Nuño, Gisela De León and Luis Carlos Buob of CEJIL, the organizations representing the alleged victims (hereinafter “the representatives”) submitted to the Court their brief with pleadings, motions and evidence under Article 24 of the Rules of Procedure. The representatives indicated that the State was responsible for violating the same rights alleged by the Commission. In addition, they alleged the violation of the right to the truth, understood as a violation of the rights contained in Articles 8, 13 and 25 of the Convention. Lastly, they asked the Court to order the State to adopt certain measures of reparation and to pay costs and expenses.

6. On January 17, 2011, the State filed its brief answering the application and with observations on the pleadings and motions brief.<sup>4</sup> In its brief, the State acknowledged and accepted the facts alleged in the application and in the brief with pleadings, motions and evidence, and thus the dispute in this regard presumably concluded (see *infra* chapter IV). The State also “waived the possibility of filing preliminary objections” and, “in application of Article 62(2) of the American Convention, declare[d] its acceptance of the Inter-American Court’s jurisdiction [...] in this specific case” (see *infra* chapter III). Consequently, the State asked the Court to accept the scope of its acknowledgement of international responsibility as well as the terms offered for the measures of reparations in this case, and to rule on costs and expenses in keeping with the parameters established in its case law. Subsequently, on March 7, 2011, it presented a brief clarifying the scope of the acknowledgment of State responsibility. On September 7, 2010, the State appointed David Ernesto Morales Cruz and Sebastián Vaquerano as its Agent and Deputy Agent, respectively.

7. On February 14, 2011, the representatives and the Commission presented their comments regarding the State’s acknowledgment of responsibility. Also, on March 18 and 21, 2011, the Commission and the representatives, respectively, submitted their observations concerning the clarifications submitted by the State on the scope of its acknowledgement of State responsibility.

## II PROCEEDINGS BEFORE THE COURT

8. In their pleadings, motions and evidence brief (*supra* para. 5), the alleged victims, through their representatives, asked to have recourse to the Victims’ Legal Assistance Fund

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<sup>3</sup> In this regard, the Commission requested that the Court take into consideration the next of kin of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras: María Maura Contreras, mother, and Fermín Recinos, father; Julia Gregoria Recinos Contreras, Marta Daisy Leiva Contreras, Rubén de Jesús, Sara Margarita and Santos Antonio López Contreras, siblings. The next of kin of Ana Julia and Carmelina Mejía Ramírez: Avenicio, María Nely and Santos Verónica Portillo, siblings; Reina Dionila Portillo de Silva, aunt, and Arcadia Ramírez Portillo, mother. The next of kin of José Rubén Rivera: Margarita Dolores Rivera de Rivera, mother, and Agustín Antonio Rivera Gálvez, father; Agustín Antonio, José Daniel, Milton, Irma Cecilia and Cándida Marisol Rivera Rivera, siblings.

<sup>4</sup> In addition, responding to a request made in a note of the Secretariat of the Court dated November 17, 2010, the State submitted copies of case files 585-UDVSV-2008, 238-UDV-OFM-2-10 and 225-UDVSV-00 to be incorporated into this case.

of the Court (hereinafter "the Legal Assistance Fund") to cover specific costs related to producing evidence during the proceedings. They also asked that the State be required to reimburse those expenses to the Legal Assistance Fund "without detriment to the amounts that the Court may establish for costs and expenses for the [alleged] victims and their representatives, which must be reimbursed directly to them." Furthermore, on December 1, 2010, the representatives informed the Court why they could not cover the said costs in this case, and included an estimate of the costs of producing evidence. In this regard, in an Order of March 4, 2011,<sup>5</sup> the President of the Inter-American Court of Human Rights (hereinafter "the President of the Court" or "the President"), in exercise of the authority vested in him under Article 3 of the Court's Rules of Procedure on the Operation of the Legal Assistance Fund<sup>6</sup> (hereinafter "the Rules of Procedure of the Fund") decided to declare that the request submitted by the alleged victims through their representatives was admissible and to grant the necessary financial assistance for the presentation of a maximum of three testimonies; also, that the amount, destination and specific purpose of this assistance would be defined when ruling on the production of the testimonial and expert evidence and, if applicable, the opening of the oral proceedings.

9. In an order of April 14, 2011,<sup>7</sup> the President of the Court required that the testimony of six alleged victims proposed by the representatives and four expert witnesses, two proposed by the representatives and two by the Commission, be received by affidavit. The State did not offer witnesses or expert witnesses. The representative and the State were able to formulate questions for the alleged victims and the expert witnesses before they gave their testimony or prepared their expert opinions, respectively, as well as submit observations on them. Only the representatives submitted questions.<sup>8</sup> The President also convened the parties to a public hearing to receive the testimony of an alleged victim and two expert witnesses proposed by the representatives, as well as the final oral arguments of the representatives and the State, and the final observations of the Inter-American Commission on the merits and possible reparations and costs in this case. Lastly, the President decided that the financial assistance from the Legal Assistance Fund (*supra* para. 8) be allocated to cover the necessary travel and accommodation expenses for the deponents to be able to appear before the Court and give their testimony at the said public hearing.

10. On May 5 and 11, 2011, the representatives and the Commission forwarded the statements made before notary public. On May 13, 2011, the State presented its observations on the statements submitted by the representatives. On May 23, the representatives stated that they had no observations to make on the statement provided by the Commission, and the State did not submit any observations in this regard within the corresponding time frame.

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<sup>5</sup> See [http://www.corteidh.or.cr/docs/asuntos/Contreras%2004\\_03\\_11.pdf](http://www.corteidh.or.cr/docs/asuntos/Contreras%2004_03_11.pdf)

<sup>6</sup> Rules of Procedure of the Inter-American Court of Human Rights on the Operation of the Victims' Legal Assistance Fund, approved by the Court on February 4, 2010, and in force as of June 1, 2010.

<sup>7</sup> See [http://www.corteidh.or.cr/docs/asuntos/contreras%2014%2004\\_11.pdf](http://www.corteidh.or.cr/docs/asuntos/contreras%2014%2004_11.pdf)

<sup>8</sup> In application of the provisions of Article 50(5) of the Court's Rules of Procedure and in keeping with the Order of the President of April 14, 2011 (*supra* para. 9 and second operative paragraph), on April 26, 2011, the representatives forwarded the written questions to be answered by the expert witnesses proposed by the Inter-American Commission when they giving their testimony before notary public (affidavit). For its part, the State did not formulate questions for the individuals who were to give their testimony before notary public within the corresponding time frame.

11. The public hearing took place on May 17, 2011, during the forty-third special session of the Court held in Panama City, Republic of Panama.<sup>9</sup>

12. On June 10, 2011, the representatives of the alleged victims advised that “following conversations with officials of the State of El Salvador, both parties agree[d] to present a joint proposal on the ‘structural psycho-social support response’” and that “conversations were ongoing on the adoption of measures by the Salvadoran State to provide the necessary conditions for Gregoria Herminia Contreras to return to El Salvador, accompanied by her family.” They therefore requested “a one-month extension of the deadline established for presentation of the final [written] arguments.” In this regard, on the instructions of the President of the Court, they were informed that the time frame established in the Order of April 14, 2011, was non-extendible and, consequently, the representatives were not granted the requested extension. Nevertheless, should an agreement be reached, the parties were requested to inform the Court. At the time it delivered this judgment, the Court had not received any agreement.

13. On June 17, 2011, the representative and the State submitted their final written arguments, and the Inter-American Commission submitted its final written observations in the case. The briefs were forwarded to the parties so that the representatives, the State and the Commission could make any observations they deemed pertinent, as appropriate, on the documents presented as attachments (*infra* paras. 36 and 37) and the information submitted at the Court’s request.<sup>10</sup> The representatives, the State and the Commission submitted their observations on July 11, 2011.

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<sup>9</sup> The following people attended the hearing: (a) for the Inter-American Commission: Luz Patricia Mejía, Commissioner; Silvia Serrano Guzmán and Karla Quintana Osuna, Lawyers; (b) for the representatives: María Ester Alvarenga Chinchilla and Elsy Lourdes Flores Sosa from the Search Association, and Gisela Leticia De León De Sedas and Luis Carlos Buob Concha, from CEJIL; and (c) for the Republic of El Salvador: Arnoldo Bernal Chévez, Ambassador of the Republic of El Salvador, accredited to Panama; David Ernesto Morales Cruz, Director General for Human Rights of the Foreign Ministry and the State’s Agent for this specific case; Matilde Guadalupe Hernández de Espinoza, Director of Childhood and Adolescence of the Social Inclusion Secretariat, and Gloria Evelyn Martínez Ramos, expert from the Foreign Ministry’s Human Rights General Directorate.

<sup>10</sup> Specifically, they were requested to submit information and supporting documentation, where relevant, on the following:

- a) the possibility of devoting resources to publish reconstructions of the faces of the disappeared children as they might be today as a possible means of identifying them.
- b) the actions taken or that could be taking to obtain information and identify the children who lived and grew up in military facilities.
- c) the specific components of the so-called “psycho-social structural support response,” including at least, the following three fundamental aspects: (i) the exact specific functions and objectives of the so-called integral psychological-social reparation program, the number of people included, and the duration of the reparation; (ii) the structure or institutional integration of the program; in other words, whether it was proposed to include it within existing structures or to set up a separate structure, and iii) the time frames for putting the program into operation and for achieving gradual results. In particular, the representatives of the alleged victims and the State were asked to report on the possibility of moving forward with a joint proposal in this regard.
- d) the time it would take to conclude the process of restoring the identity to Gregoria Herminia and her children.

In addition, the Inter-American Commission was asked to submit as helpful evidence the attachments (volume I and II) to the Report of the Truth Commission for El Salvador: From Madness to Hope, the 12-year war in El Salvador, 1992-1993. The representatives were also asked to provide information on the place where Gregoria Herminia Contreras and her family reside, as well as the full names and dates of birth of her children and the information on her husband or partner.

14. On August 11, 2011, on the instructions of the President of the Court, and pursuant to Article 5 of the Rules of Procedure of the Legal Assistance Fund, the State was informed of the expenses incurred in application of the Fund. The State presented its respective observations on August 18, 2011.

### III COMPETENCE

15. The Inter-American Court is competent to hear this case in the terms of Article 62(3) of the American Convention, because El Salvador ratified the Convention on June 23, 1978, it entered into force for the State on July 18, 1978, and the State accepted the Court's compulsory jurisdiction on June 6, 1995.

16. Although the declaration of acceptance of the Inter-American Court's jurisdiction includes a temporal restriction,<sup>11</sup> in the instant case, the State of El Salvador, in keeping with its acknowledgment of international responsibility in its brief answering the application and with observations on the pleadings and motions brief, and reiterated in its brief clarifying the said acknowledgement as well as in its final oral and written arguments, "declared its acceptance of the jurisdiction of the Court [...] in the specific case of *Gregoria Herminia Contreras et al.*, which is the purpose of the application," without any temporal limitation (*supra* para. 6 and *infra* Chapter IV). That is to say, in all the procedural stages before the Court, the State has clearly expressed its willingness to acknowledge all the facts that occurred, as well as the violations that are declared in this case and their juridical consequences, expressly granting the Court jurisdiction to rule on all aspects of this case. The Court assesses positively the declaration made by the State for this specific case (*supra* para. 6). Consequently, the Court will now decide on the merits and possible reparations in this case.

### IV ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

17. Invoking statements it had made during a hearing held before the Inter-American Commission on Human Rights in another case, the State acknowledged that, "in the context of the armed conflict that took place in the country between 1980 and 1991, there was a systematic pattern of forced disappearances of children and adolescents in different areas, especially in those most affected by armed combat and military operations." In addition, it acknowledged that "the disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés

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<sup>11</sup> The instrument by which El Salvador accepted the compulsory jurisdiction of the Court includes a temporal limitation with regard to the cases that could be submitted before the Court, as follows:

I. The Government of El Salvador accepts the jurisdiction of the Inter-American Court of Human Rights as an *ipso jure* obligation and without special convention, in keeping with the provisions of Article 62 of the American Convention on Human Rights or the "Pact of San Jose."

II Upon accepting this jurisdiction, the Government of El Salvador records that its acceptance is in force for an indefinite period under conditions of reciprocity and with the reservation that the cases in which jurisdiction is acknowledged refer solely and exclusively to subsequent facts or judicial acts, or facts or judicial acts that began to be executed after the date on which this Declaration of Acceptance was deposited, [...].

[...]

*Cf.* Text of the declaration of acceptance of the compulsory jurisdiction of the Court presented to the OAS General Secretariat on June 6, 1995.

Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera took place within that pattern of forced disappearances of children perpetrated during the Salvadoran internal armed conflict." Consequently, it acknowledged its international responsibility for the forced disappearance of the six alleged victims.

18. Specifically, the State accepted as true the facts alleged in the application presented by the Inter-American Commission and in the pleadings, motions, and evidence brief of the representatives of the alleged victims, namely: the facts of the disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés, all with the surname Contreras, who were children at the time, according to paragraphs 61 to 63 of the application; the facts of the disappearance of the children at the time, Ana Julia and Carmelina, both with the surnames Mejía Ramírez, according to paragraphs 85 and 86 of the application; and the facts of the disappearance of the child at the time, José Rubén Rivera, according to paragraphs 110 to 113 of the application. In addition, the State indicated that it acknowledged "the facts surrounding the disappearance of each of the [alleged] victims." In the same way, it acknowledged "the facts described in paragraphs 64 to 68 of the application that refer to the actions taken by the mother of the Contreras siblings, with the support of the Search Association, to look for her children and the reunion with Gregoria Herminia Contreras, as well as the statements of the latter with regard to the fact of her disappearance and her subsequent situation."

19. Regarding the legal claims, the State acknowledged its international responsibility for violation of the rights to juridical personality, life, humane treatment, personal liberty and safety, protection of the family, a name, identity and the protection of children, embodied in Articles 3, 4, 5, 7, 17, 18 and 19 of the American Convention, all to the detriment of the Contreras, Mejía Ramírez, and Rivera children; for violation of the right to humane treatment recognized in Article 5 of the American Convention, to the detriment of the next of kin of the Contreras, Mejía Ramírez, and Rivera children; for violation of Articles 8 and 25, in relation to Article 1(1) of the American Convention, to the detriment of the next of kin of the Contreras, Mejía Ramírez, and Rivera children; and for violation of the right to the truth of the alleged victims and their next of kin, protected under Articles 8, 13 and 25 of the American Convention. Regarding the rights of the family, it stated that "when understanding forced disappearance as a serious violation of the human rights of the direct victims and their next of kin, the State acknowledges that these facts also violated the right to the protection of the family, not just for the Contreras, Mejía Ramírez and Rivera children, but also for their next of kin." In addition, it clarified that "it acknowledges its international responsibility for the violation of Articles 8 and 25, in relation to Article 1(1) of the American Convention, to the detriment of the [then] children Contreras, Mejía Ramírez and Rivera as well as their next of kin, in accordance with paragraphs 234 to 247 of the application."

20. Regarding reparations, the State acknowledged its obligation to investigate the fate or whereabouts of Serapio Cristian, Julia Inés Contreras, Ana Julia, Carmelina Mejía Ramírez and José Rubén Rivera; to adopt measures to re-establish their identity and facilitate family reunification through the National Commission for the Search for Children Disappeared during the Internal Armed Conflict, notwithstanding the actions taken by the Salvadoran judicial system for the same purpose; to assume the expenses of the reunions and for the psychosocial attention that may be necessary in this regard and, if it is established that any of them is deceased, to locate their remains and return them to their next of kin; to investigate the facts denounced, prosecute them in a fair trial and, as appropriate, punish those responsible for the facts once they have been individualized and their criminal or administrative guilt has been determined. In its final arguments, the State made certain clarifications with regard to the requests for reparations and expressed "its willingness to accept and carry out measures of reparation that include compensation for pecuniary and

non-pecuniary damage, determination of the whereabouts of the victims and adoption of the necessary measures for the recovery of their identity and the reunion of the family, the establishment of a National Commission for the Search for Children Disappeared during the Internal Armed Conflict, a public act of apology and acknowledgment of responsibility, the publication of the Court's judgment in this case, and medical and psychological care for the victims and their next of kin, all in the manner, terms and scope set out in its brief answering the application." Regarding the costs and expenses requested by the representatives, the State indicated that "the amount [...] exceeds the standard in the precedents established by [the] Court."

21. With regard to the victims in the case, the State expressed its willingness to redress the results of the violations established in these international proceedings in favor of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez and José Rubén Rivera. In addition, although some individuals included in the application were not considered victims in the report under Article 50 of the Convention and the representatives had added another person in their pleadings and motions brief, it recognized "as victims and beneficiaries of reparations for the violations they have been subjected to over the years, their close family members: María Maura Contreras (mother), Fermín Recinos Ayala (father), Julia Gregoria Recinos Contreras (sister), Marta Daysi Leiva Contreras (sister), Nelson Geovany Contreras (brother, deceased), Rubén de Jesús López Contreras (brother), Sara Margarita López Contreras (sister), Santos Antonio López Contreras (brother), Arcadia Ramírez Portillo (mother), Abenicio Portillo (brother), María Nely Portillo (sister), Santos Verónica Portillo (sister), Reina Dionila Portillo de Silva (aunt), Margarita Dolores Rivera de Rivera (mother), Agustín Antonio Rivera Gálvez (father), Juan Carlos Rivera (brother deceased), Agustín Antonio Rivera Rivera (brother), José Daniel Rivera Rivera (brother), Milton Rivera Rivera (brother), Irma Cecilia Rivera Rivera (sister), and Cándida Marisol Rivera Rivera (sister); as these were the people who suffered the consequences of the disappearance of the victims in this case or who have actively pursued the search for them."

22. In addition, it should be noted that, during the public hearing, the State apologized directly to Gregoria Herminia Contreras "for the immense pain caused by State agents [...] that has had such tragic consequences for her and her next of kin, [as well as] for the lack of protection resulting from the indifference of State institutions throughout her life." It indicated that it "has fully acknowledged the facts that were the subject of the application [as well as] its responsibility in this case," emphasizing that the testimony given by Gregoria Herminia had been acknowledged as the truth of what happened, as have the testimonies of the other victims during these proceedings. The State affirmed its "unconditional commitment to take the actions necessary to provide full access to the enjoyment of their rights [...] in their condition of victims of the serious human rights violations to which [Gregoria Herminia Contreras], her siblings and her next of kin were subjected." These commitments include the search for her siblings, the restoration of her true identity and the adoption of all measures that the Court considers pertinent. Consequently, the State reiterated that "the dispute in this case has ended [...], because it has made an extensive acknowledgment of responsibility with regard to the facts set out in the application and in the petitioners' brief with pleadings, arguments and evidence." These declarations were reiterated by the State in its brief with final arguments. However, the State underlined the relevance of the judgment to be handed down by the Court, because "it will be a very important tool for making progress [...] and strengthening [...] coordination mechanisms [...] with the Search Association and with the victims."

23. The Commission expressed its satisfaction with the State's acknowledgment of international responsibility and indicated that, with the subsequent clarifications, the

acknowledgement includes the facts, the context in which they occurred, and all the human rights violations alleged in its application. In addition, the Commission stated that “it is the first time that, faced with the very serious incidents [...] that occurred during the war in El Salvador, a [...] State has [...] come forward to acknowledge serious acts of violence and grave human rights violations.” In its brief with final arguments, it assessed the Salvadoran State’s apology to Gregoria Herminia Contreras. It found that both the State’s acknowledgement of responsibility and its apology had a relevant symbolic and historical value, because the extent of the disappearance of children during the armed conflict was hidden by the Salvadoran State for many years during which it denied the existence of this systematic practice.

24. The representatives, for their part, acknowledged the State’s good will when making its acknowledgment of responsibility and found that the clarifications introduced by the State “are a sign of good faith.” They also stated that it was crucial that the Court accept the Salvadoran State’s acknowledgment of responsibility, inasmuch as it was addressed at recognizing the rights of the victims and their dignity, and was thus consistent with the purposes of the inter-American system. They indicated that they had recognized this change of position since the Government of President Mauricio Funes came to power. Nevertheless, they indicated that they do not see how this change of position can be put into practice.

25. Under Articles 62 and 64 of the Rules of Procedure<sup>12</sup> and in exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is the Court’s responsibility to ensure that acts of acquiescence are acceptable for the goals sought by the inter-American system. This task is not limited to verifying, recording or taking note of the acknowledgment made by the State, or to confirming the formal conditions of such acts; rather, it must examine them in keeping with the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>13</sup> so that it can elucidate the truth about what took place, to the extent possible and in the exercise of its competence.<sup>14</sup>

26. In this regard, the Court assesses positively the State’s willingness to declare an extensive acknowledgment of international responsibility, owing to its significance within the framework of the inter-American system for the protection of human rights because, for the Court, it represents an admission of the facts contained in the factual framework of the

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<sup>12</sup> Articles 62 and 64 of the Court’s Rules of Procedure establish:

Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

Article 64. Continuation of a case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

<sup>13</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011. Series C No. 223, para. 22, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 63.

<sup>14</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17; *Case of Abrill Alosilla et al.*, *supra* note 13, para. 22, and *Case of Vélez Loor*, *supra* note 13, para. 63.

Commission's application<sup>15</sup> and a total acquiescence to the legal claims set out in both the Commission's application and the pleadings and motions brief of the representatives on the merits of this matter. Furthermore, it highlighted the apology made to Gregoria Herminia Contreras, her siblings and her next of kin during the public hearing, which was made extensive to the other victims and their next of kin in this case; and the undertaking made by the State to advance the necessary measures of reparation by means of a permanent dialogue with representatives and using the criteria to be established by the Court. All these actions make a positive contribution to this process, to the exercise of the principles that inspire the American Convention<sup>16</sup> and, in part, to the satisfaction of the needs for reparation of the victims of human rights violations.<sup>17</sup>

27. Based on the above, the Court finds that the dispute between the parties with regard to the forced disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera has ended, and also with regard to the violation of the rights recognized in the following Articles: 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 18 (Right to a Name), 19 (Rights of the Child), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera; and Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 17 (Rights of the Family) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera: María Maura Contreras (mother), Fermín Recinos Ayala (father), Julia Gregoria Recinos Contreras (sister), Marta Daysi Leiva Contreras (sister), Nelson Geovany Contreras (brother, deceased), Rubén de Jesús López Contreras (brother), Sara Margarita López Contreras (sister), Santos Antonio López Contreras (brother); Arcadia Ramírez Portillo (mother), Avenicio Portillo (brother), María Nely Portillo (sister), Santos Verónica Portillo (sister), Reina Dionila Portillo de Silva (aunt), Margarita Dolores Rivera de Rivera (mother), Agustín Antonio Rivera Gálvez (father), Juan Carlos Rivera (brother deceased), Agustín Antonio Rivera Rivera (brother), José Daniel Rivera Rivera (brother), Milton Rivera Rivera (brother), Irma Cecilia Rivera Rivera (sister) and Cándida Marisol Rivera Rivera (sister).

28. Lastly, considering the seriousness of the facts and of the violations acknowledged by the State, the Court will make an extensive and detailed determination of the facts that occurred, because this contributes to the reparation of the victims, to preventing the repetition of similar acts and, in brief, to satisfying the purposes of the inter-American human rights jurisdiction.<sup>18</sup> In addition, the Court will open the corresponding chapters to analyze and clarify the scope of the violations, based on the characteristics of this practice perpetrated against children in the Salvadoran context. Finally, with regard to certain claims

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<sup>15</sup> Although the State did not specify the facts that it accepted as grounds for its acknowledgement of responsibility with regard to Articles 8 and 25 of the Convention, this Court understands that El Salvador accepted the facts that, according to the application - factual framework of these proceedings - constitute those violations.

<sup>16</sup> Cf. *Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43; *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 29, and *Case of Vélez Loor, supra* note 13, para. 69.

<sup>17</sup> Cf. *Case of Manuel Cepeda Vargas, supra* note 14, para. 18, and *Case of Vélez Loor, supra* note 13, para. 69.

<sup>18</sup> Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26.

concerning reparations, this Court observes that there is still a dispute with regard to their scope and to the results invoked by the State. Consequently, the Court will make the respective ruling.

## V EVIDENCE

29. Based on the provisions of Articles 46, 49 and 50 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,<sup>19</sup> the Court will examine the probative elements submitted by the parties on different occasions during the proceedings, the testimony rendered by affidavit and received during the public hearing, as well as the helpful evidence requested by the Court. To this end, the Court will respect the principles of sound judicial discretion within the applicable legal framework.<sup>20</sup>

### 1. Documentary, testimonial and expert evidence

30. The Court received different documents presented as evidence by the Inter-American Commission, the representatives and the State together with their principal briefs (*supra* paras. 1, 5 and 6). In addition, it received statements made before notary public (affidavits) by the following victims and expert witnesses:<sup>21</sup>

1) *Margarita Dolores Rivera de Rivera*, victim proposed by the representatives, who testified on the alleged suffering caused to her and her family by not knowing the whereabouts of José Rubén Rivera, as well as on the alleged impunity in which the facts remain.

2) *Agustín Antonio Rivera Gálvez*, victim proposed by the representatives, who testified on the alleged suffering caused by the disappearance of José Rubén Rivera and the lack of justice in the case, as well as on the measures that the State could take to repair the violations that were alleged.

3) *Reina Dionila Portillo de Silva*, victim proposed by the representatives, who testified on the alleged suffering that the alleged forced disappearance of Ana Julia and Carmelina Mejía Ramírez and the lack of justice had caused to her, to the mother of the girls, and to the rest of the family.

4) *Arcadia Ramírez Portillo*, victim proposed by the representatives, who testified on the alleged suffering that the alleged forced disappearance of Ana Julia and Carmelina Mejía Ramírez and the lack of justice had caused to her and to the rest of the family.

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<sup>19</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 51; *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 36, and *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 26.

<sup>20</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Mejía Idrovo*, *supra* note 19, para. 36, and *Case of Chocrón Chocrón*, *supra* note 19, para. 26.

<sup>21</sup> On April 28, 2011, the Inter-American Commission advised that expert witness Rodolfo Mattarollo had stated that he was unable to provide his written expert opinion within the time frame that had been granted; thus it desisted from offering this opinion.

5) *María Maura Contreras*, victim proposed by the representatives, who testified on the alleged suffering that the uncertainty about the whereabouts of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras and the alleged impunity in the case had caused to her and her family; the effect on her and her family of the reunion with Gregoria Herminia Contreras, and the measures she considers that the State could take to provide reparation for the alleged violations.

6) *Fermín Recinos*, victim proposed by the representatives, who testified on the alleged suffering that the alleged disappearances of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras and the lack of justice in the case caused him; the effect on him and his family of the reunion with Gregoria Herminia Contreras, and the measures he considers that the State could take to provide reparation for the alleged violations.

7) *Douglass Cassel*, professor, University of Notre Dame, and director of the Center for Civil and Human Rights, expert witness proposed by the Inter-American Commission, who gave an expert opinion on the appropriation of children by State officials as a form of forced disappearance of persons; the characteristics of this human rights violation, the corresponding State obligations, and the measures that, in accordance with the relevant international standards, could be taken by the State to discover the whereabouts of children who are victims of this practice and to order the appropriate measures of reparation.

8) *Viktor Jovev*,<sup>22</sup> legal expert, member of the International Commission on Missing Persons, and expert witness proposed by the representatives, who gave his expert opinion on the need to create an institute for anthropology and forensic genetics in El Salvador, as well as on the characteristics and instruments of an institute of this nature.

9) *Ana Georgina Ramos de Villalta*, director of the Children's Rights Information Network (CRIN) with working experience in the promotion of the human rights of children and adolescents in El Salvador, expert witness proposed by the representatives, who gave an expert opinion on the common characteristics that have been identified in the cases of forced disappearance of children in El Salvador, with special emphasis on the possible effects on their identity.

31. In addition, during the public hearing, the Court heard the testimony of the following persons:

1) *Gregoria Herminia Contreras*, victim proposed by the representatives, who testified on the conditions in which she was forced to live and the effects that the alleged forced separation from her family had on her identity; the alleged suffering due to her separation from her parents and siblings, and the uncertainty of not knowing what happened to Serapio Cristian and Julia Inés Contreras, and the actions that she considered the State could adopt to repair the alleged violations caused to her and her family.

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<sup>22</sup> Regarding Viktor Jovev's expert opinion, the Court observes that, in an Order dated April 14, 2011, the President ordered that expert witnesses Viktor Jovev and Thomas J. Parsons provide a joint opinion before notary public (affidavit), and that this opinion should be submitted by May 5, 2011, at the latest (*supra* para. 9, operative paragraphs 1(b)(3) and 2). On May 5, 2011, the representatives submitted the opinion of Viktor Jovev, which had not been notarized, and it was not until May 25, 2011, that they forwarded the opinion given before notary public. In addition, Thomas Parsons did not participate in the preparation of the expert opinion offered by the representatives "as it was not possible [...] to contact him by the established deadline."

2) *María Sol Yáñez de la Cruz*, professor and researcher, Department of Psychology of the Universidad Centroamericana “José Simeón Cañas” (UCA), expert witness proposed by the representatives, who gave an expert opinion on the psychosocial effects that the alleged forced disappearance had on Gregoria Herminia Contreras and the consequences that these facts would continue to have today; the damage caused to the families of all the alleged victims in this case as a result of the alleged forced disappearance of the children; the psychosocial effects that the alleged impunity of these facts have had on their next of kin, as well as the measures that the Salvadoran State could take to repair the damage caused to the alleged victims and their next of kin.

3) *Ricardo Alberto Iglesias Herrera*, lawyer and notary in private practice, former deputy head of the Ombudsman’s Office of El Salvador, expert witness proposed by the representatives, who gave his expert opinion on the alleged general impunity that reigns in cases of grave human rights violations in El Salvador and the main causes; the analysis of the different judicial proceedings conducted in El Salvador in relation to the forced disappearance of children in order to identify the main obstacles to obtaining justice in this type of case, as well as recommendations regarding the measures that the State could take to overcome these obstacles.

## 2. Admission of the documentary evidence

32. In this case, as in others, the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity that were not contested or opposed, and whose authenticity was not questioned.<sup>23</sup>

33. Regarding the newspaper articles forwarded by the Commission and the representatives, this Court has found that they can be admitted when they contain well-known public facts or declarations by State officials, or when they corroborate aspects related to the case.<sup>24</sup> The Court verified that, on some of those documents, the date of publication is illegible. Nevertheless, neither of the parties objected to those documents because of this, or questioned their authenticity. Consequently, the Court decides to admit the documents that are complete or that, at least, allow their source and publication date to be verified, and will assess them, taking into account all the body of evidence, the observations of the parties, and the rules of sound judicial discretion.<sup>25</sup>

34. Regarding the representatives’ request to incorporate six statements and an expert opinion from the *case of the Serrano Cruz Sisters v. El Salvador* into the body of evidence, the Court observes that neither the Commission nor the State opposed this. Nevertheless, the Court finds it unnecessary to incorporate these elements, since they are not essential in light of all the probative elements that already form part of the body of evidence in this case, as well as the State’s acknowledgment of responsibility.

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<sup>23</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Mejía Idrovo*, *supra* note 19, para. 38, and *Case of Chocrón Chocrón*, *supra* note 19, para. 29.

<sup>24</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 146; *Case of Chocrón Chocrón*, *supra* note 19, para. 30, and *Case of Abrill Alosilla et al.*, *supra* note 13, para. 40.

<sup>25</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 77; *Case of Chocrón Chocrón*, *supra* note 19, para. 30, and *Case of Abrill Alosilla et al.*, *supra* note 13, para. 40.

35. During the public hearing (*supra* para. 11), the State presented copies of several documents,<sup>26</sup> which were distributed to the representatives and the Commission who were able to present their observations. Considering them useful for deciding this case, the Court admits the documents provided by the State under Article 57(2) of the Rules of Procedure as evidence of facts that occurred subsequent to the answer to the application and will consider, where pertinent, the information therein, taking into account the entire body of evidence, the observations of the parties, and the rules of sound judicial discretion.

36. Lastly, the Commission forwarded several documents as evidence, which had been requested by the Court under the provisions of Article 58 of the Court's Rules of Procedure. Accordingly, these documents are also incorporated and they will be assessed, as pertinent, taking into account the entire body of evidence, the observations of the parties, and the rules of sound judicial discretion.

37. With regard to the documents forwarded by the representatives concerning costs and expenses, the Court will only consider those submitted with the final written arguments that refer to new costs and expenses incurred in the proceedings before this Court; in other words, those incurred following the submission of the pleadings and motions brief.

### **3. Admission of the testimony of the victims and the expert opinions**

38. The Court also finds it pertinent to admit the testimony and expert opinions provided by the alleged victims and the expert witnesses during the public hearing and in sworn statements, to the extent they are in keeping with the purpose defined by the President in the Order requiring them (*supra* para. 9) and the purpose of this case. They will be assessed in the corresponding chapter, together with the other elements of the body of evidence. Pursuant to this Court's case law, the statements made by the alleged victims cannot be assessed alone; but rather they will be examined together with all the evidence in the proceedings, because they are useful insofar as they can provide more information on the alleged violations and their consequences.<sup>27</sup>

39. During the public hearing (*supra* para. 11), expert witness Ricardo Alberto Iglesias Herrera presented his expert opinion in writing. A copy of the document was given to the parties when the hearing ended. In addition, on June 8, 2011, the representatives forwarded a written expansion of the expert opinion of expert witness María Sol Yáñez de la Cruz, which had been requested by the Court during the said hearing. Consequently, the parties were able to submit their observations on these documents. Considering them useful for deciding this case, the Court also incorporates them and they will be assessed, as pertinent, taking into account the entire body of evidence, the observations of the parties, and the rules of sound judicial discretion.

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<sup>26</sup> See "Record of receipt of documents," which confirms the documents that were presented by the State. *Cf.* Merits file, volume II, folios 864 to 865.

<sup>27</sup> *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Mejía Idrovo*, *supra* note 19, para. 42, and *Case of Chocrón Chocrón*, *supra* note 19, para. 34.

## VI CONTEXT

40. The Court will now establish the context in which the facts of the instant case took place based principally on the Report of the Truth Commission for El Salvador.<sup>28</sup>

### ***A. The armed conflict***

41. From approximately 1980 to 1991, El Salvador was submersed in an internal armed conflict<sup>29</sup> of which it is estimated that more than 75,000 members of its population were victims.<sup>30</sup>

42. The year 1980 marked the beginning of “indiscriminate attacks against the non-combatant civilian population and collective summary executions that affected the rural population in particular.” In the early 1980s, the violence in the rural areas “was extremely indiscriminate.” In addition, “[t]he appearance of organized terrorism, through the so-called death squads, became the most abhorrent practice in the steadily increasing violence.” These were groups of heavily armed individuals, usually in civilian clothing, who acted clandestinely and concealed their affiliation and identity.

43. Between October and November 1980, the Farabundo Martí National Liberation Front, (hereinafter also “FMLN”) was formed from five armed resistance and political opposition groups: the Popular Liberation Forces, the Revolutionary Armed Forces of the People, the Armed Liberation Forces, the National Resistance Armed Forces and the Revolutionary Party of the Workers of Central America. In 1981, the FMLN organizations decided to launch an offensive to promote a popular uprising and overturn the governing Junta. Although it did not achieve its goal, the FMLN ended up controlling several populated areas, consolidated its areas of political influence, and achieved international recognition as a fighting force.<sup>31</sup>

44. Meanwhile, the United States of America significantly increased its military and economic assistance to El Salvador at the time, including such resources as “training, modernizing and expanding the structure in the number of troops of the Armed Forces.” It was in this context that the Immediate Response Infantry Battalions were created, such as the Atlacatl Battalion in March 1981. These were specially trained anti-guerrilla units that had concluded their training with the advisory services and support of United States military personnel.

45. The counterinsurgency military operations resulted in a high loss of life in the non-combatant civilian population and gave rise to the concept of “displacement.” In its most extreme form, the counterinsurgency found expression in the extended concept of “draining the water from the fish”; in other words, destroying the insurgency’s support base. The inhabitants of areas where there was a strong presence of the FMLN “were equated with the

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<sup>28</sup> Cf. Report of the Truth Commission for El Salvador: from Madness to Hope, the 12-year war in El Salvador, 1992-1993 (evidence file, volume III, attachment 3 to the application, folios 1889 to 2101).

<sup>29</sup> Cf. *Case of the Serrano Cruz sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 48(1).

<sup>30</sup> Cf. United Nations. El Salvador Accords: on the road to peace, 1992 (evidence file, volume IV, attachment 6 to the pleadings, motions and evidence brief, folio 2623).

<sup>31</sup> Cf. United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador. UN Doc. A/HRC/7/2/Add.2, 26 October 2007 (evidence file, volume IV, attachment 8 to the pleadings, motions and evidence brief, folio 3188).

guerrilla, or formed part of or collaborated with the latter, and therefore ran the risk of being eliminated.”

46. Between 1989 and 1992, several agreements were signed between the Government of El Salvador and the Farabundo Martí National Liberation Front and, finally, after 12 years of armed conflict, the Peace Accords putting an end to hostilities were signed in Chapultepec, Mexico, on January 16, 1992, under the aegis of the Secretary-General of the United Nations.<sup>32</sup> Under these accords, on April 27, 1991, it was decided to create the Truth Commission with a mandate to investigate the serious acts of violence that had taken place starting in 1980 and to draft legal, political and administrative recommendations that could be related to specific cases or be of a more general nature. The Truth Commission published its report in 1993.

47. The Truth Commission described the patterns of violence during the armed conflict perpetrated by both State agents and FMLN members. Of the complaints received by the Truth Commission,<sup>33</sup> “[m]ore than 60% of the total correspond to extrajudicial executions; more than 25% to forced disappearances, and more than 20% include reports of torture.” Regarding the perpetrators, the complaints attribute almost 85% of the cases to State agents, paramilitary groups allied with them, and death squads. Similarly, members of the Armed Forces were accused in almost 60% of the complaints; members of security forces in approximately 25%; members of military escorts and civil defense forces in approximately 20%, and members of death squads in more than 10% of the cases. The complaints registered attributed responsibility to the FMLN in approximately 5% of the cases.

***B. 1980-1983: “the institutionalization of violence”***

48. The Truth Commission also gave an account of the chronology of the violence. The first period, from 1980 to 1983, when the facts of this case took place, was characterized by “the institutionalization of violence,” when “the systematic establishment of violence, terror, and distrust in the civilian population [...] were the essential characteristics of this period. The dismantling of any opposition or dissident movement through arbitrary detentions, assassinations, and the selective and indiscriminate disappearance of leaders became common practice.” According to the Truth Commission, this period saw “the greatest number of deaths and human rights violations.”

49. In this regard, the Truth Commission observed that around 50% of the total number of complaints analyzed took place during the first two years (1980 and 1981) and more than 20% occurred in the following two years (1982 and 1983). In other words, “the first four years of the decade saw a concentration of more than 75% of the serious incidents of violence denounced before the Truth Commission.”

50. Thus, the Truth Commission received direct testimony of numerous mass executions that took place over the years 1980, 1981, and 1982 in which, during counterinsurgency operations, members of the Armed Forces, “executed peasants, men, women, and children who gave no resistance, simply because they were considered to be collaborating with the guerrillas.” The Truth Commission dismissed “all possibility that these were isolated

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<sup>32</sup> Cf. United Nations. El Salvador Accords, *supra* note 30, (evidence file, volume IV, attachment 6 to the pleadings, motions and evidence brief, folio 2623).

<sup>33</sup> Although the Truth Commission recorded more than 22,000 complaints of serious incidents of violence that took place in El Salvador from January 1980 to July 1991, “these complaints d[id] not represent all the incidents of violence,” as the Commission was only able to receive a significant sample during its three-month period receiving testimony.

incidents or excesses committed by soldiers and their immediate commanding officers. [...] Everything indicates that these deaths took place as part of a pattern of conduct, a deliberate strategy to eliminate or terrorize the peasant population in areas where the guerrillas were active in order to deprive them of a source of supplies and information, as well as of the possibility of disguising themselves or hiding within the population." According to the Truth Commission, it cannot be argued that this pattern of conduct could be attributed only to local leaders and that their superior officers were unaware of it, as the massacres of the peasant population were repeatedly denounced with no evidence that any effort was made to investigate them.

**C. The systematic pattern of forced disappearances of children during the armed conflict in El Salvador**

51. The phenomenon of forced disappearance in the armed conflict in El Salvador was addressed by the Truth Commission for El Salvador with the support of the United Nations, the Inter-American Commission on Human Rights, international agencies, authorities and bodies of the State itself, and other organizations. However, there was also a more specific pattern, acknowledged by the State, relating to the forced disappearance of children (*supra* para. 17), who were taken and illegally held by the Armed Forces during counterinsurgency operations.<sup>34</sup> Likewise, it has been established that, in many cases, this practice implied the appropriation of children and their registration under a different name or with false personal data.<sup>35</sup>

52. According to the evidence in the case file, at May 2011, the Search Association had received 881 complaints of children disappeared during the armed conflict; of these, 363 had been resolved, including those who were located alive and those found dead. From these cases, they were able to reunite 224 young people with their families.<sup>36</sup> Even though the Search Association is one of the representatives in this case, it is important to highlight that it is the institution that has documented and investigated this phenomenon most

<sup>34</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción. Un estudio sobre la problemática de la niñez desaparecida por el conflicto armado en El Salvador*, January 2003 (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/24); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos como consecuencia del conflicto armado interno en El Salvador*, April 1999 (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folios 3207/32 to 3702/33); Asociación Pro-Búsqueda, *El día más esperado. Buscando a los niños desaparecidos de El Salvador*. UCA Editores, San Salvador, 2001 (evidence file, volume V, attachment 11 to the pleadings, motions and evidence brief, folios 3223); Asociación Pro-Búsqueda, Report on El Salvador to the Inter-American Commission on Human Rights, *La actuación del Estado de El Salvador en la problemática de la niñez desaparecida a consecuencia del conflicto armado*, October 2005 (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3540); Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*. Document prepared for the visit of the Working Group on Enforced or Involuntary Disappearances, February 5, 2007 (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Lainez Villaherrera, Rosa América and Hasbún Alvarenga, Gianina, *Tejiendo nuestra identidad. Intervención psicosocial en la problemática de la niñez desaparecida en El Salvador*, Asociación Pro-Búsqueda, San Salvador, 2004 (evidence file, volume VI, attachment 28 to the pleadings, motions and evidence brief, folio 3958). In addition, the FMLN had exerted pressure on some of its members to leave their children in "safe houses" to act as a screen for clandestine activities. Cf. Asociación Pro-Búsqueda, *La paz en construcción...* (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folios 2619/17 and 2619/18); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...* (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folios 3207/13 to 3207/15), and Asociación Pro-Búsqueda, *El día más esperado...* (evidence file, volume V, attachment 11 to the pleadings, motions and evidence brief, folios 3223 to 3224 and 3378).

<sup>35</sup> Cf. Expert opinion provided by Ana Georgina Ramos de Villalta before notary public (affidavit) on May 5, 2011 (evidence file, volume XI, affidavits, folios 7535 to 7537), and Expert opinion provided by Douglass Cassel before notary public (affidavit) on May 11, 2011 (evidence file, volume XI, affidavits, folios 7552 to 7575).

<sup>36</sup> Cf. Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folio 7530).

extensively and taken measures to search for and reunite young people with their families.<sup>37</sup> In this regard, the State indicated that “for more than 18 years, the Search Association has solved hundreds of cases of disappeared children and assisted numerous victimized families in an adverse environment, [...] without the support of the State.” Given that it is part of the body of evidence in this case and that the State has not objected to it, and taking into consideration the work of the Search Association that has been recognized by the State itself, the Court will proceed to present some results of the investigations conducted by this organization.

53. The phenomenon of the forced disappearance of children was part of a deliberate strategy in the context of the institutionalized State violence that characterized this period of the conflict. Most of the disappearances occurred between 1980 and 1984, with the highest figures corresponding to 1982.<sup>38</sup> In its reports, the organization has established that the departments most affected by the conflict were also those where the greatest number of children disappeared; they included Chalatenango, San Salvador, San Vicente, Morazán, Usulután, Cabañas, Cuscatlán and La Libertad,<sup>39</sup> because the disappearances formed part of the counterinsurgency strategy developed by the State under the concept of destroying population groups associated with the guerrillas. Under that strategy, it was found useful to abduct children in order to separate them from the “enemy population” and “to educate them under the State’s ideology at that time.”<sup>40</sup> The children were abducted during military operations after family members had been executed or forced to flee to save their lives, and they were frequently appropriated by military leaders, who included them within their immediate families as their children.<sup>41</sup> The Search Association has identified 15 military operations in which soldiers took children with them, with the number of documented cases varying between three and 39 in each operation.<sup>42</sup> Some former soldiers testified that, starting in 1982, they received orders to take any child found during an attack on enemy positions.<sup>43</sup> In addition to the separation of children from their families as part of a

<sup>37</sup> Expert witness Villalta stated that this organization is “the only body with disaggregated records of the number of cases of children disappeared during the armed conflict.” Expert opinion given by Ana Georgina Ramos de Villalta *supra* note 35, (evidence file, volume XI, affidavits, folio 7530).

<sup>38</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/23); Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3540); Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/32).

<sup>39</sup> Cf. Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/31).

<sup>40</sup> Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541).

<sup>41</sup> Cf. United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador, *supra* note 31, (evidence file, volume IV, attachment 8 to the pleadings, motions and evidence brief, folio 3190), and Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

<sup>42</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/16), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/13).

<sup>43</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/14), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/11).

counterinsurgency strategy, there were other reasons, including taking children to give them up for adoption.<sup>44</sup>

54. According to the evidence received, the possible destinations of the children after they had been separated from their families and disappeared can be broken down as follows:<sup>45</sup> (1) adoptions through a formal process within the judicial system, with the majority assigned to foreign families, mainly in the United States, France and Italy;<sup>46</sup> (2) “*de facto*” adoptions or “appropriations,” consisting of cases in which Salvadoran families took custody of the children but never formalized the adoption;<sup>47</sup> (3) cases of “appropriation” by soldiers,<sup>48</sup> who included the children in their families as if they were their own, although in most cases the children were used for domestic or agricultural tasks;<sup>49</sup> (4) children raised in orphanages without guardians, in which those in charge of them did not try to find their parents,<sup>50</sup> and (5) children who grew up on military bases.<sup>51</sup> In addition, although it has not been proved in a court of law, the Search Association has compiled evidence indicating that some disappeared children were victims of illegal trafficking.<sup>52</sup> Finally, at September 2010, the Search Association had located 48 cases of children who had perished.<sup>53</sup>

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<sup>44</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folios 2619/15); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/12); Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541), and Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

<sup>45</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/28); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/22), and Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541). See also, *Case of the Serrano Cruz Sisters*, *supra* note 29, para. 48.6).

<sup>46</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/31), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/25).

<sup>47</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/32), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/26).

<sup>48</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/32), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/25).

<sup>49</sup> Cf. Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

<sup>50</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/66).

<sup>51</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/34), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/22).

<sup>52</sup> Cf. Asociación Pro-Búsqueda, *La paz en construcción*, *supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/33), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...*, *supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/20).

<sup>53</sup> Cf. Statistical data from the Asociación Pro-Búsqueda up until September 2010 (evidence file, volume IV, attachment 9 to the pleadings, motions and evidence brief, folio 3206).

55. Lastly, “in the cases of both adoptions through a legal procedure and appropriation of children, there was a practice of altering the minor’s identity; many were registered as sons and daughters; in other words, without the need to alter the records; in other cases the names or surnames were changed together with the child’s age.”<sup>54</sup>

**VII**  
**RIGHTS TO PERSONAL LIBERTY, HUMANE TREATMENT, LIFE, JURIDICAL PERSONALITY, PRIVACY AND FAMILY LIFE, IDENTITY, PROTECTION OF THE FAMILY, A NAME, AND OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE THE RIGHTS**

56. Given the importance of establishing the facts in this case that resulted in State responsibility, as well as the context in which they took place, so as to preserve the historical memory and avoid the repetition of similar acts<sup>55</sup> and as a form of reparations for the victims,<sup>56</sup> in this section the Court will ascertain the facts of the case and the international responsibility arising from them, based on the factual framework presented in the Inter-American Commission’s application and the State’s acknowledgment of responsibility and taking into consideration the representatives’ pleadings and motions brief and the body of evidence.

57. The Court will now proceed to establish the facts that constituted each forced disappearance of the victims in this case, who were children at the time, as well as the circumstances surrounding it. However, the Court considers it pertinent to emphasize that these disappearances took place in the context of the armed conflict described above, particularly during the first years, in incidents that lasted between three and twelve days and in which the forced disappearances of adults and children, extrajudicial executions, and damage to property were all documented. Nevertheless, the Court observes that the Inter-American Commission did not describe the specific context of each of the military operations in which the forced disappearances took place in their full breadth and context. Rather, it merely referred to the days and places strictly related to each specific incident. It was based on this factual framework that the State acknowledged its responsibility and it is to this framework that the Court will limit its ruling.

***A. Facts related to the forced disappearance of Ana Julia and Carmelina Mejía Ramírez***

58. Ana Julia Mejía Ramírez was born on April 12, 1966, and Carmelina Mejía Ramírez on June 27, 1974, both in the canton of Cerro Pando, in the municipality of Meanguera, Morazán, El Salvador. They are the daughters of Arcadia Ramírez and Tiburcio Mejía<sup>57</sup> and

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<sup>54</sup> Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador*, *supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3585). *Cf.* see also expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folios 7535 to 7537).

<sup>55</sup> *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 69; *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 47, and *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 31.

<sup>56</sup> *Cf. Case of Tiu Tojín*, *supra* note 18, para. 39; *Case of Valle Jaramillo et al.*, *supra* note 55, para. 47, and *Case of Zambrano Vélez et al.*, *supra* note 55, para. 31.

<sup>57</sup> *Cf.* Birth certificate of Ana Julia Mejía Ramírez issued by the Civil Registry Office of the Meanguera Mayor’s Office (evidence file, volume III, attachment 20 to the application, folio 2314), and Birth certificate of Carmelina

the sisters of María Nely, Santos Verónica and Avenicio, all with the last name Portillo,<sup>58</sup> as well as of Etelvina Mejía Ramírez, Carmelina's twin. In 1981, Ana Julia and Carmelina were living with their aunt Eloisa Portillo and their father, together with other family members, in the canton of Cerro Pando, because their mother was working in San Francisco Gotera.<sup>59</sup> Also, at that time, their brother Avenicio Portillo was a soldier was stationed at the San Francisco Gotera Barracks.<sup>60</sup>

59. The State has acknowledged that, during a counterinsurgency operation called "Operation Rescue," the Armed Forces arrived in the canton of Cerro Pando on December 13, 1981. Members of the Armed Forces entered the home of the Mejía Ramírez family, executing those they found there.<sup>61</sup> Ana Julia and Carmelina Mejía Ramírez "had hidden in the bushes, [so it was not until] other troops passed by that they were found and, upon emerging, they saw their family members dead."<sup>62</sup>

60. Later, Ester Pastora Guevara, the girls' godmother, who was taking refuge in the house of Herminia Argueta, saw members of the Armed Forces in charge of the operation pass by with Ana Julia and Carmelina Mejía Ramírez. This was how Ester Pastora learned of the situation and the soldiers decided to leave the girls with her. Ms. Guevara bathed them and changed them.<sup>63</sup> In the afternoon of the same day, as the State has acknowledged, members of the Atlacatl Battalion appeared and took Ana Julia and Carmelina, who were fourteen and seven years old, respectively. The same day, near the Meanguera church, they were seen for the last time in the custody of the soldier of the said Battalion together with other children. The following day, the troops were gone, as were the children.<sup>64</sup>

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Mejía Ramírez issued by the Civil Registry Office of the Meanguera Mayor's Office (evidence file, volume III, attachment 21 to the application, folio 2316).

<sup>58</sup> Cf. Birth certificates of María Nely Portillo, Santos Verónica Portillo and Avenicio Portillo issued by the Meanguera Mayor's Office (evidence file, volume VIII, attachment 44 to the pleadings, motions and evidence brief, folios 5028 to 5032).

<sup>59</sup> Cf. Statement made by Arcadia Ramírez Portillo before notary public (affidavit) on May 3, 2011 (evidence file, volume XI, affidavits, folios 7494 to 7495); Statement made by Reina Dionila Portillo de Silva before notary public (affidavit) on April 30, 2011 (evidence file, volume XI, affidavits, folios 7481 and 7483); Aggrieved party's statement made by Arcadia Ramírez Portillo on April 7, 1997, before the Second Court of First Instance of San Francisco Gotera (evidence file, volume III, attachment 26 to the application, folio 2332), and Sworn statement of Ester Pastora Guevara de Reyes made before notary public on September 2, 2005 (evidence file, volume III, attachment 30 to the application, folio 2355).

<sup>60</sup> Cf. Statement made by Arcadia Ramírez Portillo, *supra* note 59 (evidence file, volume XI, affidavits, folio 7495); Sworn statement of Eusebio Martínez made before notary public on September 1, 2005 (evidence file, volume III, attachment 29 to the application, folio 2343), and Sworn statement of Ester Pastora Guevara de Reyes, *supra* note 59 (evidence file, volume III, attachment 30 to the application, folio 2354).

<sup>61</sup> Cf. Testimony of Ester Pastora Guevara before the Second Court of First Instance of San Francisco Gotera on June 10, 1997 (evidence file, volume III, attachment 24 to the application, folios 2326 a 2327); Testimony of Eusebio Martínez Luna before the Second Court of First Instance of San Francisco Gotera on February 19, 1999 (evidence file, volume III, attachment 28 to the application, folio 2337); Testimony of María Lucrecia Romero before the Second Court of First Instance of San Francisco Gotera on February 19, 1999 (evidence file, volume III, attachment 28 to the application, folio 2338); Sworn statement of Eusebio Martínez, *supra* note 60, (evidence file, volume III, attachment 29 to the application, folio 2346), and Sworn statement of Ester Pastora Guevara de Reyes, *supra* note 59 (evidence file, volume III, attachment 30 to the application, folio 2354).

<sup>62</sup> Sworn statement of Ester Pastora Guevara de Reyes, *supra* note 59 (evidence file, volume III, attachment 30 to the application, folio 2354).

<sup>63</sup> Cf. Sworn statement of Ester Pastora Guevara de Reyes, *supra* note 59 (evidence file, volume III, attachment 30 to the application, folios 2353 to 2354).

<sup>64</sup> Cf. Testimony of José Santos Argueta before the Second Court of First Instance of San Francisco Gotera on June 10, 1997 (evidence file, volume III, attachment 25 to the application, folios 2329 to 2330), and Statement made by Eusebio Martínez, *supra* note 60 (evidence file, volume III, attachment 29 to the application, folios 2345 and 2346).

61. Arcadia Ramírez Portillo, the mother of Ana Julia and Carmelina Mejía Ramírez, made several attempts to find her daughters. Among other measures, she went to Chalatenango and to Santa Ana to look for the Atlacatl Battalion to seek information on the whereabouts of her daughters, without success.<sup>65</sup> She filed a complaint with the Second Trial Court of San Francisco de Gotera in April 1997 (*infra* para. 138) and she went to the Red Cross, often accompanied by her sister, Reina Dionila Portillo de Silva, with whom she took several measures to find them, including searching military barracks, children's homes, and with the Search Association.<sup>66</sup> Also, on November 10, 2000, Mrs. Portillo de Silva filed an application for *habeas corpus* before the Supreme Court of Justice (*infra* para. 159).

62. As of this date, the whereabouts of Ana Julia and Carmelina Mejía Ramírez are unknown.

***B. Facts related to the forced disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras***

63. Gregoria Herminia Contreras was born on May 9, 1978, Serapio Cristian Contreras on December 5, 1980, and Julia Inés Contreras on April 20, 1982, all in the Department of San Vicente, El Salvador.<sup>67</sup> All three are the children of María Maura Contreras and Fermín Recinos Ayala<sup>68</sup> and, at that time, the family also included Marta Daysi Leiva and Nelson Contreras.<sup>69</sup>

64. On August 24, 1982, "a large-scale military operation" was launched in several cantons of San Vicente, with the participation of units of the Fifth Infantry Brigade<sup>70</sup> and "at least, members of the Cavalry Regiment, the Armed Forces Engineers Training Center, and

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<sup>65</sup> Cf. Statement made by Arcadia Ramírez Portillo, *supra* note 59 (evidence file, volume XI, affidavits, folio 7498), and Statement made by Reina Dionila Portillo de Silva, *supra* note 59 (evidence file, volume XI, affidavits, folio 7486).

<sup>66</sup> Cf. Statement made by Arcadia Ramírez Portillo, *supra* note 59 (evidence file, volume XI, affidavits, folios 7498 a 7499), and Statement made by Reina Dionila Portillo de Silva, *supra* note 59 (evidence file, volume XI, affidavits, folio 7486).

<sup>67</sup> Cf. Birth certificate of Gregoria Herminia Contreras issued by the Civil Registry Office of the Mayor's Office of San Vicente (evidence file, volume III, attachment 10 to the application, folio 2180); Birth certificate of Serapio Cristian Contreras issued by the Civil Registry Office of the Mayor's Office of San Vicente (evidence file, volume III, attachment 11 to the application, folio 2182), and Birth certificate of Julia Inés Contreras issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume III, attachment 12 to the application, folio 2184).

<sup>68</sup> Cf. Statement made by María Maura Contreras before notary public (affidavit) on April 30, 2011 (evidence file, volume XI, affidavits, folio 7508); Statement made by Fermín Recinos before notary public (affidavit) on April 30, 2011 (evidence file, volume XI, affidavits, folio 7521), and Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>69</sup> Cf. Statement made by María Maura Contreras, *supra* note 68 (evidence file, volume XI, affidavits, folios 7507 and 7508); Statement made by Fermín Recinos, *supra* note 68 (evidence file, volume XI, affidavits, folios 7520 and 7521); Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011; Birth certificate of Marta Daisy Leiva issued by the Civil Registry Office of the Mayor's Office of San Vicente (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folios 5036 a 5037), and Death certificate of Nelson Contreras issued by the Civil Registry Office of the Mayor's Office of San Vicente (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folio 5038).

<sup>70</sup> Cf. Decision issued by the Ombudsman's Office in case SS-0449-96 on March 30, 1998 (evidence file, volume III, attachment 15 to the application, folio 2205), and Decision issued by the Constitutional Chamber of the Supreme Court of Justice in *habeas corpus* proceeding 215-2000 on February 17, 2003 (evidence file, volume III, attachment 13 to the application, folio 2188).

the Armed Forces Transmissions Training Center.”<sup>71</sup> The civilian population called the operation the “ring invasion,” “because they moved in so as to create a military fence, preventing their objectives from fleeing.” When the operation started, the civilian population immediately took refuge in the mountains, trying to hide from the soldiers.<sup>72</sup>

65. The State has acknowledged that, on August 25, 1982, the civilian population that was trying to take refuge in “La Conacastada” was discovered and shot at indiscriminately by military personnel. The Contreras Recinos family was part of this group. While they were fleeing, the soldiers caught up with their three children. In the words of María Maura Contreras: “the deponent had Julia Inés in her arms; she could not carry Gregoria and Serapio [who] had fallen a little behind and [...] on trying to climb a small mound she dropped Julia Inés [...]; also she could see that they had already caught up with Gregoria because they were pulling her by the hair, and they had also caught Serapio Cristian.”<sup>73</sup> At the time of the facts, Gregoria Herminia was four years and three months old, Serapio Cristian, one year and eight months, and Julia Inés, four months.

66. Once the operation was over, the civilian population regrouped and began the search for those who had disappeared.<sup>74</sup> Mrs. Contreras and Mr. Recinos returned to the place where they had last seen their children but “they did not find them either alive or dead.”<sup>75</sup> Subsequently, they learned that their children had been seen at a military post in Río Frío canton, to the north of the municipality of Tecoluca, as the State has acknowledged.

67. Mrs. Contreras took various steps to find her children.<sup>76</sup> In 1986, she went to search for them and denounced the situation to “[t]he Red Cross, the *Diario de Hoy*, CRIPDES, COMADRES, the El Salvador Human Rights Commission,” and eventually she contacted the Search Association.<sup>77</sup> In May 1996, the El Salvador Ombudsman’s Office (hereinafter also “the Ombudsman’s Office”) opened an investigation following a complaint filed by the Search Association (*infra* para. 134). On October 16, 2002, María Maura Contreras filed an application for *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice in favor of her children (*infra* para. 159).

68. To date, the whereabouts of Serapio Cristian and Julia Inés Contreras are unknown. On December 13, 2006, the Search Association issued a press release reporting on the

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<sup>71</sup> Decision issued by the Ombudsman’s Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folios 2230 and 2231), and Decision issued by the Constitutional Chamber, *supra* note 70 (evidence file, volume III, attachment 13 to the application, folio 2189).

<sup>72</sup> *Cf.* Decision issued by the Ombudsman’s Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2205). Similarly, see Decision issued by the Constitutional Chamber, *supra* note 70.

<sup>73</sup> Statement made by María Maura Contreras, *supra* note 68.

<sup>74</sup> *Cf.* Decision issued by the Constitutional Chamber, *supra* note 70 and Decision issued by the Ombudsman’s Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2207).

<sup>75</sup> Statement made by Fermín Recinos, *supra* note 68 (evidence file, volume XI, affidavits, folio 7522), and Statement made by María Maura Contreras, *supra* note 68 (evidence file, volume XI, affidavits, folio 7512).

<sup>76</sup> *Cf.* Statement made by Fermín Recinos, *supra* note 68 (evidence file, volume XI, affidavits, folio 7522); Statement made by María Maura Contreras, *supra* note 68 (evidence file, volume XI, affidavits, folio 7512), and Publication of the Human Rights Commission of El Salvador (evidence file, volume III, attachment 14 to the application, folios 2193 and 2194).

<sup>77</sup> *Cf.* Statement made by María Maura Contreras, *supra* note 68 (evidence file, volume XI, affidavits, folio 7512).

reunion of María Maura Contreras, Fermín Recinos and Gregoria Herminia Contreras Recinos.<sup>78</sup>

69. During this reunion, they were able to determine what had happened to Gregoria Herminia after August 25, 1982. In her words, “they captured us and told me to look after my little sister, and they asked me: What about your parents? And I told them that they were there, and then they followed them and told me that they had killed them; that was really hard because it was something that I didn’t want to hear, because I loved my parents [...]; that day we camped there all day, and the following day they took me to an unfamiliar place where I didn’t know anyone and they told me that he was going to be my father, the person who was taking me, the soldier and the woman, his mother, was going to be my mother.”<sup>79</sup> She also stated that, “the day that we camped was the last time [that I saw my siblings] because the next day a helicopter came; they took us in trucks, but we weren’t alone, there were a lot of other children; and my little brother, they took him to the barracks [...], and my other little sister supposedly to Armenia, another place, and that was the last time I saw them; I told them not to separate us, but they didn’t want to leave them with me; they didn’t want us to be together.”<sup>80</sup>

70. According to the records, Gregoria Herminia Contreras was registered as Gregoria de Jesús Molina in the Santa Ana Mayor’s Office on May 16, 1988, with a date of birth of December 3, 1979, in the canton of Ochupse Arriba and as the daughter of María Julia Molina, who stated that she was the mother.<sup>81</sup> To this day, she is registered under that name and with the other false personal data.

### ***C. Facts related to the forced disappearance of José Rubén Rivera Rivera***

71. José Rubén Rivera Rivera was born on October 15, 1978 in the canton of San Andrés Los Achotes, in San Vicente Department and he is the son of Agustín Antonio Rivera Gálvez and Margarita de Dolores Rivera de Rivera.<sup>82</sup> According to several statements by his mother<sup>83</sup> and a decision of the Ombudsman’s Office of March 30, 1998,<sup>84</sup> José Rubén was

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<sup>78</sup> Cf. Press communiqué of the Asociación Pro-Búsqueda of December 12, 2006, entitled “*Asociación Pro-Búsqueda encuentra a una de los tres hermanos Contreras. Caso por el que El Salvador ha sido demandado ante la Comisión Interamericana de Derechos Humanos*” [Search Association finds one of the three Contreras sister. Case for which El Salvador has been sued before the Inter-American Commission on Human Rights] (evidence file, volume III, attachment 17 to the application, folio 2236), and Newspaper article in *El Diario de Hoy* on December 13, 2006, entitled “*Familia se reúne 24 años después de ser separada*” [Family reunited 24 years after being separated] (evidence file, volume VII, attachment 40 to the pleadings, motions and evidence brief, folio 4556). See also, Statement made by María Maura Contreras, *supra* note 68 (evidence file, volume XI, affidavits, folio 7513); Statement made by Fermín Recinos, *supra* note 68 (evidence file, volume XI, affidavits, folio 7523), and Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>79</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>80</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>81</sup> Cf. Birth certificate in which Gregoria Herminia Contreras appears registered as Gregoria de Jesús Molina issued by the Civil Registry Office of the Mayor’s Office of Santa Ana (evidence file, volume VII, attachment 41 to the pleadings, motions and evidence brief, folio 4558).

<sup>82</sup> Cf. Birth certificate of José Rubén Rivera Rivera issued by the Civil Registry Office of the Mayor’s Office of Tecoluca (evidence file, volume X, attachment 5 to the brief answering the application, folio 7431), and Baptismal certificate of José Rubén Rivera Rivera issued by the Diocese of San Vicente (evidence file, volume VI, attachment 25 to the pleadings, motions and evidence brief, folio 3899).

<sup>83</sup> Cf. Statement made by Margarita de Dolores Rivera de Rivera before notary public (affidavit) on April 30, 2011 (evidence file, volume XI, affidavits, folio 7465); Statement made by Margarita de Dolores Rivera de Rivera

three years old in May 1983. In 1983, José Rubén Rivera Rivera's family lived in the canton of La Joya, San Vicente Department,<sup>85</sup> and, in addition to his parents, included his brothers Juan Carlos and Agustín Antonio Rivera.<sup>86</sup>

72. The State has acknowledged that, as of 1981, the civilian population of La Joya was affected by military operations that were initially carried out for short periods of time by small groups of soldiers. Thus, even though the population took refuge in the "mountains" when the operations took place, they could return to their homes from time to time. In 1982 conditions worsened because the presence of the Armed Forces became increasingly constant. In 1983, "the size of the operations increased massively."<sup>87</sup>

73. One of these large-scale operations, mostly composed of members of the Fifth Infantry Brigade and soldiers from the Cañas Battalion invaded the canton of La Joya on May 17, 1983; consequently the families abandoned their homes and took refuge on the hill known as "El Moncholo," also in the canton of La Joya.<sup>88</sup>

74. Mrs. Rivera, together with her three children, formed part of a group of persons pursued during the operation. Upon meeting up with her husband's nephew, the youth José David Rivera Velásquez, she gave him José Rubén so that he could take José Rubén on horseback together with other young children; however, Ms. Rivera lost sight of them during the flight.<sup>89</sup>

75. At dawn on May 18, 1983, the Armed Forces entered El Moncholo hill. When that happened, José David Rivera Velásquez and the young children with him were surprised by how close the troops were. The children were seen by the soldiers, who decided to take José Rubén and leave another two children abandoned in the area.<sup>90</sup>

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before the Asociación Pro-Búsqueda de Niños and Niñas Desaparecidos on November 24, 2005 (evidence file, volume VI, attachment 26 to the pleadings, motions and evidence brief, folio 3901), and Application for habeas corpus profiled by Margarita Dolores Rivera de Rivera before the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000 (evidence file, volume VI, attachment 27 to the pleadings, motions and evidence brief, folio 3919).

<sup>84</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2212).

<sup>85</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2212).

<sup>86</sup> Cf. Birth certificate of Juan Carlos Rivera issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folio 5017); Birth certificate of Agustín Antonio Rivera issued by the Civil Registry Office of the Mayor's Office of San Vicente (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folios 5020 and 5021); Statement made by Margarita de Dolores Rivera de Rivera, *supra* note 83 (evidence file, volume XI, affidavits, folio 7465), and Statement made by Agustín Antonio Rivera Gálvez before notary public (affidavit) on April 30, 2011 (evidence file, volume XI, affidavits, folio 7474).

<sup>87</sup> Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folios 2212 and 2213).

<sup>88</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2213).

<sup>89</sup> Cf. Statement made by Margarita de Dolores Rivera de Rivera, *supra* note 83 (evidence file, volume XI, affidavits, folio 7465); Statement made by Agustín Antonio Rivera Gálvez, *supra* note 86 (evidence file, volume XI, affidavits, folio 7475), and Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folios 2213 and 2214).

<sup>90</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folios 2213 and 2214); Aggrieved party's statement made by Margarita de Dolores Rivera de Rivera on November 15, 1996, before the Second Criminal Court of San Vicente (evidence file, volume III, attachment 43 to the application, folios 2408 and 2409); Testimony of José Vidal Rivera Rivas before the Second Criminal Court of

76. Subsequently, José David Rivera Velásquez told José Rubén's parents what had happened.<sup>91</sup> The Armed Forces left the hill and the surrounding areas on May 19, 1983, and José Rubén's father, among others, began searching for the children immediately. On May 21, 1983, the other children were found wandering alone in the hills.<sup>92</sup>

77. They found out that José Rubén had been seen while he was being taken away on the horse by soldiers. A relative of the child who was enlisted in the Fifth Infantry Brigade, with headquarters in the town of San Vicente, received information indicating that José Rubén had been seen in the barracks of the said Brigade following the operation, together with other children.<sup>93</sup> Additionally, diverse testimonies given during the domestic proceedings indicated that the Armed Forces had been seen taking José Rubén Rivera away.<sup>94</sup>

78. Margarita de Dolores Rivera de Rivera took various steps, with her husband, Agustín Antonio Rivera Gálvez, to find their son.<sup>95</sup> In November 1996, she denounced his disappearance before the Second Criminal Court of San Vicente (*infra* para. 138). In addition, she contacted the Search Association.<sup>96</sup> On November 10, 2000, Margarita de Dolores Rivera de Rivera filed an application for *habeas corpus* before the Constitutional Chamber of the Supreme Court (*infra* para. 159)

79. To date, the whereabouts of José Rubén Rivera Rivera are unknown.

***D. The forced disappearance of children as a multiple and continuing violation of human rights and of the obligation to respect and guarantee rights***

80. The Court considers it appropriate to reiterate the legal grounds that support an integral perspective with regard to the forced disappearance of persons owing to the plurality of conducts that, united with a single purpose, permanently violate legal rights

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San Vicente on November 29, 1996 (evidence file, volume III, attachment 43 to the application, folio 2412); Sworn statement of David Antonio Rivera Velásquez made before notary public on December 5, 2005 (evidence file, volume VI, attachment 29 to the pleadings, motions and evidence brief, folios 4129 to 4135), and Testimony of David Antonio Rivera Velásquez before the Second Trial Court of San Vicente (evidence file, volume X, attachment 5 to the answer to the application, folios 7153 and 7154).

<sup>91</sup> Cf. Statement made by Margarita de Dolores Rivera de Rivera, *supra* note 83 (evidence file, volume XI, affidavits, folio 7466); Statement made by Agustín Antonio Rivera Gálvez, *supra* note 86 (evidence file, volume XI, affidavits, folio 7475); Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2214), and Aggrieved party's statement made by Margarita de Dolores Rivera de Rivera, *supra* note 90.

<sup>92</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2214).

<sup>93</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2214).

<sup>94</sup> Cf. Aggrieved party's statement made by Margarita de Dolores Rivera de Rivera, *supra* note 90; Testimony of José Vidal Rivera Rivas, *supra* note 90; Testimony of Carlota Romero before the Second Criminal Court of San Vicente on November 27, 1996 (evidence file, volume III, attachment 41 to the application, folio 2396), and Sworn statement of Carlota Moreno made before notary public on November 29, 2005 (evidence file, volume III, attachment 42 to the application, folio 2400).

<sup>95</sup> Cf. Statement made by Margarita de Dolores Rivera de Rivera, *supra* note 83 (evidence file, volume XI, affidavits, folio 7467), and Statement made by Agustín Antonio Rivera Gálvez, *supra* note 86 (evidence file, volume XI, affidavits, folio 7476).

<sup>96</sup> Cf. Statement made by Margarita de Dolores Rivera de Rivera, *supra* note 83 (evidence file, volume XI, affidavits, folio 7467), and Statement made by Agustín Antonio Rivera Gálvez, *supra* note 86 (evidence file, volume XI, affidavits, folio 7476).

protected by the Convention, while those conducts persist.<sup>97</sup> It also wishes to make some observations on this issue, in view of the characteristics of these human rights violations against children in a context of armed conflict.

81. On previous occasions, the Court has observed that the attention paid by the international community to the phenomenon of forced disappearance of persons is not a recent development.<sup>98</sup> Since the 1980s, the United Nations Working Group on Enforced or Involuntary Disappearances has developed a working definition of the phenomenon, which stresses the illegal detention by agents, government agencies or organized groups of individuals acting in the name of the State or with its support, authorization, or consent.<sup>99</sup> The conceptual elements established by this Working Group were later taken up in the definitions in different international instruments.

82. The characterization of forced disappearance as an act that includes multiple offenses with regard to the rights affected and as continuing or permanent has also emerged consistently from this Court's case law since the first case it decided in 1988,<sup>100</sup> which was even prior to the definition contained in the Inter-American Convention on Forced Disappearance of Persons.<sup>101</sup> This characterization is consistent with other definitions contained in different international instruments<sup>102</sup> that indicate the following as concurrent elements constituting forced disappearance: (a) deprivation of liberty; (b) direct involvement of State agents or their acquiescence, and (c) refusal to acknowledge the detention and to reveal the fate or whereabouts of the individual in question.<sup>103</sup> On previous occasions, this Court has indicated that the case law of the European Court of Human Rights,<sup>104</sup> the decisions of different bodies of the United Nations,<sup>105</sup> and of several

<sup>97</sup> Cf. *Case of Radilla Pacheco*, *supra* note 25, para. 138; *Case of Gelman*, *supra* note 16, para. 72, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 101.

<sup>98</sup> Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 82; *Case of Gelman*, *supra* note 16, para. 66, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 102.

<sup>99</sup> Cf. Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-seventh session, U.N. Doc. E/CN.4/1435, of 22 January 1981, para. 4, and Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-ninth session, U.N. Doc. E/CN.4/1983/14, of 21 January 1983, paras. 130 to 132.

<sup>100</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 155; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 104, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 60.

<sup>101</sup> That Convention establishes that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees." Article II of the Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil, on June 9, 1994, at the twenty-fourth regular session of the General Assembly.

<sup>102</sup> Cf. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/61/177, of 20 December 2006; Article 7(2)(i) of the Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, of 17 July 1998, and Working Group on Enforced or Involuntary Disappearances, General Comment on Article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of 15 January 1996. Report to the Commission on Human Rights. U.N. Doc. E/CN.4/1996/38, para. 55.

<sup>103</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Gelman*, *supra* note 16, para. 65, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 104.

<sup>104</sup> Cf. *Eur. Court HR, Case of Kurt v. Turkey* (Application no. 15/1997/799/1002). Judgment of 25 May 1998, paras. 124 to 128; *Eur. Court HR, Case of Çakıcı v. Turkey* (Application no. 23657/94). Judgment of 8 July 1999, paras. 104 to 106; *Eur. Court HR, Case of Timurtas v. Turkey* (Application no. 23531/94). Judgment of 13 June

Constitutional Courts and other high courts of the American States<sup>106</sup> agree with the above-mentioned characterization.<sup>107</sup>

83. Additionally, in international law, the Court's case law has been in the vanguard of the consolidation of a comprehensive perspective of the seriousness and continuing or permanent nature of the forced disappearance of persons, in which the act of disappearance and its execution start with the deprivation of the liberty of the person and the subsequent lack of information about his fate, and remain while the whereabouts of the disappeared person are unknown and his identity has not been determined with certainty.<sup>108</sup> In keeping with the foregoing, the Court has reiterated that forced disappearance constitutes a multiple violation of several rights protected by the American Convention that places the victim in a state of complete defenselessness, resulting in other related violations, with the situation being particularly serious when it forms part of a systematic pattern or practice that is applied or tolerated by the State.<sup>109</sup> In brief, the practice of forced disappearance implies a crass abandonment of the essential principles on which the inter-American human rights system is based,<sup>110</sup> and both its prohibition and the correlating duty to investigate and, eventually, punish those responsible have achieved the status of *jus cogens*.<sup>111</sup>

84. The Court reiterates that the forced disappearance of persons constitutes a multiple violation, which begins with the deprivation of liberty, whatever the form it takes, in

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2000, paras. 102 to 105; *Eur. Court HR, Case of Tas v. Turkey* (Application no. 24396/94). Judgment of 14 November 2000, paras. 84 to 87, and *Eur. Court HR, Case of Cyprus v. Turkey* (Application no. 25781/94). Judgment of 10 May 2001, paras. 132 to 134 and 147 to 148.

<sup>105</sup> Cf. Human Rights Committee. *Ivan Somers v. Hungary*, Communication No. 566/1993, Views of 23 July 1996, para. 6.3; *E. and A.K. v. Hungary*, Communication No. 520/1992, Views of 5 May 1994, para. 6.4, and *Solórzano v. Venezuela*, Communication No. 156/1983, Views of 26 March 1986, para. 5.6.

<sup>106</sup> Cf. Supreme Court of Justice of the Bolivarian Republic of Venezuela, *Case of Marco Antonio Monasterios Pérez*, Judgment of August 10, 2007 (declaring the permanent nature of the crime of forced disappearance involving multiple offenses); Supreme Court of Justice of the Nation of Mexico, Thesis: P./J. 87/2004, "Forced disappearance of persons. The period granted before its prescribes begins [when] the victim appears or his or her fate is established" (affirming that forced disappearances are permanent crimes and that the prescription should begin to be calculated only when they cease); Criminal Chamber of the Supreme Court of Chile, *Case of Caravana*, Judgment of July 20, 1999; Plenum of the Supreme Court of Chile, *Case of the withdrawal of immunity from Pinochet*, Judgment of August 8, 2000; Court of Appeal of Santiago de Chile, *Case of Sandoval*, Judgment of January 4, 2004 (all declaring that the crime of forced disappearance is continuing, a crime against humanity, cannot prescribe, and cannot be subject to amnesty); Federal Chamber of Criminal and Correctional Appeal of Argentina, *Case of Videla et al.*, Judgment of September 9, 1999 (declaring that forced disappearances are continuing crimes and crimes against humanity); Constitutional Court of Bolivia, *Case of José Carlos Trujillo*, Judgment of November 12, 2001; Constitutional Court of Peru, *Case of Castillo Páez*, Judgment of March 18, 2004 (declaring, based on the decisions of the Inter-American Court in this case, that forced disappearance is a permanent crime until the whereabouts of the victim have been established), and Supreme Court of Justice of Uruguay, *Case of Juan Carlos Blanco* and *Case of Gavasso et al.*, judgments of October 18 and April 17, 2002, respectively.

<sup>107</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 83; *Case of Chitay Nech et al.*, *supra* note 98, para. 85, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 60.

<sup>108</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 59; *Case of Gelman*, *supra* note 16, para. 65, para. 73, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 103.

<sup>109</sup> Cf. *Case of Anzaldo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 59; *Case of Gelman*, *supra* note 16, para. 65, para. 74, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 103.

<sup>110</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 158; *Case of Gelman*, *supra* note 16, para. 75, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 105.

<sup>111</sup> Cf. *Case of Goiburú et al.*, *supra* note 107, para. 84; *Case of Gelman*, *supra* note 16, para. 183, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 137.

violation of Article 7 of the American Convention.<sup>112</sup> In the instant case, the Court has verified that State agents illegally took and kept the children, separating them and removing them from the custody of their parents or next of kin (*supra* paras. 60, 65, 66 and 75 to 77), which impaired their liberty in the broadest sense of Article 7(1) of the Convention.<sup>113</sup>

85. The Court's consistent case law recognizes that depriving individuals of liberty and placing them in the custody of official repressive bodies, State agents, or private individuals acting with the State's acquiescence or tolerance that perpetrate torture and murder with impunity represents in itself a breach of the obligation to prevent violations of the right to personal integrity, even when the acts that violate the rights cannot be proved.<sup>114</sup> In this case, the Court understands that the abduction of the children and their separation from their parents or next of kin under the conditions described, as well as the fact that they were taken into the custody of military personnel during a military operation, harmed the mental, physical and moral integrity of the children, a right recognized in Article 5 of the American Convention,<sup>115</sup> Leading to feelings of loss, abandonment, intense fear, uncertainty, anguish, and pain, all of which could vary or intensify depending on age and the specific circumstances.<sup>116</sup>

86. In addition, in the specific case of children separated from their parents or next of kin in the context of armed conflict, who are in a situation of special vulnerability, their appropriation, with different objectives, is often considered a normal consequence of armed conflict or, in any case, inherent in it, which is what happened, at least in the case of Gregoria Herminia. Treating children as objects susceptible of appropriation harms their dignity and personal integrity, and it is the State that should ensure their protection and survival, as well as prioritize measures to promote family reunification.<sup>117</sup> In this regard, the Inter-American Court has indicated that an obligation exists to apply "the highest standard

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<sup>112</sup> Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 112; *Case of Gelman*, *supra* note 16, para. 91, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 122.

<sup>113</sup> Article 7(1) of the Convention establishes that: "[e]very persons has the right to personal liberty and security."

<sup>114</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 175; *Case of Gelman*, *supra* note 16, para. 95, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 122.

<sup>115</sup> Article 5(1) of the Convention stipulates that: "[e]very persons has the right to have his physical, mental and moral integrity respected."

<sup>116</sup> "Each child reacts differently to the impact of armed conflict. Their response depends on their age, gender, personality type, personal and family history, cultural background and experience, as well as on the nature and duration of the event." United Nations, *The Machel review, 1996-2000: a critical analysis of progress made and obstacles encountered in increasing protection for war-affected children*, A/55/749, 26 January 2001, p. 27. For example, among the different circumstances that can influence the psychosocial repercussions of violence on children, "include individual factors such as age, sex, personality type, personal and family history and cultural background. Other factors will be linked to the nature of the traumatic events, including their frequency and the length of the exposure. Children who suffer from stress display a wide range of symptoms, including increased separation anxiety and developmental delays, sleep disturbances and nightmares, lack of appetite, withdrawn behaviour, lack of interest in play, and, in younger children, learning difficulties. In older children and adolescents, responses to stress can include anxious or aggressive behaviour and depression." United Nations, *Impact of armed conflict on children, Report of the expert of the Secretary General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157, A/51/306*, 26 August 1996, para. 168. Similarly, in the context of flight from armed conflict, "[a]lthough the decision to leave is normally taken by adults, even the youngest children recognize what is happening and can sense their parents' uncertainty and fear." United Nations, *Impact of armed conflict on children*, *supra*, para. 67.

<sup>117</sup> Cf. United Nations, *The Machel review, 1996-2000*, *supra* note 116, pp. 14 and 27. In addition, see Convention on the Rights of the Child and provisions of international humanitarian law, such as Article 4(3) of the Protocol Additional to the 1949 Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

to determine the criminal nature of actions that impair [the] personal integrity [of children].”<sup>118</sup>

87. In addition, regarding the forced disappearances of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, the authorities’ refusal to acknowledge the said deprivation of liberty has been verified, as has its refusal to provide information on the whereabouts or fate of the victims, despite the measures taken by their next of kin and by the bodies in charge of the investigations (*supra* paras. 61, 67 and 78 and *infra* paras. 162 and 168).

88. Thus forced disappearance also leads to a violation of the right to recognition of juridical personality established in Article 3 of the American Convention,<sup>119</sup> given that forced disappearance seeks not only one of the most serious ways of removing a person from the whole sphere of the legal system, but also denies his existence and leaves him in a sort of limbo or situation of juridical uncertainty before society and the State,<sup>120</sup> especially when his identity has been altered illegally.

89. It has been proved that many of the disappeared children were registered under false information or had their personal data altered,<sup>121</sup> as in the case of Gregoria Herminia. The effects of this are twofold: on the one hand, for the children who were appropriated, it makes it impossible to find their family and to learn their biological identity and, on the other, for the family of origin, who are prevented from exercising the legal remedies to re-establish the biological identity and the family ties and end the deprivation of liberty. In this regard, a statement made by Gregoria Herminia is illustrative: “If I had known even my name or my surname, I [...] would have looked for [my parents], but I didn’t have that possibility and I think that what happened to me is also happening to my siblings, to other children, there are many who are suffering in the same way.”<sup>122</sup> That violation only ceases when the truth about the identity is revealed in some way and the victims are guaranteed the legal and real possibility of recovering their true identity and, where appropriate, the family ties, with the pertinent legal consequences.<sup>123</sup>

90. Regarding Article 4(1) of the American Convention,<sup>124</sup> the Court has considered that, owing to the nature of forced disappearance, the victim is in an aggravated situation of vulnerability, which gives rise to the risk that several rights may be violated, including the right to life. This situation is accentuated in the presence of a systematic pattern of human

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<sup>118</sup> *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs.* Judgment of July 8, 2004. Series C No. 110, para. 170.

<sup>119</sup> Article 3 of the Convention establishes that: “[e]very person has the right to recognition as a person before the law.”

<sup>120</sup> *Cf. Case of Anzualdo Castro, supra* note 109, para. 90; *Case of Gomes Lund et al. (Guerrilha do Araguaia), supra* note 97, para. 122, and *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 98.

<sup>121</sup> *Cf.* Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, affidavits, folio 7534), and Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/31).

<sup>122</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>123</sup> *Cf. Case of Gelman, supra* note 16, para. 131.

<sup>124</sup> Article 4(1) of the Convention stipulates that: “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

rights violations and when children are involved, as in this case, given that the illegal removal of their biological parents also jeopardizes the life, survival and development of the children,<sup>125</sup> the latter understood in its broadest sense to include its physical, mental, spiritual, moral, psychological, and social aspects.<sup>126</sup> In the same way, the Court has established that the lack of an investigation into what happened represents a breach of the State's obligation to guarantee to all persons subject to its jurisdiction the inviolability of life and the right not to be deprived of life arbitrarily, which includes the reasonable prevention of situations that could result in the suppression of that right.<sup>127</sup>

91 Based on the rights established and the acknowledgement of State responsibility, it has been proved that State agents, specifically, members of the Salvadoran Armed Forces, illegally abducted and held Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras, and José Rubén Rivera Rivera, as of December 13, 1981, August 25, 1982, and May 18, 1983, respectively, in the course of different counterinsurgency operations during the armed conflict in El Salvador. In addition, it has been proved that a soldier who took Gregoria Herminia Contreras registered her as part of his family.

92 Because the subsequent whereabouts or fate of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera are still unknown, the Court finds that they are still subject to forced disappearance. In the case of Gregoria Herminia Contreras, who was located in 2006, her situation must also be categorized as a forced disappearance that ceased when her identity was determined.

93. Consequently, the State is responsible for the forced disappearance of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera and the resulting violation of the rights recognized in Articles 7, 5(1), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof.

94. The Inter-American Court underscores the seriousness of the facts *sub judice* that took place between 1981 and 1983 in the context of the most brutal phase of the armed conflict in El Salvador (*supra* paras. 48 to 50). Evidently, the disappearances of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera were not isolated incidents, but formed part of the systematic pattern of forced disappearance of children by the State that has been verified during the armed conflict in El Salvador. And the State has acknowledged this (*supra* para. 17).

### ***E. The right to personal integrity of Gregoria Herminia Contreras***

95. In the application the Commission stated that, “[a]ccording to the information provided by Gregoria Herminia, she was subjected to different kinds of physical and mental abuse and forced to perform domestic tasks,” which proves that “her right to personal integrity continued to be violated for many years and [...] persists to this day.” Similarly, the

<sup>125</sup> Cf. *Case of Gelman*, *supra* note 16, para. 130.

<sup>126</sup> Cf. United Nations, Committee on the Rights of the Child, General Comment No. 5, *General measures of implementation for the Convention on the Rights of the Child (Articles 4, 42 and 44(6))*, CRC/GC/2003/5, of 27 November, 2003, para. 12.

<sup>127</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 188; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 122, and *Case of Chitay Nech et al.*, *supra* note 98, para. 96.

representatives pointed out that “[w]hile she was in the custody of the soldier Molina and his family, she was victim of numerous types of physical and mental ill-treatment.” On this point, the State declared that it specifically acknowledges this aspect of the application, with regard to the declarations of Gregoria Herminia Contreras concerning her disappearance and subsequent situation.”

96. In her testimony during the public hearing, Gregoria Herminia Contreras described the treatment and abuse she received during the time she was with the Molina family. Among other things, she indicated that she was the victim of sexual abuse. When she had concluded her testimony, the State asked to speak and declared that “it wishe[d] to advise Gregoria Herminia that the State has acknowledged her story, the testimony of her suffering, as the truth of what occurred in the instant case”; in other words, that it accepted the facts.

97. The Commission indicated that, since the State of El Salvador had reiterated its acknowledgement of international responsibility during the public hearing and, specifically acknowledged as true the facts narrated by Gregoria Herminia Contreras at the hearing, the Inter-American Court must rule on the legal consequences of these facts. The representatives stated that the rape of which Gregoria Herminia Contreras was a victim when she was 10 years of age should be categorized as torture. For its part, the Commission added that the acts of sexual abuse suffered at different moment of her life, as well as the rape, constituted torture and were contrary to Articles 5(1) and 5(2) of the American Convention,<sup>128</sup> and should also be considered as having affected her privacy, giving rise to a violation of Article 11 of the Convention. The State did not submit specific legal arguments in this regard.

98. Gregoria Herminia stated that “just the fact of having [the surname] Molina is painful [for her] because [Mr.] Molina harmed [her] a great deal.”<sup>129</sup> Thus, she indicated: “although I was only four years old [...] the soldier who took me, he abused me, I mean, they always made me wear a skirt and he was always touching me, so I was always very afraid of him and always lived with that fear; then time passed and I grew up and had to go around selling things to be able to eat because, if I didn’t, they would tell me that if I didn’t work, I couldn’t eat; so they had me selling vegetables and stuff and I walked the streets and sometimes spent the entire day hungry, but when I got home, if I arrived and still had the merchandise they hit me, [...] so I lived with that fear, constantly afraid of what could happen to me, what they were going to do; I would always try to get away, to go out, to not be there [...]. The time came, I kept growing and he always hit me if I didn’t go, but I didn’t go because I was afraid, because I told myself, he’s going to keep touching me, because I told him, I’m going to tell my mother - because I called his mother my mother - then he said to me, if you tell her, I’m going to kill you, because I still have guns, and he always threatened me with that, [...] and I always lived like that, I never had peace, I mean, they never saw me as a daughter, they always saw me as a guerrilla, I was always humiliated,

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<sup>128</sup> The pertinent parts of Article 5 of the Conventions stipulate:

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>129</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

mistreated; they always said I was a guerrilla; I always suffered disdain, humiliation, I never had any peace.”<sup>130</sup>

99. In addition, expert witness María Sol Yáñez described how “Gregoria has very deep anguish owing to the abandonment, from being unable to have love and caresses and affection. When children are small, they should spend their time playing and daydreaming; Gregoria had to spend her time surviving and, in addition, she was mistreated and [...] raped.”<sup>131</sup> Furthermore, she classified those years in the life of Gregoria Herminia as a period of “general ill-treatment”<sup>132</sup> and of “a daily context of [...] dehumanization,”<sup>133</sup> during which she was accused “of being a guerrilla.”<sup>134</sup>

100. The Court considers that the separation of children from their families under the circumstances of this case has had specific and especially serious effects on their personal integrity that could have a lasting impact. In the case of Gregoria Herminia Contreras, the soldier Molina assured her that her parents had been killed in the context of the armed conflict in El Salvador (*supra* para. 69), which caused her intense mental suffering. In addition, the Court finds that Gregoria Herminia Contreras was subjected to various forms of physical, mental and sexual abuse, including physical mistreatment, exploitation, humiliation, and threats by her aggressor, who also raped her at knifepoint,<sup>135</sup> in circumstances where she was in a situation of absolute defenselessness and helplessness,<sup>136</sup> as well as subject to the custody, authority and complete control of the soldier Molina. Moreover, the Court emphasizes that rape is an extremely traumatic experience that can have serious consequences and cause great physical and mental harm.<sup>137</sup>

101. In this regard, it has been said that, “[v]iolence against children takes a variety of forms and is influenced by a wide range of factors, from the personal characteristics of the victim and perpetrator to their cultural and physical environments”<sup>138</sup> and includes “all forms

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<sup>130</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>131</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>132</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>133</sup> Expansion of the expert opinion provided by María Sol Yáñez de la Cruz on June 8, 2011 (evidence file, volume XI, affidavits, folio 7575/10).

<sup>134</sup> Expansion of the expert opinion provided by María Sol Yáñez de la Cruz, *supra* note 133, and Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>135</sup> *Cf.* Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>136</sup> In this regard, it is worth underlining that Gregoria Herminia Contreras declared: “I had no one at that time; I wanted to have my real parents, because I was sure that if I had had them, none of this would have happened to me; I suffered a great deal because no one helped me.” Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>137</sup> *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 114, and *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 124.

<sup>138</sup> *Case of González et al. (“Campo Algodonero”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 407, citing United Nations, sixty-first session, Agenda item 62 of the provisional program: Promotion and protection of the rights of the child. *Report of the*

of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”<sup>139</sup> Furthermore, different international bodies have acknowledged that during armed conflicts women and girls face specific situations affecting their human rights, such as rape, which is often used as a “symbolic means of humiliating the opposing side.”<sup>140</sup> In addition, “sexual violence predominantly affects those who have reached puberty or adolescence,” with girls being the most exposed to suffering this kind of violence.<sup>141</sup> Sexual abuse is constituted by acts of a sexual nature committed against a person without their consent, which, in addition to including the physical invasion of the human body, can include acts that do not involve penetration or even any physical contact.<sup>142</sup>

102. The Court finds that all the ill-treatment suffered by Gregoria Herminia, her age, the circumstances of her disappearance, and the impossibility of turning to her own family for protection, placed her in a state of elevated vulnerability that exacerbated the suffering she endured. The Court stresses that Gregoria Herminia Contreras suffered the said acts of violence for almost 10 years, that is to say, from the age of four to the age of 14.<sup>143</sup> Based on all this, the Court finds that all the ill-treatment, physical and mental abuse, humiliation and suffering that permeated the life of Gregoria Herminia during her appropriation, as well as the acts of rape to which she was submitted while under the control of the soldier Molina, constituted a violation of Article 5(2) of the American Convention, which prohibits torture and cruel, inhuman or degrading treatment, in relation to Article 1(1) of this instrument, to the detriment of Gregoria Herminia Contreras. The Court will refer to the arguments relating to Article 11 of the Convention in the next section.

***F. The rights of the child to protection of the family, a name, privacy and family life and identity***

103. Both the Commission and the representatives argued that, in this case, the right to identity, the rights of the family, the right to a name and the right to special measures of protection for children have been violated. The State acknowledged its international responsibility for the violation of the rights to protection of the family, a name, identity, and

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*independent expert for the United Nations study of violence against children, Paulo Sérgio Pinheiro, submitted pursuant to General Assembly resolution 60/231. A/61/299, 29 August 2006, para. 25.*

<sup>139</sup> United Nations, sixty-first session, Agenda item 62 of the provisional program: Promotion and protection of the rights of the child. *Report of the independent expert for the United Nations study of violence against children, Paulo Sérgio Pinheiro, supra* note 138, para. 8.

<sup>140</sup> United Nations, Committee for the Elimination of Discrimination against Women, eleventh session. General recommendation 19 “Violence against women.” Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 16; United Nations, Commission on Human Rights, fifty-seventh session, 2001, *Report of Ms. Radica Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences*, submitted in accordance with Commission on Human Rights resolution 2000/45, “Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997- 2000),” E/CN.4/2001/73, para. 44.

<sup>141</sup> *Cf. Case of González et al. (“Campo Algodonero”), supra* note 138, para. 407, citing United Nations, sixty-first session, Agenda item 62 of the provisional program: Promotion and protection of the rights of the child. *Report of the independent expert for the United Nations study of violence against children, Paulo Sérgio Pinheiro, supra* note 138, para. 30.

<sup>142</sup> *Cf. Case of the Miguel Castro Castro Prison, supra* note 137, para. 306; *Case of Rosendo Cantú et al., supra* note 137, para. 109, and *Case of Fernández Ortega et al., supra* note 137, para. 119.

<sup>143</sup> *Cf.* Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011. The parties agree that Gregoria Herminia Contreras left that house when she was 14 years of age.

the protection of children, recognized in Articles 17,<sup>144</sup> 18,<sup>145</sup> and 19<sup>146</sup> of the American Convention, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera. In addition, it specified that, “by understanding forced disappearance as a serious violation of the human rights of the direct victims and their next of kin, the State acknowledges that these facts also violated the right to protection of the family, not only of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera, but also of their families.

104. Despite the foregoing, the Court observes that there is a difference as regards the arguments on the legal grounds for the right to identity in the text of the Convention according to the Commission<sup>147</sup> and the representatives,<sup>148</sup> and that the State did not specify

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<sup>144</sup> The pertinent part of Article 17 of the Convention stipulates: “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

<sup>145</sup> Article 18 of the Convention establishes: “[e]very person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.”

<sup>146</sup> Article 19 of the Convention establishes: “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.”

<sup>147</sup> For the Commission, Articles 18 and 19 of the Convention incorporate a right to identity in such a way that the total or partial suppression or modification of a child’s right to preserve his or her identity and the elements that make up that identity can involve State responsibility. In this specific case, the Commission alleged that the State, by forcibly disappearing Gregoria Herminia Contreras and facilitating the replacement of her identity through a legal name change, violated the rights acknowledged in Articles 18 and 19 of the Convention in relation to Article 1(1) of the Convention, which meant that despite the inexhaustible efforts of her mother, María Maura Contreras, to find her along with the support of the Search Association and the Ombudsman’s Office, they were not able to locate her for more than two decades. Likewise, the Commission argued that, taking into account that all the alleged victims were children at the time of their forced disappearance, the Salvadoran State had failed to comply with the obligations derived from Article 17 of the Convention, interpreted jointly with Article 19 of the same instrument. At the same time, it held that the right of all individuals to receive protection against arbitrary or illegal interference in their families forms an implicit part of the right to protection of the family and the child, and in the event that a child is separated from his or her immediate family, the State must work to preserve that bond by temporarily intervening and orienting its actions toward reincorporating the child back into his or her family and community, as long as that reincorporation is not contrary to the child’s best interest. In sum, the Commission asked the Court to conclude and rule that the State had violated Article 17 of the American Convention with regard to the obligations established in Article 1(1) of the Convention, to the detriment of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Ramírez, and José Rubén Rivera as well as the members of their families, and its obligations established in Article 19 of the American Convention in relation to Article 1(1) of the Convention, to the detriment of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Ramírez, and José Rubén Rivera.

<sup>148</sup> The representatives alleged that the right to identity “must be considered to incorporate the right to family, the right to a name, and the right to juridical personality,” while previously they had held that from the right to identity derive the rights to family and name, which “have been directly affected in this case.” According to the representatives, the family separation deeply affected the alleged victims’ right to identity, for which reason they requested that the Court find the Salvadoran State responsible for the violation of the rights of the alleged victims in this case to family as an element of the right to identity. In the same way, the representatives argued that this Court should assume that the same occurred with all the children who are victims in this case, in particular with the youngest, “as their own “self” was affected when they were taken from their family and community environment.” In addition, in the case of the alleged victims who were children, they also allege a violation of their right to be subject to special protective measures. The Salvadoran State did not adopt any measure to promote family reunification, or any measure to aid in the recovery of the children who were found from the trauma caused by having been separated from their families for so many years, or any special measures of protection. To the contrary, it ensured that the families would not be reunited through different acts and omissions. With regard to the right to a name, they argued that, according to the facts alleged in this case, it is possible to establish with certainty that Gregoria Herminia Contreras had her original name taken away from her and that the soldier who took her from her parents’ care registered her with a different name - a name that she keeps to this day - and that even though the State is aware of what happened to her, it has not taken any measure to facilitate the recovery of her original identity. Consequently, they requested that the Salvadoran State be declared responsible for the

which of these the acknowledgment applies to. Similarly, the Court notes that the Commission asserted the violation of the right to identity and a name only with regard to Gregoria Herminia Contreras, while the representatives did so with regard to Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras, and José Rubén Rivera Rivera based on specific reasons they gave, among which they mentioned that the systematic practice of forced disappearance which existed at the time included changing names, and that the other cases fit perfectly into that pattern. Thus, it is necessary to make the pertinent clarifications and to establish to whose detriment these rights have been violated.

105. First, it is important to clarify that, in the instant case, the arguments concerning the right to identity must be analyzed in the context of the forced disappearance of children by State agents during the armed conflict in El Salvador and their subsequent appropriation. One of the objectives of these actions was to suppress or eliminate the identity of children of families considered “guerrillas” (*supra* para. 53), with no certainty in all cases about the children’s subsequent whereabouts or fate.

106. The Court has already established in its case law that the separation of children from their family constitutes, under certain conditions, a violation of their right to a family, recognized in Article 17 of the American Convention.<sup>149</sup> In this regard, it is important to recall that the Court has also indicated that “children have a right to live with their families, which are called on to meet their material, affective and psychological needs.”<sup>150</sup> Also, under Article 11(2) of the Convention,<sup>151</sup> everyone has the right to receive protection against arbitrary or illegal interference with their family,<sup>152</sup> especially children, given that the family plays an essential role in their development.<sup>153</sup>

107. In this context, it is important to determine which special and distinctive measures the State should have taken in keeping with its obligations under Article 19 of the Convention, with specific attention to the holder of the right and to the best interest of the child.<sup>154</sup> Thus, from the provisions of the Convention on the Rights of the Child, which

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violation of the right to a name of the alleged victims in this case as an element of the right to identity, as well as for the violation of the right to be subject to special measures of protection.

<sup>149</sup> Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 71; *Case of Gelman*, *supra* note 16, para. 125, and *Case of Chitay Nech et al.*, *supra* note 98, para. 157.

<sup>150</sup> *Advisory Opinion OC-17/02*, *supra* note 149, para. 71; *Case of Chitay Nech et al.*, *supra* note 98, para. 157, and *Case the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 188.

<sup>151</sup> Article 11(2) of the Convention stipulates that: “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

<sup>152</sup> Cf. *Advisory Opinion OC-17/02*, *supra* note 149, para. 71; *Case of Chitay Nech et al.*, *supra* note 98, para. 156, and *Case the Dos Erres Massacre*, *supra* note 150, para. 188.

<sup>153</sup> Cf. *Advisory Opinion OC-17/02*, *supra* note 149, para. 71; *Case of Gelman*, *supra* note 16, para. 130, and *Case the Dos Erres Massacre*, *supra* note 150, para. 188. Similarly, Article 16 of the Additional Protocol to the American Convention on Human Rights in the area of Economic Social and Cultural Rights “Protocol of San Salvador” establishes that “[e]very child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother.

<sup>154</sup> Cf. *Advisory Opinion OC-17/02*, *supra* note 149, para. 56; *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 257, and *Case of Chitay Nech et al.*, *supra* note 98, para. 164.

comprise the *corpus juris* of the rights of the child,<sup>155</sup> it can be derived that the State must not only abstain from interfering unduly in the private or family relationships of the child, but must also, according to the circumstances, adopt positive measures to ensure the full exercise and enjoyment of his or her rights.<sup>156</sup> This requires the State, in the context of its responsibility for the common good, to safeguard the preponderant role of the family in the protection of the child and to ensure that the public authorities assist the family through the adoption of measures that promote family unity.<sup>157</sup> Furthermore, in the context of internal armed conflicts, the State's obligations to children are defined in Article 4(3) of Protocol II additional to the Geneva Convention, which stipulates that: "Children shall be provided with the care and aid they require, and in particular: [...] (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated [...]."<sup>158</sup>

108. In brief, it was the State's responsibility to protect the civilian population during the armed conflict, especially the children,<sup>159</sup> who were in a situation of greater vulnerability and risk of having their rights affected. However, in this case, State agents acted completely outside the law, using the State's structures and facilities to perpetrate the forced disappearance of children through the systematic repression of certain segments of the population considered subversives or guerrillas, or in some way against the Government. Consequently, interference with family life has been confirmed, which had an impact not only on Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, when they were illegally abducted and retained (*supra* para. 84), violating their right to remain with their family group and to establish relationships with other individuals who formed part of it, but also generated and continues to generate specific effects on each of the members of the family, as well as on the individual dynamics of each family (*infra* para. 123).

109. Therefore, the State violated the right to a family, recognized in Article 17(1) of the Convention, as well as, in application of the *iuria novit curia* principle, the right embodied in Article 11(2) of the Convention, in relation to Articles 19 and 1(1) of that instrument, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera. In the same way, the State violated Articles 17(1) and 11(2) of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of their families.

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<sup>155</sup> Cf. *Advisory Opinion OC-17/02*, *supra* note 149, para. 24; *Case of Gelman*, *supra* note 16, para. 121, and *Case of Chitay Nech et al.*, *supra* note 98, para. 165.

<sup>156</sup> Cf. Articles 7, 8, 9, 11, 16, and 18 of the Convention on the Rights of the Child.

<sup>157</sup> Cf. *Advisory Opinion OC-17/02*, *supra* note 149, para. 88, and *Case of The Dos Erres Massacre*, *supra* note 150, para. 190.

<sup>158</sup> According to the International Committee of the Red Cross, this obligation has been defined as that "[t]he parties in conflict must do everything possible to re-establish family ties; that is not only permit the searches undertaken by members of dispersed families, but even facilitate them." Commentary on the Protocol Additional to the 1949 Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Section B. Family reunion, para. 4553. El Salvador has been a party to Protocol Additional to the 1949 Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) since November 23, 1978.

<sup>159</sup> Article 38 of the Convention on the Rights of the Child stipulates:

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

110. Regarding the right to a name, the Court has established that it “constitutes a basic and indispensable element of the identity of each person.”<sup>160</sup> In this regard, the Court has indicated that, “States must ensure that every person is registered under the name that his or her parents have chosen, whenever the registration takes place, without any type of restriction to the right or interference in the decision to choose the name. Once a person is registered, the possibility of preserving and re-establishing the given name and surname must be ensured. The given name and surname are essential to establish formally the connection that exists between the different members of the family.”<sup>161</sup>

111. In this regard, the Court found it proven that the persons who appropriated Gregoria Herminia Contreras at the age of four, registered her with false personal data on May 16, 1988, altering, among other elements, part of the name and the surname given to her by her biological parents, personal data with which she has lived since then. The change in her name and surname, carried out to conceal her identity, still remains because the State has not taken the necessary measures to make the pertinent changes in her registration and identity document, including not only her name and surname, but also the date and place of birth, and the information on her biological parents.<sup>162</sup> Therefore, the State is responsible for the violation of Article 18 of the Convention, in relation to Article 1(1) thereof, to the detriment of Gregoria Herminia Contreras.

112. Nevertheless, the Court has recognized<sup>163</sup> that the right to identity is not expressly provided for in the American Convention.<sup>164</sup> However, Article 29(c) of this instrument establishes that “[n]o provision of this Convention shall be interpreted as [...] precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government.” In this regard, the Court has used the “Norms on Interpretation” of this article to clarify the content of certain provisions of the

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<sup>160</sup> *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of September 8, 2005. Series C No. 130, para. 182; *Case of Gelman, supra* note 16, para. 127, and *Case of the Dos Erres Massacre, supra* note 150, para. 192.

<sup>161</sup> *Case of the Yean and Bosico Girls, supra* note 160, para. 184, and *Case of the Dos Erres Massacre, supra* note 150, para. 192.

<sup>162</sup> *Cf.* Passport issued by the Republic of El Salvador in which Gregoria Herminia Contreras appears as Gregoria de Jesús Molina (merits file, volume II, folio 860); Birth certificate in which Gregoria Herminia Contreras appears registered as Gregoria de Jesús Molina, *supra* note 81, and Birth certificate of Gregoria Herminia Contreras, *supra* note 67.

<sup>163</sup> *Case of Gelman, supra* note 16, para. 122.

<sup>164</sup> Similarly, within the European framework of human rights protection, there is no provision explicitly recognizing a right to identity in the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the European Court of Human Rights has consistently found that Article 8 of the European Convention “protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world.” Thus private life includes aspects of “an individual’s social and physical identity.” In addition, private life protects “gender identification, name and sexual orientation and sexual life, [...] the right to personal development, and the right to establish and develop relationships with other human beings and the outside world.” *Eur. Court HR, Case of Bensaid v. The United Kingdom* (Application no. 44599/98). Judgment of 6 February 2001, para. 47; *Eur. Court HR, Case of Pretty v. The United Kingdom* (Application no. 2346/02). Judgment of 29 April 2002, para. 61, and *Eur. Court HR, Case of Peck v. United Kingdom* (Application no. 44647/98). Judgment of 28 January 2003, para. 57. That European Court’s case law refers abundantly to the right to identity, a significant part of which relates to the right to information on the biological truth. In this regard, it has indicated that a broad interpretation of the scope of the notion of private life also recognizes the right of all individuals “to know their origins.” On this aspect, the European Court has indicated that “people have a vital interest, protected by the Convention, in receiving the necessary information to know and to understand their childhood and early development.” *Eur. Court HR, Case of Odièvre v. France* (Application no. 42326/98). Judgment of 13 February 2003, paras. 42 and 44. See also, *Eur. Court HR, Case of Mikulić v. Croatia* (Application no. 53176/99). Judgment of 7 February 2002, paras. 57 and 64.

Convention<sup>165</sup> so that an important source of reference regarding Article 29(c) of the American Convention and the *corpus juris* of international human rights law,<sup>166</sup> is the Convention on the Rights of the Child,<sup>167</sup> an international instrument that expressly recognizes the right to identity. Its Article 8(1) indicates that “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as acknowledged by law without unlawful interference.” From the regulation of the norm contained in the Convention on Rights of the Child, it can be deduced that identity is a right that encompasses several elements, including nationality, name and family relationships, included in the said article in a descriptive but not restrictive manner. In the same way, the Inter-American Juridical Committee has underlined that the “right to identity is consubstantial to human attributes and dignity,” and an autonomous right, possessing “a central nucleus of clearly identifiable elements that include the right to a name, the right to nationality, and the right to family relationships.” In fact, “it is a fundamental human right opposable *erga omnes* as an expression of a collective interest of the international community as a whole, which admits neither annulment nor suspension in the cases established in the American Convention.”<sup>168</sup> Consequently, in the circumstances of this case, and taking into consideration the context of the terms of the American Convention, interpreted in light of Article 31 of the Vienna Convention, the Court finds that the series of violations of the rights established in the American Convention that were analyzed constitute a violation of the right to identity, which is inherent in the human being, and is stipulated expressly in the Convention on the Rights of the Child.

113. In this regard, this Court has previously established that “the right to identity can be conceptualized, in general, as a collection of attributes and characteristics that allow for the individualization of a person in society. In that sense, it includes several other rights according to the subject of the rights in question and the circumstances of the case.”<sup>169</sup> Thus, personal identity is intimately linked to the person in his or her specific individuality and private life, both of which are based on an historical and biological experience, as well as the way in which each individual relates with others through the development of social and family ties.<sup>170</sup> Moreover, it is important to stress that, although identity has special

<sup>165</sup> Cf. *Case of Apitz Barbera et al. (“First Administrative Law Court”) v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, paras. 217 and 218.

<sup>166</sup> Cf. *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 115; *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, footnote 177, and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 128.

<sup>167</sup> El Salvador has been a party to the Convention on the Rights of the Child since July 10, 1990, which entered into force on September 2, 1990, in accordance with its Article 49(1).

<sup>168</sup> Cf. Inter-American Juridical Committee, Opinion “on the scope of the right to identity” Seventy-first regular session, Rio de Janeiro, Brazil. Document CJI/doc. 276/07 rev. 1, of August 10, 2007, paras. 11(2) and 18(3)(3), approved at the same session by resolution CJI/RES.137 (LXXI-O/07), of August 10, 2010, second operative paragraph.

<sup>169</sup> *Case of Gelman, supra* note 16, para. 122.

<sup>170</sup> For example, expert witness Yáñez de la Cruz indicated that “according to psychology, identity responds to a basic question, which is “who am I?”; the need to know one’s identity [...] is a basic need of each human being; it is the center of gravity around which the person develops and becomes part of the world; your place or your persona in the world is based on identity; but identity also has a dialectic perspective between the individual persona and the social persona. The human being evolves in society; the identity is developed first within the primary framework of the family, the mother, the father, but it evolves in the social framework in which it is inserted: namely the community, which represents place, other families, and therefore there is no persona that is not a social persona; it is not separate, we are social beings.” Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011. For her part, expert witness Villalta stated: “[t]he right to a name and a nationality is universal, but, at the same time, the identity includes the

importance during childhood as it is essential for the development of a person, the truth is that the right to identity is not exclusive to children, because it is constantly evolving and the interest of individuals in maintaining their identity and preserving it does not diminish with the passage of time.<sup>171</sup> In addition, the right to identity can be affected by numerous situations or contexts that can take place from childhood to adulthood.

114. Evidently, the breach of the right to identity in the circumstances of this case has entailed a complex legal phenomenon that covers a series of illegal acts and violations of rights to conceal them and to prevent the re-establishment of the bond between the abducted children and their families,<sup>172</sup> which translate into acts of interference with private life<sup>173</sup> as well as violations of the right to a name and to family relationships.

115. In this regard, it is illustrative to recall the opinion of the expert witness Ms. Yáñez that, “[a] central part of Gregoria’s identity is damaged because her name was stolen, but also because her family was stolen and so were her place, her community, her people. She does not know her own roots and this creates a kind of a vacuum, not knowing who she is, but it also prevents her from having a life plan in which she can place herself. She has gone through life asking, who am I, how old am I? She says that, at times, because they made her do adult tasks, she said, maybe I’m older than I am. She could not place herself in her real age or who she looked like. Who do I look like, who am I, what is my surname, what is my name; ultimately, who am I?”<sup>174</sup>

116. In summary, the Court finds that abducting a child from her family and cultural environment, holding her illegally, subjecting her to acts of violence and sexual abuse, registering her with a different name, changing her personal identification data with false information, and raising her in a different environment, from a cultural, social, religious and linguistic point of view, according to the circumstances, as well as in certain cases keeping

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knowledge of the family and maintaining close ties; the legacy of customs and traditions from the surroundings and from ones grandparents.” Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folio 7534).

<sup>171</sup> Cf. Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” *supra* note 168 second operative paragraph.

<sup>172</sup> Cf. *Case of Gelman*, *supra* note 16, para. 120. Similarly, the United Nations Human Rights Committee, when examining a case of the appropriation of a child, the daughter of people disappeared during the Argentine military dictatorship, indicated that “[her] abduction [...], the falsification of her birth certificate and her adoption by S.S. entailed numerous acts of arbitrary and unlawful interference with their privacy and family life, in violation of article 17 of the Covenant [the International Covenant on Civil and Political Rights].” H.R.C.. *Mónaco de Gallicchio, on her behalf and on behalf of her granddaughter Ximena Vicario v. Argentina*, Communication No. 400/1990, U.N. Doc. CCPR/C/53/D/400/1990 (1995), View of 27 April 1995, para. 10.4.

<sup>173</sup> In this regard, it is important to recall that the Court has determined that, although Article 11 is entitled [Note: in Spanish] “Protection of Honor and Dignity,” its content includes, *inter alia*, the protection of privacy. Furthermore, it has indicated that privacy is a broad term which cannot be defined exhaustively, but which encompasses, among other protective spheres, the right to establish and develop relationships with other human beings. In other words, privacy includes the way in which the individual sees himself and how and how much he decides to reveal to others. Cf. *Case of Rosendo Cantú et al.*, *supra* note 137, para. 119, and *Case of Fernández Ortega et al.*, *supra* note 137, para. 129, citing *Eur. Court HR, Case of Niemietz v. Germany* (Application no. 13710/88). Judgment of 16 December 1992, para. 29, and *Eur. Court HR, Case of Peck*, *supra* note 164, para. 57.

<sup>174</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011. See also Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011: “it was thanks to Pro-Búsqueda that I found out that my parents were alive, because all that time I had believed them to be dead and, when I found out that they were alive, it gave me so much pleasure because at least I was going to know who I was, what my real name was, how old I was; because I was always treated as “you are already old enough, you have to do this,” and I told them that I could not because I couldn’t wash a large pair of canvas trousers; I told them that I couldn’t; “it’s not that you are old already, it’s just that you didn’t grow”; and they always treated me like this.”

her ignorant about all this, constitutes an aggravated violation of the prohibition of interference with an individual's privacy and family life, as well as the right to preserve name, identity, and family relationships, as a means of personal identification. In particular, when, subsequently, the State has not taken any measure to reunite her with her biological family and restore her name and identity.

117. Thus, it can be concluded that, to the extent that the State interfered in her private and family life and failed in its obligation to respect and guarantee intimate aspects of personality – such as the right to a name – as well as factors concerning her interrelation with others – the right to a family – the State violated Articles 11(2), 17, 18 and 19 of the American Convention. In addition, in light of Article 19 of the American Convention, the Court reiterates the particular seriousness of the fact that a State Party to the Convention can be attributed with having applied or tolerated a systematic practice of illegal abduction and retention of children on its own territory,<sup>175</sup> which included the alteration of their identity. In conclusion, taking into consideration the context of the terms of the American Convention, interpreted in light of Article 29(c) thereof and Article 31 of the Vienna Convention, the Court finds that the series of violations of the American Convention established in the present case constitute a violation or loss of the right to identity of Gregoria Herminia Contreras.

118. Regarding the representatives' arguments that, in this case, the Court should establish this violation also to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Julia Inés Contreras, Serapio Cristian Contreras, and José Rubén Rivera Rivera, the Court considers that the violation of this right should only be analyzed with regard to Gregoria Herminia Contreras because, even though it has been established that "the original name of 69% of the 222 young people reunited with their families had been altered,"<sup>176</sup> this assumption cannot be applied to establish the violation of the right to a name in all the cases. In this regard, the sole confirmation of the practice of disappearances is not enough, because evidence of the alleged violations is required.

### ***G. The right to personal integrity of the next of kin***

119. Both the Commission and the representatives alleged the violation of the personal integrity of the next of kin of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera owing to the suffering caused by their disappearances and the uncertainty about their whereabouts or fate.

120. In numerous cases the Court has found that the next of kin of the victims of human rights violations may themselves be victims.<sup>177</sup> In this case, the State acknowledged its international responsibility for the violation of the right to personal integrity of the direct next of kin, of the siblings of the victims including those who had not been born at the time of the facts, and of other family members. The Court observes that, following the facts, Julia

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<sup>175</sup> Cf., *mutatis mutandi*, *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C. No. 63, para. 191; *Case of Gelman*, *supra* note 16, footnote 127, and *Case of the Dos Erres Massacre*, *supra* note 150, para. 199.

<sup>176</sup> Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folio 7535).

<sup>177</sup> Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph; *Case of Gelman*, *supra* note 16, para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 235.

Gregoria Recinos Contreras;<sup>178</sup> Rubén de Jesús, Sara Margarita and Santos Antonio, all with the surnames López Contreras;<sup>179</sup> and José Daniel,<sup>180</sup> Milton, Irma Cecilia and Cándida Marisol, all with the surname Rivera Rivera, were born.<sup>181</sup>

121. Together with the State's acknowledgment, the Court observes that the testimony and the expert opinions received (*supra* paras. 30 and 31) reveal that, in one way or another, the personal integrity of the victims' next of kin was affected by one or several of the following situations: (a) they suffered mental and physical effects; (b) an irreversible change in their immediate family and family life that had been characterized, *inter alia*, by significant sibling relationships; (c) they were involved in the search for the whereabouts of the victims; (d) the uncertainty surrounding the whereabouts of the victims prevents mourning, which contributes to prolonging the psychological effects of the disappearance on the next of kin, and (e) the State's lack of investigation and collaboration to determine the whereabouts of the victims and those responsible for the disappearances exacerbated the different effects suffered by the said next of kin. These circumstances have had an effect that persists over time and remains to this day due to the continuing uncertainty about the whereabouts of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera.

122. Regarding the siblings who had not been born at the time of the facts (*supra* para. 120), it has been determined from the evidence that they also suffered a violation of their moral and mental integrity. The fact of living in an environment of suffering and uncertainty owing to the failure to determine the whereabouts of the disappeared victims, despite the ceaseless efforts of their parents, harmed the mental and moral integrity of the children who were born and lived in that environment.

123. Furthermore, this Court's case law has established that the absence of the truth about the whereabouts of a victim of forced disappearance results in a form of cruel and inhuman punishment for the immediate family.<sup>182</sup> In addition, the Court has considered that the constant refusal of the State authorities to provide information about the whereabouts of

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<sup>178</sup> Cf. Birth certificate of Julia Gregoria Recinos Contreras issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folio 5034).

<sup>179</sup> Cf. Birth certificate of Rubén de Jesús López Contreras issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folio 5039); Birth certificate of Sara Margarita López Contreras issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folios 5040 and 5041), and Birth certificate of Santos Antonio López Contreras issued by the Civil Registry Office of the Mayor's Office of Tecoluca (evidence file, volume VIII, attachment 45 to the pleadings, motions and evidence brief, folio 5042).

<sup>180</sup> According to the Commission and the representatives, on May 17, 1983, Margarita de Dolores Rivera de Rivera was eight-months pregnant with José Daniel. This fact was acknowledged by the State. However, according to his birth certificate, José Daniel was born on May 7, and the registration was made on May 12, 1983. Cf. Birth certificate of José Daniel Rivera Rivera issued by the Civil Registry Office of the Mayor's Office of Ciudad Arce (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folio 5019).

<sup>181</sup> Cf. Birth certificate of Milton Rivera Rivera issued by the Civil Registry Office of the Mayor's Office of Ciudad Arce (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folio 5024); Birth certificate of Irma Cecilia Rivera Rivera issued by the Civil Registry Office of the Mayor's Office of Ciudad Arce (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folio 5023), and Birth certificate of Cándida Marisol Rivera Rivera issued by the Civil Registry Office of the Mayor's Office of Ciudad Arce (evidence file, volume VIII, attachment 43 to the pleadings, motions and evidence brief, folio 5022).

<sup>182</sup> Cf. *Case of Trujillo Oroza v. Bolivia. reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 114; *Case of Gelman, supra* note 16, para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia), supra* note 97, para. 240.

the victims or to open an effective investigation to elucidate what happened causes increased suffering to the next of kin.<sup>183</sup> The circumstances of this case reveal that the suffering of the three families affected by the disappearance of one or more of their children was exacerbated by the withholding of the truth about what happened and the whereabouts of the victims, and by the lack of collaboration from the State authorities to establish that truth, which consequently aggravated the violation of the next of kin's right to personal integrity.

124. Based on all these considerations and in view of the State's acknowledgment responsibility, the Court concludes that the State violated the right to personal integrity recognized in Articles 5(1) and 5(2) of the American Convention in relation to Article 1(1) thereof, to the detriment of María Maura Contreras (mother), Fermín Recinos Ayala (father), Julia Gregoria Recinos Contreras (sister), Marta Daysi Leiva Contreras (sister), Nelson Contreras (brother, deceased), Rubén de Jesús López Contreras (brother), Sara Margarita López Contreras (sister), Santos Antonio López Contreras (brother); Arcadia Ramírez Portillo (mother), Avenicio Portillo (brother), María Nely Portillo (sister), Santos Verónica Portillo (sister), Reina Dionila Portillo de Silva (aunt); Margarita de Dolores Rivera de Rivera (mother), Agustín Antonio Rivera Gálvez (father), Juan Carlos Rivera (brother, deceased), Agustín Antonio Rivera (brother), José Daniel Rivera Rivera (brother), Milton Rivera Rivera (brother), Irma Cecilia Rivera Rivera (sister) and Cándida Marisol Rivera Rivera (sister).

## VIII

### **RIGHTS TO PERSONAL LIBERTY, JUDICIAL GUARANTEES, JUDICIAL PROTECTION, AND FREEDOM OF THOUGHT AND EXPRESSION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE THE RIGHTS**

125. In this chapter, the Court will examine the various proceedings initiated following the forced disappearances of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras, and José Rubén Rivera Rivera in order to determine if, taken as a whole, they have constituted an effective remedy to ensure the rights of the victims and their next of kin to access to justice, to know the truth, and to reparation. In this regard, the Court notes that three types of proceedings were initiated in El Salvador: investigations into human rights violations before the Ombudsman's Office; criminal investigations before the Public Prosecution Service and judicial authorities, and constitutional proceedings for *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice. To this end, the Court finds it pertinent, first, to recall the grounds for the obligation to investigate the facts of the forced disappearance and to emphasize their specific elements as these are facts that took place in the context of a systematic pattern of violations with regard to children. Subsequently, the Court will address the legal and factual obstacles that have impeded compliance, giving rise to a situation of impunity.

#### ***A. The obligation to investigate in cases of the forced disappearance of children that form part of a systematic pattern***

126. First, it is pertinent to recall that the systematic practice of forced disappearance supposes a disregard for the obligation to organize the State apparatus so that it guarantees the rights recognized in the Convention; this creates the situation of impunity, allowing this

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<sup>183</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Gelman, supra* note 16, para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia), supra* note 97, para. 241.

kind of facts to be repeated.<sup>184</sup> Hence the importance that the State adopt all necessary measures to investigate and, as appropriate, punish those responsible; to establish the truth of what happened; to discover the whereabouts of the victims and inform their next of kin, and, as appropriate, to provide fair and adequate reparation.

127. The obligation to investigate human rights violations is one of the positive measures that States must adopt in order to guarantee the rights recognized in the Convention.<sup>185</sup> Hence, since its first judgment, this Court has emphasized the importance of the State's obligation to investigate and punish human rights violations,<sup>186</sup> an obligation that acquires particular significance given the seriousness of the crimes committed and the nature of the rights harmed,<sup>187</sup> as in this case that concerns the forced disappearance of children in the context of a systematic pattern of serious human rights violations. For this reason, these rights cannot be eliminated or conditioned by any kind of domestic legal provisions or acts.

128. This Court has already considered that, when a forced disappearance has occurred, it must be considered and treated as an illegal act whose consequences can include imposing punishments on those who commit, instigate, conceal, or in any way participate in its perpetration.<sup>188</sup> Consequently, the Court has considered that a criminal investigation should be launched whenever there are reasons to suspect that a person has been subjected to forced disappearance.<sup>189</sup> This obligation does not depend on a complaint being filed, as in cases of forced disappearance, international law and the general obligation to guarantee rights impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner. Thus the investigation does not depend on the procedural initiative of the victim or his next of kin or on the provision of probative elements by private individuals.<sup>190</sup> This is a fundamental and determinant element for the protection of the rights affected by these situations.<sup>191</sup> Consequently, the investigation must be conducted using all legal means available and aimed at determining the truth, and pursuing, capturing, bringing to trial, and eventually punishing all the masterminds and perpetrators of the facts, especially when State agents are or could be involved.<sup>192</sup> Also, impunity<sup>193</sup> must be

<sup>184</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 158; *Case of Heliodoro Portugal*, *supra* note 112, para. 116, and *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 115.

<sup>185</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 166; *Case of Gelman*, *supra* note 16, para. 184, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 138.

<sup>186</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 166.

<sup>187</sup> Cf. *Case of La Cantuta*, *supra* note 184, para. 157; *Case of Gelman*, *supra* note 16, para. 183, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 137.

<sup>188</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 175.

<sup>189</sup> Cf. *Case of Heliodoro Portugal*, *supra* note 112, para. 65; *Case of Gelman*, *supra* note 16, para. 186, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 108.

<sup>190</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 177; *Case of Gelman*, *supra* note 16, para. 186, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 108.

<sup>191</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 145; *Case of Gelman*, *supra* note 16, para. 186, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 108.

<sup>192</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 177; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 155, and *Case of Heliodoro Portugal*, *supra* note 112, para. 144.

<sup>193</sup> Impunity has been defined by the Court as the "the total lack of investigation, pursuit, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention." Cf. *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 20, para. 173; *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 224, para. 97, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 172.

eradicated by determining responsibilities, both general - of the State - and individual - criminal and any other kind of its agents or private individuals.<sup>194</sup> In compliance with this obligation, the State must remove all *de facto* and the *de jure* obstacles that maintain impunity.<sup>195</sup>

129. In addition, in cases of forced disappearance, the investigation will have certain specific connotations that arise from the very nature and complexity of the phenomenon investigated; in other words, additionally, the investigation must include the implementation of all necessary measures to determine the fate of the victim and to discover his or her whereabouts.<sup>196</sup> The Court has already established that the obligation to investigate facts of this nature subsists as long as the uncertainty about the final fate of the disappeared person remains, because the right of the victim's next of kin to learn his or her ultimate fate and, if applicable, where their remains are, represents a fair expectation that the State must satisfy using all the means it has available.<sup>197</sup>

130. In brief, due to the nature and gravity of the facts, and especially if there is a context of systematic human rights violations, States have the obligation to carry out an investigation with the above-mentioned characteristics and to determine criminal responsibilities through the competent judicial authorities, strictly following the requirements of due process established in Article 8 of the American Convention.<sup>198</sup> In addition, for the international community, the need to eradicate impunity obliges cooperation between States, which must adopt the necessary measures to avoid leaving these violations in impunity, either by exercising their jurisdiction to apply domestic and international law to prosecute and, as appropriate, punish those responsible, or by collaborating with other States that are doing so or seeking to do so.<sup>199</sup>

### ***B. Obligation to open an investigation ex officio***

131. The Inter-American Commission indicated that, even though the disappearance of the Contreras siblings had been "in the public domain since at least March 1993, when the Report of the Truth Commission that refers to them was issued," it was not until March 16, 2000, that the State launched a criminal investigation into what happened, a fact that, in itself, implied "a disregard of the State obligation to initiate and pursue investigations *ex officio*, included in the obligation to provide effective remedies to the victims of [the] violations." The Commission did not identify or specify in which part of the report or its attachments that reference appeared. For its part, the State expressly acknowledged this fact.

132. The evidence reveals that the report issued by the Truth Commission in 1993 (*supra*

<sup>194</sup> Cf. *Case of Goiburú et al.*, *supra* note 107, para. 131; *Case of Chitay Nech et al.*, *supra* note 98, para. 199, and *Case of Radilla Pacheco*, *supra* note 25, para. 212.

<sup>195</sup> Cf. *Case of La Cantuta*, *supra* note 184, para. 226; *Case of Chitay Nech et al.*, *supra* note 98, para. 199, and *Case of Radilla Pacheco*, *supra* note 25, para. 212.

<sup>196</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 80; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 152, and *Case of Radilla Pacheco*, *supra* note 25, para. 191.

<sup>197</sup> Cf. *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 181, and *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, para. 191.

<sup>198</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 106; *Case of Vera Vera et al.*, *supra* note 193, para. 93, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 158.

<sup>199</sup> *Case of Goiburú et al.*, *supra* note 107, para. 131; *Case of Anzualdo Castro*, *supra* note 109, para. 125, and *Case of La Cantuta*, *supra* note 184, para. 160.

para. 46) includes several “lists of victims presented to the Truth Commission,” one of which includes the names of “Fermina Gregoria Contreras Recinos” (sic) and “Julia Ynos Contreras” (sic), both as victims of murder on August 25, 1982, and “Serapio Cristian Contreras” as a victim of disappearance on August 25, 1982, facts attributed to the Armed Forces.<sup>200</sup>

133. However, as part of its mandate, the Truth Commission issued a series of recommendations, including a section on “measures for national reconciliation.” Among other matters, this section indicates:

All in all, to reach the goal of pardon, it is necessary to pause and consider certain consequences that can be inferred from knowing the truth about the grave incidents described in this Report. One of them, perhaps the most difficult to face in the current context of the country, is that of satisfying the requirements of justice. These requirements point in two directions. One is to punish those responsible. The other is the reparation due to the victims and their next of kin.<sup>201</sup>

134. In addition, from the evidence presented in this case, it emerges that on May 31, 1996, the representatives of the Search Association filed a complaint with the Ombudsman’s Office in which it set out a total of 145 cases of children who had been victims of forced disappearance, all in the context of the Salvadoran armed conflict. The Ombudsman’s Office issued a decision on March 30, 1998, under case file SS-0449-96 referring, among other cases, to the forced disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, and José Rubén Rivera, in which members of the Armed Forces of El Salvador are indicated as those responsible for the said disappearances.<sup>202</sup> It also ordered that the decision be notified, among others, to the Prosecutor General so that he could initiate “the legally established procedures in order to determine the corresponding criminal responsibilities,”<sup>203</sup> and this was done on November 6, 1998.<sup>204</sup>

135. In this regard, the Court considers it pertinent to reiterate, as it has in other cases, that, in compliance with their obligation to guarantee the right to know the truth, States may establish truth commissions that contribute to the construction and preservation of the historical memory, the clarification of the facts, and the determination of institutional, social, and political responsibilities during specific historical periods of a society.<sup>205</sup> Nevertheless, this does not fulfill or substitute for the State’s obligation to establish the truth through judicial proceedings<sup>206</sup>; thus the State had an obligation to launch a criminal investigation to determine the corresponding criminal responsibilities. Also, although a complaint before the Ombudsman’s Office can result in effective and useful actions in cases of alleged human rights violations, it is clear that the facts denounced were also brought to the attention of the Office of the Prosecutor General whose responsibility it was to initiate the corresponding

<sup>200</sup> Cf. Appendices to the Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993, Volume II (evidence file, volume XIII, attachments to the Commission’s final observations, folio 8308).

<sup>201</sup> Report of the Truth Commission for El Salvador, *supra* note 28, (evidence file, volume III, attachment 3 to the application, folio 2088).

<sup>202</sup> Cf. Decision issued by the Ombudsman’s Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folios 2196 to 2233).

<sup>203</sup> Decision issued by the Ombudsman’s Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2233).

<sup>204</sup> Cf. Official communication No. DR5-476/98 addressed to the Prosecutor General on November 6, 1998 (evidence file, volume III, attachment 18 to the application, folio 2239).

<sup>205</sup> Cf. *Case of Zambrano Vélez et al.*, *supra* note 55, para. 128; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 297, and *Case of Radilla Pacheco*, *supra* note 25, para. 74.

<sup>206</sup> Cf. *Case of Zambrano Vélez et al.*, *supra* note 55, para. 128; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 297, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 158.

criminal proceedings. However, it was only on March 16, 2000, that, in compliance with the decision of the Ombudsman's Office, orders were given to open a case file to conduct a criminal investigation into the facts.<sup>207</sup> Consequently, the Court finds that, since the State did not initiate a criminal investigation into what happened to Gregoria Herminia, Julia Inés and Serapio Cristian Contreras, even though on three different occasions it had full knowledge that they had been disappeared during the Salvadoran armed conflict, the State failed to comply in its duty to investigate those forced disappearances *ex officio*.

### ***C. Lack of due diligence in the criminal investigations***

136. The State acknowledged its responsibility for violating Articles 8<sup>208</sup> and 25<sup>209</sup> of the American Convention, mentioning the legal grounds presented by the Commission in its application brief. The Court has verified that, in its application brief, the Commission referred to the investigations conducted up until January 2004, while the representatives presented information on the investigations carried out up until September 2010, and identified some specific obstacles that would allow and promote a situation of absolute impunity for the human rights violations committed during the Salvadoran armed conflict. They also affirmed that the cases of forced disappearance of children would "not be excluded from this reality." In addition, the State forwarded a copy of the case file of the investigations carried out to December 2010 and January 2011. Thus the Court finds it necessary, based on all the evidence submitted, to establish clearly the facts that gave rise to the violations acknowledged by the State, and the omissions and failures of the authorities in charge of the investigations undertaken.

137. With regard to the processing of the investigations conducted in this case, it is pertinent to clarify that the criminal proceedings for the forced disappearances of José Rubén Rivera before the Second Trial Court of San Vicente (Case File 479-3-96) and of Ana Julia and Carmelina Mejía Ramírez before the Second Court of First Instance of San Francisco Gotera (Case 187/97), which have remained in the pre-trial investigation stage, were processed under the 1973 Code of Criminal Procedure, in force until 1998.<sup>210</sup> Meanwhile, the investigations into the forced disappearances of José Rubén Rivera, Herminia, Serapio Cristian and Julia Inés Contreras (Case File 225-UDVSV-00), Gregoria Herminia, Serapio Cristian and Julia Inés Contreras (Case File 585-UDVSV-08), and Ana Julia and Carmelina Mejía Ramírez (Case File 238-UDV-OFM-2-10) were processed directly before the Public Prosecution Service under the 1998 Code of Criminal Procedure.

#### ***1. Initial criminal investigations***

138. On November 15, 1996, Margarita Dolores Rivera de Rivera filed a criminal complaint before the Second Criminal Court of San Vicente owing to the forced disappearance of her

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<sup>207</sup> Cf. Official decision issued by Unit for Crimes against Life of San Vicente on March 16, 2000 (evidence file, volume X, attachment 5 to the answer to the application, folio 7242).

<sup>208</sup> The pertinent part of Article 8 establishes that: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>209</sup> Article 25(1) establishes that: "[e]veryone 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."

<sup>210</sup> Expert opinion provided by Ricardo Alberto Iglesias Herrera before the Inter-American Court of Human Rights during the public hearing held on May 17, 2011.

son, José Rubén Rivera, indicating that the Fifth Infantry Brigade of the El Salvador Armed Forces and other military units were responsible. The complaint was assigned case file number 479-3-96.<sup>211</sup> Also, on April 7, 1997, Arcadia Ramírez Portillo filed a criminal complaint before the Second Court of the First Instance of San Francisco Gotera for the forced disappearances of her daughters Ana Julia and Carmelina Mejía Ramírez, indicating that members of the Atlacatl Immediate Response Battalion were responsible. The case was assigned file number 187/97.<sup>212</sup> Finally, in compliance with a decision of the Ombudsman's Office (*supra* para. 134), on March 16, 2000, the Public Prosecution Service opened case file 255-UDVSV-00 to investigate the forced disappearances of José Rubén Rivera and the Contreras siblings, although procedural activity was not recorded until June 27, 2003; in other words, it took a year and a half to launch the investigation and, initially, it remained paralyzed for more than three years.

139. Nevertheless, during the said investigations, evidence collection procedures were carried out consisting of: receiving the testimony of the individuals that the complainants, the mothers of the disappeared children, had indicated as witnesses;<sup>213</sup> conducting inspections to locate the next of kin of the disappeared children, when no complaint had been presented by a relative; but without finding them;<sup>214</sup> sending official letters to the authorities of the Armed Forces and the Ministry of Defense, whose response, when there was one, indicated that no information had been found on the presence of troops or operations in the place and on the date of the facts;<sup>215</sup> and inspections of the file archives of the Fifth Infantry Brigade, but without finding any relevant information.<sup>216</sup>

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<sup>211</sup> Cf. Aggrieved party's statement made by por Margarita de Dolores Rivera de Rivera, *supra* note 90.

<sup>212</sup> Cf. Aggrieved party's statement made by Arcadia Ramírez Portillo, *supra* note 59.

<sup>213</sup> It is a fact acknowledged by the State that in criminal case 187/97, "during a period of almost two years, the testimony of only [five] individuals mentioned by the complainant were received." In addition, in criminal investigation 479-3-96, during almost a year, the testimony of two persons mentioned by the complainant was received. Cf. Testimony of Carlota Romero *supra* note 94, and testimony of José Vidal Rivera Rivas, *supra* note 90.

<sup>214</sup> The State has acknowledged that in investigation 225-UDVSV-00, it carried out "an inspection where the facts took place" in which "no one from the Contreras family was found" or "from the Rivera family."

<sup>215</sup> In case 479-3-96, on May 14, 1997, an official letter was sent to the Commanding Officer of the Fifth Infantry Brigade asking for information on whether the entry of José Rubén Rivera had been registered in the Brigade's records. In a response dated May 22, 1997, the judge was informed that no information was found mentioning José Rubén Rivera or the presence of troops in the place and at the time of his disappearance. Cf. File 479-3/96 before the Second Criminal Court of San Vicente (evidence file, volume III, attachment 43 to the application, folios 2422 and 2423). Also, the State has acknowledged that, in criminal case 187/97, "[t]he only action taken by the Prosecutor in charge was requesting information from the Head of the Joint Chiefs of Staff of the Armed Force and the Ministry of Defense, who indicated that they did not have information on an operation carried out by the Atlacatl Battalion on the day the facts took place." Cf. File No. 187 before the Second Court of First Instance of San Francisco Gotera (evidence file, volume VII, attachment 34 to the pleadings, motions and evidence brief, folios 4522 to 4524 and 4526). In addition, in investigation 225-UDVSV-00, on January 29, 2004, an official letter was sent to the Commanding Office of the Fifth Infantry Brigade asking whether the records known as "operation logs" provided information on the military operations carried out at the time of the disappearances, the names of the Brigade's commanding officer, the battalions, and the officers in charge of them, and on the possibility that the disappeared children were evacuated during those military actions. No response to those requests has been recorded. Cf. File 225-UDVSV-00 on Disappearances of Persons before the Unit for Crimes against Life and Physical Integrity of San Vicente (evidence file, volume X, attachment 5 to the answer to the application, folio 7264).

<sup>216</sup> In case 479-3-96, on July 29, 1997, the judge ordered an inspection be carried out of the Filing Archives of the Fifth Infantry Brigade. The same day, the corresponding official letter was sent to the Commanding Officer of the Fifth Infantry Brigade. On August 2, 1997, the Commanding Officer of the Brigade informed the judge that, in order to have access to the logs, the authorization of the Minister of Defense had been requested. On August 12, 1997, the Commanding Officer reported that the Minister had ordered that an attested copy of the logs be coordinated with the Court. August 25, 1997, was indicated as the day for inspecting the logs kept by that institution in 1983, but the inspection was not carried out due to "reasons of *force majeure*." Finally, the inspection took place on September 16, 1997, but no record was found of the attack on La Joya Canton on May 16, 1983, by

140. Once these actions had been taken, on October 2, 1997, the executing judge decided to close file 479-3-96, as “there were no more steps to take [...] in the search for the child José Rubén Rivera, having exhausted all the necessary measures to try to find the said child.”<sup>217</sup> This case remained closed until July 27, 2009, when the prosecutors who had been assigned to it, who are also responsible for case file 225-UDVSV-00, requested that it be reopened and the criminal proceedings continued. They also requested that several measures be taken and evidence collected, and on October 21, 2009, the judge answered the prosecutor’s request.<sup>218</sup> In brief, the investigation had been archived for 12 years.

141. On February 23, 1999, the executing judge decided to suspend the processing of case 187/97, “[n]ot having any significant information at that date with regard to the identity of the perpetrators of the forced disappearance of the children Ana Julia Ramírez Mejía and Carmelina Mejía Ramírez [...] and] until new information can be provided.”<sup>219</sup> The body of evidence reveals that there has been no subsequent procedural activity, which is to say that the case has been suspended for more than 12 years.

142. Finally, the evidence presented in this case reveals that there was procedural activity in case 225-UDVSV-00 until February 13, 2004,<sup>220</sup> and then it remained inactive regarding the forced disappearance of José Rubén Rivera until August 14, 2007<sup>221</sup> (in other words, for three and a half years), and regarding the forced disappearance of the Contreras siblings until August 27, 2008;<sup>222</sup> that is, for four and a half years.

## 2. Reactivation and opening of new criminal investigations

143. In compliance with a *habeas corpus* resolution issued on February 17, 2003, by the Constitutional Chamber of the Supreme Court of Justice (*infra* para. 161), on July 3, 2008, the Public Prosecution Service launched a new investigation into the forced disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras against members of the Fifth Infantry Brigade under case file 585-UDVSV-08.<sup>223</sup> Also, following a report submitted by the

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the Fifth Brigade, or any record of José Rubén Rivera. *Cf.* File 479-3/96, *supra* note 215, (evidence file, volume III, attachment 43 to the application, folios 2424, 2426 to 2436). Regarding investigation 225-UDVSV-00, the State has acknowledged that, on June 27, 2003, action was taken “to obtain the records of operations of the Fifth Infantry Brigade; [during which,] a lieutenant informed the Prosecutor that the said records were in the General Archives of the Ministry of Defense and that he should request them from the Ministry’s Legal Affairs Directorate. However, there is no indication that the Prosecutor took further action to obtain the information from that General Archive.” *Cf.* File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7243 to 7244).

<sup>217</sup> File 479-3/96, *supra* note 215, (evidence file, volume III, attachment 43 to the application, folio 2437).

<sup>218</sup> Missing folios from File 479-3/96 before the Second Trial Judge of San Vicente (evidence file, volume VI, attachment 30 to the autonomous pleadings, motions and evidence brief, folios 4218 to 4221 and 4247 to 4249), and File 225-UDVSV-00 on Disappearances of Persons, Unit for Crimes against Life and Physical Integrity. Public Prosecution Service (evidence file, volume X, attachment 5 to the answer to the application, folios 7237 to 7241 and 7232 to 7234).

<sup>219</sup> File No. 187, *supra* note 215, (evidence file, volume VII, attachment 34 to the pleadings, motions and evidence brief, folio 4533).

<sup>220</sup> *Cf.* File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7262 and 7263).

<sup>221</sup> *Cf.* File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7405 to 7408).

<sup>222</sup> *Cf.* File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7445 to 7447).

<sup>223</sup> *Cf.* File 585-UDVSV-2008 for the crime of forced disappearance of persons before the Unit for Crimes against Life of San Vicente (evidence file, volume X, attachment 3 to the answer to the application, folio 6575).

Human Rights Prosecutor of the Prosecutor General's Office, on March 5, 2010, the Public Prosecution Service opened "the investigation file to examine the crime of forced disappearance to the detriment of Ana Julia and Carmelina Mejía Ramírez" under number 238-UDV-OFM-2-10.<sup>224</sup> The processing of file 225-UDVSV-00 (*supra* para. 142) and case 479-3-96 (*supra* para. 140) continued.

144. Thus, when new investigations were launched or reopened, the probative procedures ordered consisted in: sending another official request to the authorities of the Armed Forces and of the Ministry of Defense, who, in response, reiterated that they did not have the information requested;<sup>225</sup> requesting information on the case from non-governmental organizations;<sup>226</sup> arranging to obtain information from different authorities on the next of kin and possible witnesses, most of whom had already testified prior to the inactivity of the case files; however, most of them could not be located this time.<sup>227</sup>

<sup>224</sup> Cf. File 238-UDV-OFM-2-10 for the crime of forced disappearance of persons before the Unit for Crimes against Life and Physical Integrity of San Francisco Gotera (evidence file, volume X, attachment 4 to the answer to the application, folio 6738).

<sup>225</sup> Regarding investigation 585-UDVSV-08, on July 17, 2008, the Commanding Officer of the Fifth Infantry Brigade and the Minister of Defense were asked to provide a variety of information on the troops, rank and officials, in relation to the time and place of the forced disappearances. In response, on July 29, 2008, the Defense Minister stated that "no information [had] been found on the facts [referred to]" and, on August 7, 2008, the Commanding Officer of the Fifth Infantry Brigade indicated that the request should have been addressed to the Minister of Defense. Cf. Case file 585-UDVSV-2008, *supra* note 223, (evidence file, volume X, attachment 3 to the answer to the application, folios 6588 to 6592). In investigation 225-UDVSV-00, on August 27 and 28, 2008, the head of the San Vicente Public Prosecutor's Office asked the Head of the Joint Chiefs of Staff, the Head of the Inspectorate General of the Armed Forces, and the Minister of Defense, respectively, for information on the units and commanding officers who participated in military operations at that time and place of the disappearance of the Contreras siblings and of José Rubén Rivera; he also asked for the place or address where a summons could be sent to the individuals indicated in the said report. In this regard, in official letters dated August 30, 2008, and September 1, 2008, the Joint Chiefs of Staff and the Inspector General of the Armed Forces reported that "the competent authority to respond to petitions of this nature is the Minister of Defense." On September 10, 2008, the Ministry of Defense replied that it did not have the requested information, "as has been indicated on previous occasions, given the nature and type of conflict that took place," and therefore provided "public information" in that regard. Case File 225-UDVSV-00 *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7442 to 7447). In case 479-3-96 before the Second Trial Court of San Vicente, on November 4, 2009, the judge asked the Head of the Joint Chiefs of Staff of the Armed Forces and the Minister of Defense, among others, to provide a detailed report on the Special Units that took part in the operations carried out in the area of the "La Joya" Hacienda in San Vicente department, specifically on May 17 and 18, 1983, as well as the names of the leaders and officers or commanding officers and the place or address where a summons could be sent to them. In an official letter sent on November 13, 2009, the Minister of Defense advised the judge that the requested information had not been found. For his part, the Head of the Joint Chiefs of Staff replied similarly on the same date. Cf. Missing folios of case 479-3/96 before the Second Trial Court of San Vicente (evidence file, volume VI, attachment 30 to the brief of pleadings, motions and evidence, folios 4257 to 4263). Regarding investigation 238-UDV-OFM-2-10, on March 5, 2010, the Minister of Defense was asked to prove "the payroll of officers and soldiers, with their respective identification and domicile, of the Armed Force's Atlacatl Immediate Reaction Infantry Battalion," who were involved in the military operation carried out from December 8 to 16, 1981, in Cerro Pando de Meanguera canton. In response, on April 16, 2010, the Minister of Defense advised that, having reviewed his files, he had not found "any information on a Military Operation during that period and in that place, given the nature and type of conflict." Cf. Case file 238-UDV-OFM-2-10, *supra* note 224 (evidence file, volume X, attachment 4 to the answer to the application, folios 6746 and 6776).

<sup>226</sup> For example, the Legal Protection Office of the Archbishopric and the Search Association. Cf. File 238-UDV-OFM-2-10, *supra* note 224 (evidence file, volume X, attachment 4 to the answer to the application, folios 6748, 6750 and 6794) and File 585-UDVSV-2008, *supra* note 223 (evidence file, volume X, attachment 3 to the answer to the application, folios 6686 and 6703 to 6704).

<sup>227</sup> Cf. File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7142 to 7153 and 7156, 7228 to 7229, 7237 to 7241, 7405 to 7411, 7423 to 7431), and Missing folios from File 479-3/96 before the Second Trial Court of San Vicente (evidence file, volume VI, attachment 30 to the pleadings, motions and evidence brief, folios 4218 to 4221, 4265 to 4266, 4271 to 4272 and 4283 to 4285); File 585-UDVSV-2008, *supra* note 223, (evidence file, volume X, attachment 3 to the answer to the application, folios 6589 and 6593), and File 238-UDV-OFM-2-10, *supra* note 224, (evidence file, volume X, attachment 4 to the answer to the application, folios 6782 to 6787, 6790 to 6791 and 7034 to 7035).

### 3. Considerations of the Court

145. The Court has established that the right of access to justice requires that the facts investigated and, as appropriate, the corresponding criminal responsibilities be determined effectively within a reasonable period of time. Hence, given the need to guarantee the rights of those who have been prejudiced, a prolonged delay may, in itself, constitute a violation of judicial guarantees.<sup>228</sup> The Court has also indicated that the State bodies responsible for investigating the forced disappearance of persons in order to determine the whereabouts of those persons and clarify what happened, identify those responsible, and punish them, must perform their tasks diligently and exhaustively.<sup>229</sup> It is opportune to recall that, in cases of forced disappearance, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place where the victim might be found deprived of liberty.<sup>230</sup> In this case, that obligation was reinforced by the fact that the victims were children at the time of the facts, some of them in their infancy, so that the State had the obligation to ensure they were found as soon as possible. The legal rights involved in the investigation make it obligatory to redouble efforts as regards the measures that must be taken to fulfill this objective, because the passage of time has a directly proportionate relationship to the limitations to – and, in some cases, the impossibility of – obtaining evidence and/or testimony, making it difficult and even rendering ineffective or invalid, the probative measures taken in order to elucidate the facts investigated,<sup>231</sup> identify the possible authors and participants, and determine possible criminal responsibilities. Despite the foregoing, national authorities are not exempt from making all necessary efforts to comply with their obligation to investigate.<sup>232</sup> If the State bodies proceed in an omissive or negligent manner, this is not compatible with the obligations arising from the American Convention; particularly if essential human rights are at stake.<sup>233</sup> Thus, the States must provide the corresponding authorities with the necessary logistic and scientific resources to collect and process evidence and, in particular, with the authority to access pertinent documentation and information to investigate the facts denounced and to obtain indications or evidence of the whereabouts of the victims.<sup>234</sup>

146. In addition, in cases such as this one, the Court has found that the authorities in charge of the investigation have the obligation to ensure that, during its course, they assess systematic patterns that allow the perpetration of grave human rights violations,<sup>235</sup> such as those committed in this case. In order to guarantee its effectiveness, the investigation must

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<sup>228</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, paras. 142 to 145; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 152, and *Case of Chitay Nech et al., supra* note 98, para. 196.

<sup>229</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 173.

<sup>230</sup> Cf. *Case of Anzualdo Castro, supra* note 109, para. 134; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 167, and *Case of Radilla Pacheco, supra* note 25, para. 215.

<sup>231</sup> Cf. *Case of Heliodoro Portugal, supra* note 112, para. 150; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 167, and *Case of Chitay Nech et al., supra* note 98, para. 196.

<sup>232</sup> Cf. *Case of Anzualdo Castro, supra* note 109, para. 135; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 167, and *Case of Radilla Pacheco, supra* nota 25, para. 215.

<sup>233</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 173.

<sup>234</sup> Cf. *Case of Tiu Tojín, supra* note 18, para. 77; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 168 and *Case of Radilla Pacheco, supra* note 25, para. 222.

<sup>235</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 156; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 166, and *Case of Radilla Pacheco, supra* note 25, para. 206.

be conducted taking into account the complexity of this type of facts, which took place in the context of the Armed Force's counterinsurgency operations, and also the structure in which those who were probably involved were situated; thereby avoiding omissions in the collection of evidence and in following logical lines of investigation.<sup>236</sup>

147. However, when analyzing the effectiveness of the investigations that were conducted, the Court takes into account the systematic pattern of forced disappearances of children perpetrated in the context of the Salvadoran armed conflict and the information on the possible subsequent fate of the children (*supra* paras. 54 and 55), which should also have been considered by the authorities in charge of the investigation. To this end, first the Court will refer to all the measures taken to establish the corresponding criminal responsibilities and, then the measures taken to discover the whereabouts of the victims.

148. First, the evidence in this case reveals that, even though the testimony of some witnesses was received, inspections were made to locate the next of kin, and official letters were sent to the authorities of the Armed Forces and to the Minister of Defense, which indicates that although the authorities responsible for the investigations conducted some investigative actions, they did not exhaust all the measures that should have been taken to identify the possible authors of the facts and, as appropriate, bring charges against them.

149. Thus, no measures were taken to inspect newspaper archives in which information could possibly have been obtained on the individuals who participated in the military operations that were conducted in the place and at the time of the facts;<sup>237</sup> and the investigations did not incorporate the corresponding sections of the Report of the Truth Commission for El Salvador, which give the names of some of the soldiers who took part in the operations.<sup>238</sup> Similarly, the conclusions reached by the Ombudsman's Office and the evidence contributed to the investigations indicated the military units that supposedly participated in the operations and identified the names of some of the authorities in charge of them.<sup>239</sup> Yet that information was not used in any line of investigation, and no member of the Armed Forces was charged or called to testify. In other words, none of the investigations pursued tried to obtain more evidence to confirm or disprove the responsibility of the individuals accused. The only measure that an attempted in this regard was in judicial case 479-3-96, in which, on July 27, 2009, the prosecutor assigned to the case tried unsuccessfully to summon an individual who had been in command of the Fifth Infantry Brigade to testify "as a witness."<sup>240</sup>

150. The Court finds that the investigations pursued have not taken into account the

<sup>236</sup> Cf. *Case of the Serrano Cruz sisters*, *supra* note 29, paras. 88 and 105; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 166, and *Case of Radilla Pacheco*, *supra* note 25, para. 206.

<sup>237</sup> For example, expert witness Iglesias stated that, at the time of the forced disappearances in this case, "[t]he Armed Forces used and had what they called the Armed Forces Press Committee (COPRESA), which prepared very clear reports on where operations were being carried out and who the officers in charge were. They published this and sent it as press releases and [...] even the newspapers published it. So there is information." Expert opinion given by Ricardo Alberto Iglesias Herrera before the Inter-American Court of Human Rights at the public hearing held on May 17, 2011. See also, newspaper articles which describe the occurrence of operations relating to these cases (evidence file, volume V, attachment 21 to the pleadings, motions and evidence brief, folios 3757 to 3774).

<sup>238</sup> Cf. Report of the Truth Commission for El Salvador, *supra* note 28, (evidence file, volume III, attachment 3 to the application, folios 2011 to 2018 and 2023).

<sup>239</sup> Cf. Decision issued by the Ombudsman's Office, *supra* note 70 (evidence file, volume III, attachment 15 to the application, folio 2208), and File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folio 7442).

<sup>240</sup> Cf. File 225-UDVSV-00, *supra* note 215, (evidence file, volume X, attachment 5 to the answer to the application, folios 7228 to 7229, 7232 to 7234, 7237 to 7241 and 7155 to 7156).

context of the facts, their complexity, the patterns that explain their perpetration, the complex structure of individuals involved, or the special position within the State structure at that time of those who could be responsible. On this point, the Court has found that, with facts such as the ones alleged in this case, given their context and complexity, it is reasonable to consider that there are different degrees of responsibility at different levels.<sup>241</sup> However, this is not reflected in the investigations. Consequently, the authorities in charge of the investigations do not appear to have followed clear and logical lines of investigation that would have taken those elements into account. Furthermore, obvious omissions can be observed in the collection of evidence. In this regard, the Court finds that the State has not been diligent with regard to this obligation.

151. In addition, the Court observes that, even though, on December 12, 2006, the reunion between Gregoria Herminia Contreras and her biological parents was made public,<sup>242</sup> and communicated by the representatives during the proceedings before the Inter-American Commission,<sup>243</sup> there is no record of any actions taken to receive her testimony, with due guarantees, avoiding possible re-victimization. The only measure in this regard was the request made on June 9, 2010, to the Search Association for a certified copy of the information relating to “the reappearance of Gregoria Erminia Contreras [*sic*].”<sup>244</sup> Moreover, the State has not opened investigations into the facts of the appropriation and registration of Gregoria Herminia in the civil registry of the Santa Ana Mayor’s Office with false information (*supra* para. 111), or into any other related fact.

152. Likewise, there is no indication that steps have been taken to determine the possible location of the children whose whereabouts are still unknown in accordance with the *modus operandi* concerning the disappearance of children during the armed conflict, such as notifying and, if appropriate, inspecting the records and files of orphanages, children’s homes, hospitals, medical institutions, and military premises, as well as requesting information from the International Committee of the Red Cross and the Salvadoran Red Cross to determine whether, at the time, the children were attended to in any of their facilities, obtaining information on adoption proceedings before the Minors Courts and the adoption records of the period, and obtaining information on children registered as leaving by way of the airport during the relevant period, as well as of individuals who died without being identified in the age range. All this should have been done in the understanding that many of the children lacked identification documents, their original names were changed or they were registered in the municipal mayors’ offices with other names and surnames, or their family registration was changed to include the death of their parents through annotations or the addition of false death certificates.<sup>245</sup> Moreover, since a systematic pattern was involved in which numerous authorities could be involved, and which included cross-border movements, in this case, the State should have used and applied the appropriate legal tools to the analysis of the case, including the required inter-State cooperation.<sup>246</sup>

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<sup>241</sup> Cf. *Case of Radilla Pacheco*, *supra* note 25, para. 203, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 171.

<sup>242</sup> Cf. Newspaper article that appeared in *El Diario de Hoy*, *supra* note 78.

<sup>243</sup> Cf. Note of the Search Association of December 14, 2006, received by the Inter-American Commission on April 3, 2007 (evidence file, volume II, appendix 3, folio 842).

<sup>244</sup> File 585-UDVSV-2008, *supra* note 223, (evidence file, volume X, attachment 3 to the answer to the application, folios 6659 to 6686 and 6703 to 6704).

<sup>245</sup> Cf. Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folios 7535 to 7537).

<sup>246</sup> Cf. *Case of Gelman*, *supra* note 16, para. 234.

153. In brief, it was the responsibility of the authorities in charge of pursuing the investigations to channel them correctly and opportunely from the outset in order to establish the identity of those responsible for the disappearances, as well as to determine the fate or the whereabouts of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras and José Rubén Rivera Rivera, based on the context in which they took place. Meanwhile, it was the search activities of a non-governmental organization that made it possible to locate Gregoria Herminia Contreras. In the Court's opinion, the actions of the authorities in charge of pursuing the investigations have not been exhaustive and have not allowed the investigation to advance, or to determine coherent lines of investigation. In addition, it should be stressed that, during their initial stages, the domestic investigations were plagued by long periods of inactivity due to the absence of procedural activity *ex officio* by the body responsible for the investigation and the closure of the cases decided by the judicial authorities which, in the Court's opinion, impaired their seriousness and due diligence. Also, the Court considers that, in this case, as a result of the prolonged inactivity during certain periods of the investigation and the lack of diligence, as time has passed, the possibility of collecting and presenting pertinent evidence that would clarify the facts and determine the corresponding responsibilities has been unjustifiably affected. Moreover, no investigations have been opened on all the facts surrounding the disappearance of Gregoria Herminia Contreras.

154. The Court observes that, in this case, several investigations have been opened on the same facts and victims. In this regard, it is not clear that the number of parallel case files has benefited the development and effectiveness of the investigations. On the contrary, the progress of the investigations could have been hindered by the existence of fragmented parallel investigations or duplication of resources.

155. All things considered, in this case the use of State power as a means and resource for committing the violations of rights that should have been respected and guaranteed has been verified.<sup>247</sup> This has encouraged situations of impunity for these grave violations, promoted and tolerated by all the investigations, which have been neither coherent with each other nor sufficient to clarify the facts. Consequently, they have not complied satisfactorily with the obligation to investigate forced disappearances of the then children effectively. The Court observes that approximately 30 years after the start of the facts and 16 years after the first investigations were opened, the criminal proceedings remain in their initial stages without having individualized, prosecuted, and eventually punished any of those responsible; this has surpassed excessively the time that could be considered reasonable in this regard. Therefore, the Court considers that the State has not conducted serious, diligent and exhaustive investigations, within a reasonable time, into the facts concerning the forced disappearances of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras and José Rubén Rivera Rivera. In light of these considerations and of the State's acknowledgment of responsibility, the Court finds that the State failed to comply with the requirements of Articles 8(1) and 25 of the Convention, to the detriment of the Mejía Ramírez, Contreras and Rivera children and of their next of kin.

#### ***D. Habeas Corpus proceedings***

156. The Commission stressed that, even though the decisions in the three *habeas corpus* proceedings filed on behalf of José Rubén Rivera Rivera, the Mejía Ramírez sisters and the

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<sup>247</sup> Cf. *Case of Goiburú et al.*, *supra* note 107, para. 66; *Case of Manuel Cepeda Vargas*, *supra* note 14, para. 125, and *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 195, para. 149.

Contreras siblings ordered the Prosecutor General's Office to investigate the facts, "the inquiry remains closed" or "inactive." The representatives indicated that all the applications for *habeas corpus* filed by the victims' next of kin "were ineffective," in violation of Article 25(1) of the Convention. The State acknowledged its responsibility for violations of Articles 8 and 25 of the American Convention in general terms.

157. Nevertheless, since Article 7(6) of the Convention<sup>248</sup> has its own juridical content consisting in the direct protection of personal or physical liberty by means of the judicial mandate addressed at the corresponding authorities ordering them to bring detainees before a judge so that the latter may examine the legality of the detention and, if appropriate, order the release of the individual in question,<sup>249</sup> and given that the principle of effectiveness (*effet utile*) crosscuts the protection due to all the rights recognized in the Convention, as it has on other occasions,<sup>250</sup> the Court finds it unnecessary to analyze this provision in relation to Article 25 of the Convention.

158. The Court has considered that the remedy of *habeas corpus*, or the presentation of the person, is the ideal measure to guarantee liberty, to monitor respect for life and personal integrity, and to prevent an individual's disappearance or uncertainty about his place of detention.<sup>251</sup> In this regard, this Court's case law has already indicated that these remedies should not only exist formally in law, but must be effective.<sup>252</sup>

159. In this case, it has been verified that three applications for *habeas corpus* were filed before the Constitutional Chamber of the Supreme Court of Justice: on November 10, 2000, by Reyna Dionila Portillo in favor of Ana Julia and Carmelina Mejía Ramírez<sup>253</sup> and by Margarita de Dolores Rivera de Rivera in favor of José Rubén Rivera<sup>254</sup> and, on October 16, 2002, by María Maura Contreras in favor of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.<sup>255</sup>

160. The body of evidence reveals that once the applications for *habeas corpus*

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<sup>248</sup> Article 7(6) of the Convention establishes that: "[a]nyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies."

<sup>249</sup> Cf. *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 Geoff January 30, 1987. Series A No. 8, paras. 33 and 34; *Case of Vélez Loor*, *supra* note 13, para. 123, and *Case of Anzaldo Castro*, *supra* note 109, para. 77.

<sup>250</sup> Cf. *Case of Anzaldo Castro*, *supra* note 109, para. 77, and *Case of Vélez Loor*, *supra* note 13, para. 123.

<sup>251</sup> Cf. *Advisory Opinion OC-8/87*, *supra* note 249, para. 35; *Case of Chitay Nech et al.*, *supra* note 98, para. 203, and *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 28, 2005. Series C No. 138, para. 104.

<sup>252</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 63; *Case of Mejía Idrovo*, *supra* note 19, para. 28, and *Case of Vélez Loor*, *supra* note 13, para. 129.

<sup>253</sup> Cf. Application for *habeas corpus* filed by Reina Dionila Portillo before the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000 (evidence file, volume III, attachment 22 to the application, folios 2318 to 2321).

<sup>254</sup> Cf. Application for *habeas corpus*, *supra* note 83 (evidence file, volume VI, attachment 27 to the pleadings, motions and evidence brief, folios 3918 to 3927).

<sup>255</sup> Cf. Application for *habeas corpus* filed by María Maura Contreras before the Constitutional Chamber of the Supreme Court of Justice on October 16, 2002 (evidence file, volume VII, attachment 37 to the pleadings, motions and evidence brief, folios 4543 to 4547), and Decision issued by the Constitutional Chamber, *supra* note 70 (evidence file, volume III, attachment 13 to the application, folio 2186).

proceedings were admitted, an executing judge was appointed in each case, who, after addressing the corresponding authorities, examined the investigation by the Ombudsman's Office and the criminal investigation conducted up until that time in the each case. In the case of the Mejía Ramírez sisters, the executing judge placed on record that she "could not notify the Commanding Officer of the Atlacatl Immediate Response Infantry Battalion because it had been demobilized owing to the signature of the Peace Accords, and that the officials mentioned in the application for *habeas corpus* were not notified because they had retired from military service."<sup>256</sup> In the case of José Rubén Rivera Rivera, the executing judge notified the Commanding Officer of the Fifth Infantry Brigade of San Vicente, who made the "Daily Operations Log" available; although evidence of an attack in the canton of La Joya, San Vicente Department, on May 16, 1983, was not found, and there was no record of the rescue of a child named José Rubén Rivera Rivera. The Military Summary Log was also examined, "with the same results," and in response to a direct question from the executing judge, the Commanding Officer of the Brigade responded that "an operation of that type did not take place."<sup>257</sup> Lastly, in the case of the Contreras siblings, the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces were notified, and they advised that there were no records or background information related to possible restrictions or deprivations of liberty of the Contreras siblings. Thus, the executing judge concluded that "at that time, no complete and organized record was available of the military units that took part in the military operations [described by María Maura Contreras]; also, there is no complete or detailed record of the rank or name of the soldiers who carried out those operations."<sup>258</sup>

161. In rulings dated March 20<sup>259</sup> and 21,<sup>260</sup> 2002, and February 17, 2003,<sup>261</sup> the Constitutional Chamber decided to acknowledge the constitutional violation of the right to physical liberty of all of them and urged the Prosecutor General's Office to take the necessary measures, in keeping with its constitutional powers, to establish the situation of the beneficiaries in order to safeguard their fundamental right to liberty. It was only in the case of the Contreras siblings that the Public Prosecution Service ordered the opening of an investigation under file No. 585-UDVSV-08 on July 3, 2008.<sup>262</sup>

162. Regarding the measures taken in the context of the applications for *habeas corpus*, it is clear that the executing judge merely sent a letter to the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces in the case of the Contreras siblings, and inspected certain files of the Fifth Infantry Brigade of San Vicente in the case of José Rubén Rivera Rivera, which had been part of the investigative activity in the criminal

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<sup>256</sup> Decision issued by the Constitutional Chamber of the Supreme Court of Justice in habeas corpus proceeding 379-2000 on March 20, 2002 (evidence file, volume III, attachment 39 to the application, folios 2384 to 2392) and Report issued by the Executing Judge in habeas corpus proceeding 379-2000 (evidence file, volume III, attachment 34 to the application, folios 2368 to 2370).

<sup>257</sup> Decision issued by the Constitutional Chamber of the Supreme Court of Justice of El Salvador in habeas corpus proceeding 378-2000 on March 21, 2002 (evidence file, volume III, attachment 44 to the application, folios 2471 to 2475).

<sup>258</sup> Decision issued by the Constitutional Chamber, *supra* note 70 (evidence file, volume III, attachment 13 to the application, folios 2186 to 2191).

<sup>259</sup> *Cf.* Decision issued by the Constitutional Chamber, *supra* note 256.

<sup>260</sup> *Cf.* Decision issued by the Constitutional Chamber, *supra* note 257.

<sup>261</sup> *Cf.* Decision issued by the Constitutional Chamber, *supra* note 70 (evidence file, volume III, attachment 13 to the application, folios 2186 to 2191).

<sup>262</sup> *Cf.* File 585-UDVSV-2008, *supra* note 223, (evidence file, volume X, attachment 3 to the answer to the application, folio 6575).

jurisdiction and, like the authorities of that jurisdiction, settled for the answer received from the authorities regarding the inexistence of records or information relating to operations or restriction to the liberty of the then children, without requesting an explanation about the mechanisms used by the authorities to reach that conclusion. Furthermore, in the case of the Mejía Ramírez sisters, the individuals indicated by the appellant were not notified, because they had “retired from military service” and the Commanding Officer of the Atlacatl Battalion had been demobilized.

163. The Court assesses that the *habeas corpus* proceedings that were processed and decided could have elucidated that a situation harmful to the personal liberty of the victims had been constituted, because they “recognized the constitutional violation of the right to physical liberty [of the said persons].” However, the proceedings were ineffective to discover the whereabouts of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera because the corresponding procedural measures were not carried out diligently, taking into account the broad powers of the executing judge and the obligation of the State authorities to provide the information requested; hence, the protection required by means of those measures was illusory. Consequently, in application of the *iuria novit curia* principle, the Court finds that the State violated Article 7(6) of the American Convention to the detriment of the Mejía Ramírez, Contreras and Rivera children and of their next of kin.

164. The representatives also alleged the violation of Article 25(2) of the Convention,<sup>263</sup> in the cases of José Rubén Rivera and the Mejía Ramírez sisters, because the State did “not take any measure to implement the judgments of the Supreme Court of Justice, as regards the opening of an investigation.” They also indicated that, in none of the cases, “the Constitutional Chamber had used its powers of investigation satisfactorily.” In addition, even though that chamber had ordered the Prosecutor to initiate an investigation, the order was carried out only in the Contreras case, five years after it had been issued. The Court observes that, when the *habeas corpus* writs were issued, two judicial investigations and an investigation by the Public Prosecution Service had already been opened into the disappearance of José Rubén Rivera, the Contreras siblings, and the Mejía Ramírez sisters, respectively, so that, over and above opening a new investigation, it was the responsibility of the Prosecutor General’s Office to seriously, exhaustively and diligently pursue the investigations opened; the analysis of this is subsumed in the previous section.

#### ***E. Access to information contained in military archives***

165. The Commission indicated that, on several occasions during the investigations into the three cases, military institutions had been asked to provide information on the operations and the participants, without receiving an answer, or an incomplete response, or “they insist that the information does not exist,” and the authorities in charge of the investigation do not have other means to obtain the information, such as “inspecting military facilities or archives of the Ministry of Defense.” Consequently, the Commission asked that the State be ordered to make all institutional, legal, administrative and other efforts to remove the obstacles impeding access to the information recorded in military archives.

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<sup>263</sup> Article 25(2) of the Convention stipulates: “[t]he States Parties undertake:

- a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b) to develop the possibilities of judicial remedy; and
- c) to ensure that the competent authorities shall enforce such remedies when granted.

166. The representatives alleged the violation of the right to the truth, because “the Salvadoran Armed Forces have systematically refused to provide information that would be useful for determining the whereabouts of the children” in the different judicial proceedings underway, stating that they do not have the requested information, and the judicial and prosecutorial authorities have accepted that response. The representatives underlined that the State authorities cannot shield themselves by alleging lack of evidence of the existence of the requested documents, but rather they must justify the refusal to provide them, demonstrating that they have taken all the measures at their disposal to prove that the requested information does not exist.

167. For its part, the State indicated that domestic provisions oblige the public authorities, including the military authorities, to provide information on cases such as this one. Thus, it affirmed that Salvadoran legislation permits access to information contained in the military archives of that era, by judicial order or to institutions with investigative powers, such as the Prosecutor General’s Office and the Ombudsman’s Office. Furthermore, it indicated that the National Search Commission is empowered to inspect documentary records or the files of State institutions, especially the records or archives of military or police institutions, or detention centers that functioned between January 1, 1977, and January 16, 1992. In addition, it provided information on “the entry into force on April 8, 2011, of the Law on Access to Public Information,” which was promulgated by the Legislative Assembly on March 3, 2011. In this regard, it indicated that the said law “will provide an internal mechanism for accessing information concerning government activities allegedly related to the disappearance of children during the internal armed conflict” and explained the control mechanisms included in the law.

168. The evidence presented reveals that, within the framework of the judicial investigations and those of the Public Prosecution Service, as well as the *habeas corpus* proceedings, the authority in charge of directing them or the executing judge requested information from different military authorities and the Ministry of Defense. The invariable response, when there was one, was that the information requested had not been found or did not exist. The Court notes that the inspection carried out in the archives of the records of the Fifth Infantry Brigade on September 16, 1997, required the prior consent of the Minister of Defense, even though there was a clear court order for the inspection. In addition, the Court observes that, in another of the investigations, the prosecutor assigned to the case was informed that the records of the Brigade’s operations in 1980 and 1990 were located in the General Archive of the Ministry of Defense and that any information of that nature could be provided by the Human Rights Department of the Legal Affairs Directorate of the Ministry of Defense. However, there is no record of any further measures taken in this regard (*supra* footnote 216). In short, the authorities in charge of the investigation did not take any other steps to collect the requested information.

169. The Court finds that it has been demonstrated in this case that the authorities of the Armed Forces and the Ministry of Defense systematically denied information and access to the archives and military files to the judicial authorities and the Public Prosecution Service. The presence of this pattern can be observed from the first steps taken in the internal investigations in 1997 up until the last measure taken in 2010 (*supra* paras. 162 and 168). This Court considers that this refusal has prevented the investigations underway from identifying those individuals who formed part of the planning and execution of the counterinsurgency operations, and from obtaining the personal information of those who charged during these proceedings.

170. The Court finds that the right to know the truth has the necessary effect that, in a democratic society, the truth is known about the facts of grave human rights violations.

This is a fair expectation that the State must satisfy,<sup>264</sup> on the one hand by the obligation to investigate human rights violations and, on the other, by the public dissemination of the results of the criminal and investigative proceedings.<sup>265</sup> To guarantee the right to information and to know the truth, the government authorities must act in good faith and carry out diligently the actions required to ensure the effectiveness of that right, especially as this refers to knowing the truth of what happened in cases of grave human rights violations such as the forced disappearances in this case.<sup>266</sup>

171. In this regard, the Court considers that the State authorities are obliged to collaborate in the collection of evidence to achieve the goals of the investigation, and to abstain from actions that represent obstructions to the progress of the investigative process.<sup>267</sup> In the same way, it is essential that the bodies in charge of the investigations be endowed, formally and substantially, with the adequate and necessary powers and guarantees to access the documentation and information that is pertinent for investigating the facts denounced and obtaining indications or evidence of the whereabouts of the victims.<sup>268</sup> Furthermore, it is crucial that the authorities in charge of the investigation have full access to the documentation in the State's possession as well as to places of detention.<sup>269</sup> The State cannot shield itself behind the lack of evidence of the existence of the requested documents, but, on the contrary, it must justify the refusal to provide them, demonstrating that it has taken all available measures to prove that the requested information does not exist.<sup>270</sup> In this regard, in the case of human rights violations, the Court has indicated that "the State authorities cannot shield themselves behind mechanisms such as State secrets or the confidentiality of the information, or by reasons of public interest or national security, to fail to provide the information required by the judicial or administrative authorities in charge of the pending investigations or proceedings."<sup>271</sup>

172. Regarding the effectiveness of the Law on Access to Public Information in El Salvador, since it was not applied in this case, the Court does not find it necessary to analyze it, because the purpose of the Court's contentious jurisdiction is not to review domestic legislation in the abstract.<sup>272</sup>

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<sup>264</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 23, para. 181; *Case the Dos Erres Massacre*, *supra* note 150, para. 149, and *Case of Anzualdo Castro*, *supra* note 109, para. 119.

<sup>265</sup> Cf. *Case of Las Palmeras v. Colombia. reparations and costs*. Judgment of November 26, 2002. Series C No. 96; *Case the Dos Erres Massacre*, *supra* note 150, para. 149, and *Case of Anzualdo Castro*, *supra* note 109, para. 119.

<sup>266</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 211.

<sup>267</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168 para. 112, and *Case the Dos Erres Massacre*, *supra* note 150, para. 144.

<sup>268</sup> Cf. *Case of Tiu Tojín*, *supra* note 18, para. 77; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 168 and *Case of Radilla Pacheco*, *supra* note 25, para. 222.

<sup>269</sup> Cf. *Case of Anzualdo Castro*, *supra* note 109, para. 135, citing the *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, paras. 180 to 182; *Case of Tiu Tojín*, *supra* note 18, para. 77, and *Case of La Cantuta*, *supra* note 184, para. 111. See also Article X of the Inter-American Convention on the Forced Disappearance of Persons, and Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>270</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 211.

<sup>271</sup> *Case of Myrna Mack Chang*, *supra* note 269; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 202, and *Case of Tiu Tojín*, *supra* note 18, para. 77.

<sup>272</sup> Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 50; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and*

173. With regard to the alleged violation of Article 13 of the Convention,<sup>273</sup> acknowledged by the State, the Court recalls that every individual, including the next of kin of the victims of grave human rights violations, has, in accordance with Articles 1(1), 8(1), 25 and, under certain circumstances, Article 13 of the Convention,<sup>274</sup> the right to know the truth, so that they and society as a whole must be informed on what happened.<sup>275</sup> In the instant case, the Court finds that there are no elements to verify the alleged violation of that provision, without prejudice to the analysis already made under the right of access to justice and the obligation to investigate.

#### **F. General Amnesty Law for the Consolidation of the Peace**

174. The Commission indicated that, even though that the Amnesty Law is currently in force in El Salvador, the investigations into the forced disappearances in this case have not yet examined its application, because they were “in such early stages that they have not even reached the point of filing charges against those possibly responsible.” Consequently, when the investigations advance and the possibility arises of bringing those allegedly responsible to trial, there is no doubt that the existence of the law “represents a possible obstruction to the prospect of justice in later stages of the investigations.” For their part, the representatives alleged that the Amnesty Law is another specific obstacle that would allow and encourage “a situation of absolute impunity.” In this regard, they stated that “[e]ven though the Amnesty Law has not been invoked in any of these cases, sanctions have not been applied, which [would] indicate that the system of justice assumed that this law extinguished any type of responsibility.”

175. Since, according to the evidence provided by the parties, there is no indication that Legislative Decree No. 486 “General Amnesty Law for the Consolidation of the Peace,” promulgated in El Salvador on March 20, 1993,<sup>276</sup> has been applied in the investigations in this case, it is not incumbent on the Court to rule on whether that law is compatible with the American Convention as a result of a specific violation in this case.

#### **G. Conclusions**

176. Approximately 30 years have passed since the forced disappearances of Ana Julia

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*costs.* Judgment of November 26, 2010. Series C No. 220, para. 207, and *Case of Vélez Loor*, *supra* note 13, para. 285.

<sup>273</sup> The pertinent part of Article 13 of the Convention establishes: “1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

<sup>274</sup> *Cf. Case of Gelman*, *supra* note 16, para. 243. In this regard, in the case of *Gómes Lund et al.*, the Court observed that, in keeping with the facts of the case, the right to know the truth was related to an action filed by the family members to access certain information related to access to justice and the right to seek and receive information embodied in Article 13 of the American Convention, and it therefore analyzed the right under this provision. *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 201.

<sup>275</sup> *Cf. Case of Myrna Mack Chang*, *supra* note 269, para. 274; *Case of Gelman*, *supra* note 16, para. 243, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 200.

<sup>276</sup> Legislative Decree in force as of March 22, 1993, that conceded a “broad, absolute and unconditional amnesty to all the persons who, in any way, have participated in the perpetration of political crimes, common crimes connected to political crimes, and in common crimes committed by at least 20 individuals before January 1, 1992, even if judgment has been handed down against the said persons, or proceedings have been initiated for these crimes, and this pardon is granted to all those who have participated.” *Cf. Legislative Decree No. 486, Law of General Amnesty for Consolidation of the Peace, of March 20, 1993*, published in Official Gazette No. 56, Volume 318, on March 22, 1993 (evidence file, volume V, attachment 14 to the pleadings, motions and evidence brief, folios 3605 to 3608).

Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras and José Rubén Rivera Rivera, without any of the perpetrators or masterminds behind the disappearances having been identified and brought to trial, and without the truth of the facts being known. Only the whereabouts of Gregoria Herminia Contreras have been determined owing to the actions of a non-State body. Thus a situation of total impunity prevails. From the moment the investigations were launched, the lack of diligence, exhaustiveness and seriousness has been evident. In particular, the failure to comply with the duty to open an investigation *ex officio*, the absence of clear and logical lines of investigation that would have taken into account the context of the facts and their complexity, the long periods of procedural inactivity, the refusal to provide information on the military operations, and the lack of diligence and exhaustiveness in the investigations by the authorities in charge of them, permit the Court to conclude that all the domestic proceedings have not constituted effective remedies to determine the fate or to discover the whereabouts of the victims, or to guarantee the rights of access to justice and to know the truth, through the investigation and eventual punishment of those responsible, and full reparation of the consequences of the violations.

177. For the said reasons, the Court concludes that the State violated the rights recognized in Articles 7(6), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras, and José Rubén Rivera Rivera, and their next of kin.

## IX REPARATIONS *(Application of Article 63(1) of the American Convention)*

178. Based on the provisions of Article 63(1) of the American Convention,<sup>277</sup> the Court has established that any violation of an international obligation which has caused harm entails the obligation to provide adequate reparation.<sup>278</sup>

179. This Court has established that reparations must have a causal connection to the facts of the case, the violations declared and the damage proved, and the measures requested to repair the corresponding harm. Therefore, the Court must verify the concurrence of these elements in order to rule in keeping with law.<sup>279</sup>

180. Considering the violations of the American Convention declared in the preceding chapters, the Court will proceed to examine the claims submitted by the Commission and the representative, as well as the arguments of the State, in light of the criteria established in the Court's case law with regard to the nature and scope of the obligation to provide

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<sup>277</sup> Article 63(1) stipulates that, "[i]f the Court finds that there has been a violation of a right or freedom protected by [the] 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."

<sup>278</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Mejía Idrovo*, *supra* note 19, para. 126, and *Case of Chocrón Chocrón*, *supra* note 19, para. 143.

<sup>279</sup> Cf. *Case of Ticona Estrada et al.*, *supra* note 196, para. 110; *Case of Mejía Idrovo*, *supra* note 19, para. 129, and *Case of Chocrón Chocrón*, *supra* note 19, para. 146.

reparation,<sup>280</sup> in order to establish measures to repair the harm caused to the victims.

#### **A. Injured Party**

181. The Court reiterates that, according to the provisions of Article 63(1) of the Convention, those who have been declared a victim of the violation of any right embodied in the Convention are considered injured parties. Therefore, this Court considers that the following are “injured parties”: Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, José Rubén Rivera Rivera, María Maura Contreras, Fermín Recinos, Julia Gregoria Recinos Contreras, Marta Daysi Leiva, Nelson Contreras, Rubén de Jesús López Contreras, Sara Margarita López Contreras, Santos Antonio López Contreras, Arcadia Ramírez Portillo, Avenicio Portillo, María Nely Portillo, Santos Verónica Portillo, Reina Dionila Portillo de Silva, Margarita de Dolores Rivera de Rivera, Agustín Antonio Rivera Gálvez, Juan Carlos Rivera, Agustín Antonio Rivera, José Daniel Rivera Rivera, Milton Rivera Rivera, Irma Cecilia Rivera Rivera and Cándida Marisol Rivera Rivera. The foregoing, as victims of the violations declared in Chapters VII and VIII will be the beneficiaries of the reparations ordered below by the Court.

#### **B. Obligation to investigate the facts that resulted in the violations and to identify, prosecute and, as appropriate, punish those responsible, as well as to determine the whereabouts of the victims**

##### *1. Investigation, identification, trial, and, as appropriate, punishment of all the perpetrators and masterminds*

182. Both the Commission and the representatives asked the Court to order the State to carry out an impartial, diligent and effective investigation into the circumstances surrounding the forced disappearances in this case in order to identify all the perpetrators, participants, and masterminds, bring them to trial, and impose the corresponding punishments. Additionally, the Commission requested that the State be required to carry out the criminal, administrative and any other kind of investigations to establish the legal consequences for the acts or omissions of State officials that contributed to the concealment, the denial of justice, and the current impunity of the facts of the case, and the representatives requested that those responsible for the obstruction of justice be investigated. They also requested an investigation into those responsible for the ill-treatment and rape suffered by Gregoria Herminia Contreras, as well as the facts related to the alteration of her identity. In addition, the representatives asked that the State be ordered to create a special investigation unit to clarify the forced disappearances of children that occurred during the armed conflict “in order to establish a specialized agency to facilitate the comprehensive investigation of the facts.” The State acknowledged its obligation to investigate the facts denounced, to prosecute those responsible for the facts through a fair trial, and to punish them once they had been identified and their criminal or administrative responsibility determined. The State indicated its willingness to implement a strategy allowing access, through cooperation, to the necessary technical capabilities in forensic, anthropological, genetic and criminalistic investigation to investigate cases of children disappeared during the internal armed conflict.

183. In Chapter VIII of this judgment, the Court declared the violation of the rights to judicial guarantees and judicial protection because the domestic proceedings, taken as a whole, have not constituted effective remedies to determine the fate or to discover the

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<sup>280</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 278, paras. 25 to 27; *Case of Mejía Idrovo*, *supra* note 19, para. 127, and *Case of Chocrón Chocrón*, *supra* note 19, para. 144.

whereabouts of the victims, or to guarantee the rights of access to justice and to know the truth through the investigation and eventual punishment of those responsible, together with the full reparation of the consequences of the violations. Thus, more than 30 years after the facts began and 16 years after the first investigations were opened, impunity prevails as well as the lack of effectiveness of the investigations and criminal proceedings. This is reflected in the fact that none of those responsible has been identified or even involved in the investigations.

184. The Court reiterates that both the investigation and the search for disappeared persons are imperative State obligations, as is the importance that those actions are carried out in keeping with international standards, with an approach that takes into account that the victims were children at the time of the facts. Hence, the Court considers it necessary that the State adopt clear and concrete strategies designed to overcome the impunity in prosecuting the forced disappearances of children during the Salvadoran armed conflict, in order to evidence the systematic nature of this crime that particularly affected Salvadoran children, thereby preventing these facts from being repeated.

185. Based on the foregoing, together with its case law,<sup>281</sup> this Court orders that the State must continue, effectively and with the greatest diligence, the investigations that have been opened, and open those that may be necessary to identify, prosecute and, as appropriate, punish those responsible for the forced disappearance of Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera. This obligation must be complied with in a reasonable time, in order to establish the truth of the facts, and to determine the possible criminal responsibilities, based on the criteria indicated for investigations in cases of forced disappearance,<sup>282</sup> and removing all the *de facto* and *de jure* obstacles that maintain impunity<sup>283</sup> in this case. In particular, the State must:

- a) Take into account the systematic pattern of forced disappearances of children in the context of the Salvadoran armed conflict, as well as the large-scale military operations during which the facts of this case took place, so that the pertinent investigations and proceedings may be conducted taking into account the complexity of these facts and the context in which they occurred, avoiding omissions in the collection of evidence and in following logical lines of investigation, based on a proper assessment of the systematic patterns that gave rise to the facts under investigation;
- b) Identify and individualize all the perpetrators and masterminds of the forced disappearances of the victims. Due diligence in the investigations means that all the State authorities are obliged to collaborate in the collection of evidence; consequently, they must provide the judge, prosecutor or other judicial authority with all the information required and abstain from actions that obstruct the progress of the investigative process;
- c) Ensure that the competent authorities carry out the corresponding investigations *ex officio* and that, to do so, they have and use all the necessary logistic and scientific resources to collect and process evidence and, in particular, that

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<sup>281</sup> Cf. *Velásquez Rodríguez*, *supra* note 23, para. 174; *Case of Anzualdo Castro*, *supra* note 109, para. 181, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 237.

<sup>282</sup> Cf. *Case of Anzualdo Castro*, *supra* note 109, para. 181; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 256, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 237.

<sup>283</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 269, para. 277; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 237, and *Case of Manuel Cepeda Vargas*, *supra* note 14, para. 216.

they have the authority to access pertinent documentation and information to investigate the facts denounced and to take the measures and make the inquiries promptly that are essential to elucidate what happened to the disappeared persons in this case;

d) Since grave violations of human rights are at issue,<sup>284</sup> and considering the continuing or permanent nature of forced disappearance, the effects of which persist until the fate or whereabouts of the victims and their identity have been determined (*supra* paras. 83 and 92), the State must abstain from resorting to mechanisms such as amnesty for the perpetrators, or any other similar provision, such as prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem*, or any other similar exclusion of responsibility to avoid this obligation, and

e) Guarantee that the investigations into the facts that constituted the forced disappearances in this case remain at all times in the ordinary jurisdiction.

186. Also, in the circumstances of the present case, the Court deems necessary that the State adopts other measures, such as:

a) Establish coordination mechanisms between the different State bodies and institutions with the powers to investigate, and mechanisms to monitor the cases being processed for the forced disappearance of children during the armed conflict; to this end, a database on the matter must be set up and kept updated in order to ensure the most coherent and effective investigations;

b) Elaborate protocols for procedures in this matter with an interdisciplinary approach and train the officials involved in the investigation of serious human rights violations so that they are able to use the available legal, technical and scientific elements;

c) Promote pertinent actions of international cooperation with other States in order to facilitate the collection and exchange of information, as well as and other necessary legal actions, and

d) Ensure that the different bodies of the justice system involved in the case have the human, financial, logistic, scientific and other resources necessary to perform their tasks adequately, independently and impartially, and adopt the necessary measures to guarantee that judicial, prosecutorial and investigative officials and other agents of justice have an adequate security and protection system, which takes into account the circumstances of the cases for which they are responsible and the place where they work, and allows them to perform their functions with due diligence, and to protect witnesses, victims and next of kin.

187. The State must ensure the full access and capacity to act of the victims or their next of kin at all stages of the investigation and trial of those responsible.<sup>285</sup> In addition, the results of the corresponding proceedings must be made public so that Salvadoran society

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<sup>284</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 257, and *Case of Gelman*, *supra* note 16, para. 225.

<sup>285</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Gelman*, *supra* note 16, para. 256, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 257.

can learn about the facts that are the subject of this case, as well as those responsible.<sup>286</sup>

188. Furthermore, the State must open the pertinent investigations to elucidate, determine the corresponding criminal responsibilities, and apply the punishments and consequences provided for by law in relation to the appropriation of Gregoria Herminia Contreras, as well as the alteration of her identity, and any other related illegal act.

2. *Determination of the whereabouts of Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera*

189. The Commission asked the Court to order the State to carry out an impartial, diligent and effective investigation into the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez and José Rubén Rivera and, in the event that they are found, to order the re-establishment of their right to identity and to take the necessary measures to ensure family reunification. Should it be found that any of them are no longer alive, the State must adopt the measures necessary to return their remains to their next of kin. The representatives asked the Court to order the Salvadoran State to carry out a genuine search in which all possible efforts are made to determine the whereabouts of the victims as soon as possible. They argued that, if it is determined that the victims are alive, the State must assume the costs of the reunion and of providing adequate psychosocial care. In the event that their remains are found, following DNA testing to corroborate their identity, the State must return them to the next of kin as soon as possible and assume the respective expenses. The State acknowledged its obligation to investigate the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez and José Rubén Rivera and to adopt measures to re-establish their identity and facilitate family reunification through the National Search Commission. The State confirmed that it would assume the expenses of family reunion and the necessary psychosocial care and, if it is established that any of them are no longer alive, it would assume the responsibility of finding their remains, recovering them, and returning them to the next of kin.

190. In this case, it has been established that Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera are still disappeared (*supra* para. 92). The Court underlines that the victims disappeared approximately 30 years ago, so that it is a reasonable expectation of their next of kin that their whereabouts be identified, which, in itself, constitutes a measure of reparation and, therefore, gives rise to the corresponding obligation of the State to satisfy it.<sup>287</sup>

191. Consequently, the State must carry out a genuine search in which it makes every possible effort to determine the whereabouts of Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera as soon as possible. This should be done systematically and rigorously, with all the adequate and appropriate human, technical and scientific resources and, if necessary, cooperation should be requested from other States and international organizations. The said measures must be reported to the next of kin and, where possible, their presence should be secured.

<sup>286</sup> Cf. *Case of El Caracazo*, *supra* note 285, para. 118; *Case of Gelman*, *supra* note 16, para. 256, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 257.

<sup>287</sup> Cf. *Case of Neira Alegría et al. v. Peru*, reparations and costs. Judgment of September 19, 1996. Series C No. 29, para. 69; *Case of Gelman*, *supra* note 16, para. 258, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 261.

192. In the event that any of the victims are found alive following the steps taken by the State, the State must assume the expenses of identifying them using reliable methods, of the reunion, and of the necessary psychosocial care; it must provide a means of re-establishing their identity and make the efforts required to facilitate family reunification, should they so wish. If the victims are found to be deceased, their previously identified remains must be returned to the next of kin as soon as possible and without cost. Also, the State must cover the funeral expenses, as appropriate, in accordance with the wishes of the next of kin.<sup>288</sup>

### **C. Measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition**

#### *1. Restitution*

##### *a) Recovery of the identity of Gregoria Herminia Contreras*

193. The representatives argued that the State should assume the expenses generated to recover the identity of Gregoria Herminia, including “the measures necessary to guarantee her return to her country, the provision [of] psychological support that is adequate for her needs, and the measures necessary for the recovery of her original name,” as well as “the correction of those documents in which she appears with the surname Molina.” In addition, they advised that they had already been in conversations with the State in this regard. The Commission also indicated that the State should take “the measures required for the recovery of the identity of Gregoria Herminia Contreras, including the immediate elimination of the surname Molina for both herself and her children.” The State considered that this would require six months, during which a proceeding before the corresponding judicial authority could be carried out to define the specific situation of Gregoria Herminia’s identity. Regarding her children, who were born in the Republic of Guatemala, the Salvadoran State expressed its willingness to pursue domestic proceedings and send a letter, through its diplomatic representatives, to facilitate any measures that must be taken. Regarding the return of Gregoria Herminia to El Salvador, this is pending reception of a proposal from the representatives for its evaluation and the pertinent measures that the State must take.

194. The Court established the State’s international responsibility for altering the identity of Gregoria Herminia Contreras (*supra* para. 117). During the public hearing, she testified that “my name is now Gregoria de Jesús Molina and I would like to be able to have my real name with my real surnames.” She also stated, “I have children and they also have the surname Molina. I’m married, and I got married as Gregoria Molina, so it will be quite a problem [to recover my identity].”<sup>289</sup> In this regard, expert witness María Sol Yáñez stressed that, in her rehabilitation, it was very important and necessary for Gregoria Herminia to have her real name.<sup>290</sup>

195. In order to contribute to making reparation to Gregoria Herminia Contreras, the Court orders the State to take all adequate and necessary measures to restore the identity of Gregoria Herminia Contreras, including the name and surnames given to her by her biological parents, as well as her other personal data, including the correction of all the State

<sup>288</sup> Cf. *Case of Anzualdo Castro*, *supra* note 109, para. 185; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 262, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 242.

<sup>289</sup> Testimony given by Gregoria Herminia Contreras before the Inter-American Court during the public hearing held on May 17, 2011.

<sup>290</sup> Cf. Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011.

records in El Salvador in which Gregoria Herminia appears with the surname "Molina." The State has the obligation to comply with these measures of reparation in the terms ordered and within one year of notification of this judgment.

196. In addition, the Court orders the State to activate and use the available diplomatic channels to coordinate cooperation with the Republic of Guatemala to facilitate the correction of the identity of Gregoria Herminia Contreras, including the name, surname and other information, in that State's records where she appears with the surname "Molina." These include the registration of her marriage and the birth of her children. The Court understands that the result of this measure of reparation does not depend strictly on El Salvador, so that compliance with this aspect of the judgment will depend on the efforts made by the State, and it must report on the measures taken in this regard within one year of notification of this judgment.

197. Additionally, the State must guarantee the conditions for the return of Gregoria Herminia Contreras by providing the appropriate psychosocial support when she decides to return to El Salvador permanently. In that event, the State must pay the moving expenses of Gregoria Herminia Contreras and her family. The Court recognizes that, for the State to comply with this aspect, the beneficiary must indicate her willingness to return to El Salvador. Therefore, the Court deems it pertinent that, within six months of notification of this judgment, the State and the beneficiary agree on the corresponding details in order to comply with the Court's decision, should Gregoria Herminia Contreras consider returning to El Salvador.

## 2. *Rehabilitation*

### a) *Medical and psychological or psychiatric care for the victims*

198. The Commission asked the Court to order rehabilitation measures for Gregoria Herminia Contreras, her next of kin, and the next of kin of the other victims who remain disappeared. The representatives asked that the State provide "free medical and psychological assistance to the disappeared children in the event that they are found, and to their next of kin, so that they can have access to a State medical center and be provided with adequate and personalized attention. The State assumed the responsibility for implementing rehabilitation measures in favor of Gregoria Herminia Contreras, her next of kin and the other victims, which include free health care through the public health system and any necessary psychosocial treatment" in the terms established in the case of the Serrano Cruz sisters." The Commission requested similar measures in favor of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez and José Rubén Rivera, should they be found. Furthermore, it provided information on the initiation of measures to treat the physical health of the members of the Contreras, Mejía Ramírez and Rivera families, in coordination with the Search Association. The measures will be provided through the Health Ministry and three public hospitals, corresponding to the places of residence of the families, and include the scheduling of medical appointments, house calls by doctors, appointments with generalists and specialists, delivery of medicines, and clinical tests.

199. The Court finds, as it has in other cases,<sup>291</sup> that it is necessary to provide measures of reparation that offer adequate care for the psychological and physical ailments suffered

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<sup>291</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 267, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 253.

by the victims arising from the violations established in this judgment. Therefore, having verified the violations and the harm suffered by the victims, the Court considers it necessary to order measures of rehabilitation in this case.

200. The Court assesses positively the actions taken by the State in order to provide medical care to the victims in this case.<sup>292</sup> To help repair this harm, the Court establishes the State's obligation to provide medical and psychological or psychiatric treatment to the victims who request it, free of charge, immediately, adequately and effectively, in its specialized health care institutions. The treatment must include the provision of the medication they may need, also free of charge, based on the ailments of each person. In the event that these services are not available through the State, it must turn to specialized private or civil society institutions. Also, insofar as possible, the respective treatments must be provided in the centers nearest to their places of residence<sup>293</sup> in El Salvador for the time necessary. When providing the psychological or psychiatric treatment, the particular circumstances and needs of each victim must be taken into account so that individual, family and collective treatment is provided to them, according to the agreement reached with each victim, after individual evaluation.<sup>294</sup> The victims who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to inform the State of their intention to receive psychological or psychiatric treatment.<sup>295</sup>

201. The Court observes that, at the present time, Gregoria Herminia Contreras does not live in El Salvador and, therefore, will not have access to Salvadoran public health services in keeping with the provisions of this section. Therefore, the Court finds it pertinent to determine that, if Gregoria Herminia Contreras does not wish to return to that country, El Salvador must provide a sum to cover the expenses of her medical and psychological or psychiatric treatment, as well as other related expenses, in her place of residence.<sup>296</sup> Consequently, the Court orders that the State grant her once, within six months of the beneficiary communicating her intention not to return to El Salvador, the sum of US\$7,500.00 (seven thousand five hundred United States dollars) for medical and psychological or psychiatric treatment and any medicines and related expenses.

### 3. *Satisfaction*

#### a) *Publication and dissemination of the judgment*

202. The Commission asked the Court to order the State to publish the pertinent parts of the judgment issued by the Court. The representatives asked the Court to order the State to publish the judgment in both the official gazette and a national newspaper with wide circulation, as well as on the web page of the search for disappeared children that the State must create in compliance with the Court's judgment in the *case of the Serrano Cruz Sisters*.

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<sup>292</sup> Cf. Monitoring report of the Office for the Right to Health of May 11, 2011 (evidence file, documents handed over at the public hearing, folios 7659 to 7661).

<sup>293</sup> Cf. *Case the Dos Erres Massacre*, *supra* note 150, para. 270; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 268 and *Case of Rosendo Cantú et al.*, *supra* note 137, para. 253.

<sup>294</sup> Cf. *Case of the 19 Tradesman v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 268 and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 100, para. 253.

<sup>295</sup> Cf. *Case of Fernández Ortega et al.*, *supra* note 137, para. 252; *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 268 and *Case of Rosendo Cantú et al.*, *supra* note 137, para. 253.

<sup>296</sup> Cf. *Case of Loayza Tamayo v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 42, paras. 106(a) and (m), and 129(d); *Case of Cabrera García and Montiel Flores*, *supra* note 272, para. 221, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 269.

In addition, they asked the Court to require the State to publish the proven facts and the operative paragraphs of its judgment in a bulletin of the Salvadoran Armed Forces. The State accepted to publish the pertinent parts of the judgment to be delivered by the Court in a newspaper with national circulation and in the country's official gazette, in accordance with the parameters followed in the *case of the Serrano Cruz Sisters*.

203. The Court considers, as it has in other cases,<sup>297</sup> that, within six months of notification of this judgment, the State must publish:

- a) The official summary of this judgment prepared by the Court, once, in the Official Gazette;
- a) The official summary of this judgment prepared by the Court, once, in a national newspaper with wide circulation, and
- c) The whole of this judgment, for one year, on an official web site.

204. Finally, taking into account the representatives' request, the Court finds it appropriate to order the State to publish, once, the official summary of the judgment prepared by the Court in an internal bulletin of the Armed Forces of El Salvador, within the time frame indicated above.

*b) Act of public acknowledgment of international responsibility*

205. Both the Commission and the representatives asked the Court to order the State to carry out a public act acknowledging international responsibility. The representatives specified that it must be a public ceremony presided by the President of the Republic and with the presence of senior officials of the Armed Forces of El Salvador, the Public Prosecution Service, the Judiciary and the National Assembly, in which the State guarantees the presence of the victims' next of kin and of Gregoria Herminia Contreras, assumes all the traveling expenses, and agrees on the date and place of the act with the victims, their next of kin and their representatives. They also asked that the act be "transmitted by the principle national media" and that "a recording of the act be given to each of the victims' families." The State indicated that, on January 16, 2010, the President of the Republic had effected an act of reparation and apologized to all the victims of the human rights violations that took place in the context of El Salvador's internal armed conflict, who include the victims of the forced disappearance of children, and expressed his willingness to effect a specific act of reparation and acknowledgment of responsibility in this case.

206. The Court assesses positively the initiative to acknowledge responsibility executed by the State at the domestic level with regard to "all the victims of human rights violations that took place in the context of the Salvadoran internal armed conflict." However, as it has in other cases,<sup>298</sup> the Court considers that the State must carry out a public act of acknowledgment of international responsibility in relation to the facts of the instant case, referring to the violations established in this judgment. The act must be effected by means of a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on the means of complying with the public act of acknowledgment, as well as the specific details such as the

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<sup>297</sup> Cf. *Case of Barrios Altos*, *supra* note 291, operative paragraph 5(d); *Case of Mejía Idrovo*, *supra* note 19, para. 141, and *Case of Chocrón Chocrón*, *supra* note 19, para. 158.

<sup>298</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 81; *Case of Gelman*, *supra* note 16, para. 266, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 277.

place and date.<sup>299</sup> In addition, the State must cover the transportation costs of the next of kin and disseminate the act through the media.<sup>300</sup> The State must do this within one year of notification of this judgment.

c) *Designation of schools with the names of the victims*

207. The representatives asked the Court to order the State to name a school in each place where the forced disappearances occurred after the victims in this case, to be agreed on with the victims and their next of kin; with a plaque on which the victims' names appear together with an acknowledgment that they were forcibly disappeared by State agents. The representatives requested that this plaque be unveiled in the presence of the victims' next of kin. The State agreed to name a school after the victims in each place where the disappearances occurred or in any other place with symbolic relevance acceptable to the victims and their representatives.

208. The Court assesses positively the State's willingness to comply with the reparations requested by the representatives concerning this aspect of the judgment. In the instant case, the State has acknowledged the existence of a systematic pattern of forced disappearance of children that was perpetrated in the context of the Salvadoran internal armed conflict, within the framework of which the forced disappearances of José Rubén Rivera Rivera, Ana Julia and Carmelina Mejía Ramírez, and Gregoria Herminia, Serapio Cristian and Julia Inés Contreras took place. In this regard, given the circumstances of the case, the Court finds it important to name three schools, one for each family group: one with the name of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, another with the name of Ana Julia and Carmelina Mejía Ramírez, and a third with the name of José Rubén Rivera Rivera, in each place where the forced disappearance took place or in another nearby place with symbolic relevance, following the agreement of the victims and their representatives. A plaque must be placed within these schools with the names of the then children and an acknowledgment that they were forcibly disappeared by members of the Salvadoran Armed Forces. The plaques must be unveiled in the presence of the respective victims. The content of the plaques must be agreed upon previously with the victims and their representatives. The State has two years from notification of this judgment to implement these measures.

d) *Preparation, distribution and transmission of an audiovisual documentary*

209. The representatives considered it crucial that the State transmit a video in the media with the most extensive national coverage, and on the Internet, informing society about the *modus operandi* of the Armed Forces in the forced disappearance of children during the conflict, to include a segment in which the State's willingness to guarantee the non-repetition of the facts is reiterated, whose content must receive the prior consent of the victims and their representatives, and which must be transmitted monthly on three separate occasions, on the channel and at prime time. The documentary must also be placed on the web page of the search for disappeared children. The State agreed to produce a video on the forced disappearances of children during the armed conflict, the substance of which would include the contents of the judgments that the Court has handed down in relation to the

<sup>299</sup> Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009 Series C No. 196, para. 202; *Case of Gelman, supra* note 16, para. 266, and *Case of Gomes Lund et al. (Guerrilha do Araguaia), supra* note 97, para. 277.

<sup>300</sup> Cf. *Case of Myrna Mack Chang, supra* note 269, para. 278; *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 193, and *Case of the Miguel Castro Castro Prison, supra* note 137, para. 445.

disappearance of children in El Salvador, as well as the progress made toward complying with them. In addition, it stated that it would produce a video on the life and legacy of the priest Father Jon Cortina S.J., and the work of the *Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos*.

210. The Court assesses positively the State's willingness to comply with the reparations requested by the representatives under this aspect of the judgment. Given the circumstances of this case, the Court considers it important to prepare an audiovisual documentary on the forced disappearance of children during the armed conflict in El Salvador that makes specific mention of this case and that includes the work done by the *Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos*, the content of which must be agreed on previously with the victims and their representatives. The State must assume the expenses arising from the production and distribution of this video. The Court considers that the video must be distributed as widely as possible among the victims, their representatives, and the country's schools and universities, for its subsequent promotion and dissemination, with the ultimate purpose of informing Salvadoran society about these facts. The video must be transmitted at least once during prime time on a national channel, and placed on the web page of the search for disappeared children ordered by the Court in the *case of the Serrano Cruz Sisters*. The State has two years from notification of this judgment to carry out these measures.

#### **D. Guarantees of non-repetition**

##### *1. Public access to State archives*

211. The Commission indicated the need to open the military archives and that the State "establish the necessary conditions for these archives to be made available to all the investigators and all the committees and all the prosecutors working on this case." The representatives asked the Court to order the State to "make the military archives from the period of internal conflict public" and to ensure that the information "is adequately safeguarded and protected." To this end, the State must "make all the necessary financial, human and technical resources available to the entity designated as custodian so that it can carry out the work of classifying and safeguarding the documentation." The State reported on the entry into force of the Law on Access to Public Information on April 8, 2011, which "will provide an internal mechanism for accessing information on government activities allegedly related to the disappearance of children during the internal armed conflict." It also provides for "the creation of Access to Public Information Units" and "the creation of an Institute for Access to Public Information," with its own legal personality and funding, which will be responsible for overseeing the application of the law. In addition, the State advised that the law includes "a control mechanism, if no response is received to a request for information."

212. The Court assesses positively the initiative taken by El Salvador to allow access to information related to government activities allegedly related to the disappearance of children during the internal armed conflict. In particular, with regard to the control mechanism if no response is received to a request for information. Although there is no indication that this law was applied in this case with regard to the victims, the Court has observed that one of the constraints to progress in the investigations is the lack of access to the information contained in the archives on the counterinsurgency operations and on the individuals, and military units and ranks that took part in the operations in which the victims in this case were disappeared, including their rank, functions and responsibilities. Since this information is of vital importance for advancing judicial investigations and the investigations of the Public Prosecution Service, as well as for making it possible to identify and to

individualize those responsible, the State must adopt the pertinent and adequate measures to guarantee public, technical and systematic access to agents of justice and to Salvadoran society to the archives containing information that is useful and relevant to the investigation in cases involving human rights violations during the armed conflict. The measures must be supported by adequate budgetary allocations.

2. *Psychosocial assistance program for individuals who are found and their next of kin, and for the next of kin of those who remain disappeared*

213. The representatives requested the creation of a State program to provide free psychological assistance to those who are found and their next of kin, and to the next of kin who have not yet found their loved one and who, at the time of the disappearance, were under 18 years of age. They reported on several communications and meetings with the State in which the following agreements were reached: the program “would be attached to the Health Ministry;” “its establishment will mean setting up a new structure with its own budget and technical independence;” “it must include the participation of the next of kin of the victims and the support of experts in this area;” “it must have trained and sensitive personnel” and “it must be permanent.” Furthermore, the representatives gave a detailed description of the characteristics of the program and asked the Court to establish a deadline for the State to comply with this measure, and to monitor its implementation until it was fully complied with. The Commission did not make any specific request on this issue. The State confirmed that it has reached a general agreement with the representatives on the characteristics and progressive establishment of a State program for psychosocial care, which would create a specialized structure on the matter within the Health Ministry of El Salvador with technical independence. The “essential characteristics [of the program] include: personnel trained in providing care to victims; it will be holistic in its approach to medical and psychological care, and it will coordinate with the different processes for reparation to the victims that are being carried out by the State; it will seek inter-institutional coordination and apply recognized technical, legal and ethical standards in the sphere of psychosocial support, with the active participation of next of kin and the technical support of experts in this area.” In addition, it indicated that the program will be set up in several stages, which include the identification of the victim population that will benefit from the program; the initial individual and family evaluation and diagnosis based on psychosocial parameters; the training of human resources and the preparation of supporting material on experiences, as well as the theoretical framework of the program and its functions.

214. The Court assesses positively and takes note of the agreements and coordination between the State and the representatives in order to establish a comprehensive program of psychosocial care for victims of forced disappearance who have been found and their next of kin, and the next of kin of those who remain disappeared, which will not be monitored by the Court.

4. *Other measures requested*

215. The Commission considered that, taking into account the relationship between this case and the *case of the Serrano Cruz Sisters*, the Court should “again order the State to take non-judicial measures to find the disappeared children.” To this end, it deemed it necessary for the Court to “take into account the most specific problems that are being verified in the compliance with the judgment in [that] case [...] so that the State has more precise guidelines for rectifying the problems that have impeded implementation.” For their part, the representatives referred to the said reparations, asking that the State be ordered to create a regulatory framework for the National Search Commission through the Legislature, as well as to “create an autonomous Institute of Anthropology and Forensic

Genetics." The State "reaffirm[ed] its commitment to comply" with these measures, and indicated that it was taking steps in the context of the case in question. Regarding the National Search Commission, it indicated that it "did not object" to the representatives' request, because creation of the Commission, "by presidential decree, does not exclude the possibility of the Legislative Assembly consolidating the establishment of this Commission by ordering its creation by legislative decree." Regarding the Institute of Anthropology and Forensic Genetics, the State considered it positive that a proposed strategy for implementing this measure is "the possibility of entering into partnerships and obtaining technical cooperation from countries and entities that have installed capacity and accumulated experience."

216. In the seventh operative paragraph of the judgment in the *case of the Serrano Cruz Sisters*,<sup>301</sup> the Court ordered that the State "must adopt the following measures to determine the whereabouts of Ernestina and Erlinda Serrano Cruz: establishment of a national commission to trace the young people who disappeared during the armed conflict when they were children, with the participation of civil society; creation of a search web page, and creation of a genetic information system." Since the said measures ordered in the judgment in the *case of the Serrano Cruz Sisters* are part of a specific operative paragraph of that judgment, which, taken as a whole, refers to the implementation of a system that permits an effective search for the children disappeared during the armed conflict, the Court does not find it pertinent to order the requested measures of reparation again, because they have already been established in the said judgment and compliance with what the Court ordered is still being evaluated during the stage of monitoring compliance with judgment.

217. Similarly, the Court does not find it pertinent to order the creation of an autonomous Institute of Anthropology and Forensic Genetics, in the understanding that the contact with the families in order to interview their members, collect and update information, obtain details of the circumstances of the disappearance, and collect biological samples with the proper chain of custody, must be part of the work performed by the National Search Commission and the genetic information system to permit the identification of a person or of human remains using the appropriate forensic methods.

218. The representatives also asked the Court to order the State to adapt the definition of the crime of forced disappearance of persons to international standards on the matter. In addition, they asked that the recommendation that the State adopt "the measures necessary to ratify the Inter-American Convention on Forced Disappearance of Persons" be reiterated. The State reported that the Legislative Assembly of El Salvador was examining bills to reform the definition of the crime of forced disappearance, which would result in compliance with the international standards for the definition of this crime.

219. According to the information it has received, the Court urges the State to continue the legislative process and adopt, within a reasonable time and in accordance with the obligation arising from Article 2 of the American Convention, the necessary measures to define the crime of forced disappearance of persons in keeping with the inter-American standards. This obligation is binding for all the State powers and bodies. In this regard, as this Court has indicated previously,<sup>302</sup> the State must not restrict itself to promoting the corresponding bill, but rather it must also ensure its prompt enactment and entry into force in accordance with procedures established in domestic law. While complying with this

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<sup>301</sup> Cf. *Case of the Serrano Cruz sisters*, *supra* note 29, seventh operative paragraph.

<sup>302</sup> Cf. *Case of Radilla Pacheco*, *supra* note 25, para. 344, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 97, para. 287.

measure, the State must take all necessary steps to guarantee the effective prosecution and, as appropriate, punishment of the facts constituting forced disappearance through the mechanisms that exist in its domestic law.

220. In addition, the representatives asked the Court to order “the creation of a commission on reparations for disappeared children,” with the necessary independence and funding; different types of reparation should be foreseen, including measures of material restitution and financial compensation. The State reported that, on May 5, 2010, by Executive Decree No. 57, the “National Commission on Reparation for the Victims of the Human Rights Violations that occurred in the Context of the Internal Armed Conflict” was established in order to propose to the President of the Republic, in a duly justified report, the establishment of a presidential program to provide reparation to the victims of serious human rights violations, which would include the young people who have been found. In this regard, the Court considers that the delivery of this judgment and the reparations ordered are sufficient and adequate to remedy the violations suffered by the victims in this case.<sup>303</sup>

221. Regarding the other requests of the Commission<sup>304</sup> and the representatives,<sup>305</sup> the Court observes that they were not presented at the appropriate procedural moment; in other words, when submitting the application in this case to the Court’s consideration, and in the pleadings and motions brief. The requests are therefore time-barred and will not be considered.<sup>306</sup>

## E. Compensation

### 1. Pecuniary damage

222. The Commission asked the Court to establish, in equity, the amount of compensation corresponding to the pecuniary damage caused as a result of the alleged violations. The representatives stated that, in order to find the disappeared children, the victims’ next of kin and the Search Association incurred multiple expenses. In addition, the next of kin incurred different expenses in order to obtain medical attention and medicines as a result of the effect on them of the harm caused. However, since “they do not have documents to support the expenses incurred by the families,” they asked the Court to determine, in equity, the amounts that the State must pay to each family for indirect damage. The State asked the Court to set an amount for the reparation of pecuniary damage in keeping with the parameters established in *case of the Serrano Cruz Sisters*.

223. In its case law, the Court has developed the concept of pecuniary damage and the hypotheses under which it must be compensated. This Court has established that pecuniary damage assumes “the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a

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<sup>303</sup> Cf. *Case of Radilla Pacheco*, *supra* note 25, para. 359; *Case of Cabrera García and Montiel Flores*, *supra* note 272, para. 247, and *Case of Vélez Loo*, *supra* note 13, para. 294.

<sup>304</sup> During the public hearing and in its brief with final observations, the Commission expressed the need for the State to ensure that “symbols of honor are removed from perpetrators of serious violations in the context of the armed conflict, including the designation of certain military ranks with the name Domingo Monterrosa.”

<sup>305</sup> In their brief of final arguments, the representatives asked the Court to order the State “to designate a State entity” with specialized personnel and adequate operating resources with “the authority and responsibility to review the archives held by the Armed Forces in order to classify them and make them available to the corresponding authorities.”

<sup>306</sup> Cf. *Case of Radilla Pacheco*, *supra* note 25, para. 359; *Case of Gelman*, *supra* note 16, para. 269, and *Case of Rosendo Cantú et al.*, *supra* note 137, para. 269.

causal nexus with the facts of the case."<sup>307</sup> In this case, the representatives have only requested that the Court establish an amount for indirect damage resulting from medical and other expenses related to the search, in favor of the victims' next of kin.

224. In the section on costs and expenses, the Court will examine the financial expenses of the Search Association resulting from the search and family reunion of the victims in this case (*infra* para. 234), because the amounts expended are also related to the expenses to advance the domestic investigations.

225. The Court considers that, owing to the searches carried out directly by the next of kin of the victims under adverse conditions, as well as the expenses incurred by the next of kin for medical attention and medicines as a result of the effects on them of the forced disappearances verified in this case (*supra* paras. 120 to 123), it is reasonable to establish, in equity, the following amounts for indirect damage:

Name	Relationship	Amount
<b>Mejía Ramírez Family</b>		
Arcadia Ramírez Portillo	Mother	US\$ 5.000,00
Avenicio Portillo	Brother	US\$ 1.000,00
María Nely Portillo	Sister	US\$ 1.000,00
Santos Verónica Portillo	Sister	US\$ 1.000,00
Reina Dionila Portillo de Silva	Aunt	US\$ 5.000,00
<b>Contreras Recinos Family</b>		
María Maura Contreras	Mother	US\$ 5.000,00
Fermín Recinos Ayala	Father	US\$ 5.000,00
Julia Gregoria Recinos Contreras	Sister	US\$ 1.000,00
Marta Daysi Leiva Contreras	Sister	US\$ 1.000,00
Nelson Geovany Contreras	Brother, deceased	US\$ 1.000,00
Rubén de Jesús López Contreras	Brother	US\$ 1.000,00
Sara Margarita López Contreras	Brother	US\$ 1.000,00
Santos Antonio López Contreras	Brother	US\$ 1.000,00
<b>Rivera Rivera Family</b>		
Margarita Dolores Rivera de Rivera	Mother	US\$ 5.000,00
Agustín Antonio Rivera Gálvez	Father	US\$ 5.000,00
Juan Carlos Rivera	Brother, deceased	US\$ 1.000,00
Agustín Antonio Rivera Rivera	Brother	US\$ 1.000,00
José Daniel Rivera Rivera	Brother	US\$ 1.000,00
Milton Rivera Rivera	Brother	US\$ 1.000,00
Irma Cecilia Rivera Rivera	Sister	US\$ 1.000,00
Cándida Marisol Rivera Rivera	Sister	US\$ 1.000,00

## 2. Non-pecuniary damages

226. The Commission requested that the Court establish, in equity, the amount of compensation corresponding to non-pecuniary damage resulting from the alleged violations. The representatives asked the Court, in equity, to order the Salvadoran State to repair the non-pecuniary damage caused to the victims and their next of kin owing to the profound suffering they have experienced as a result of the factors they described at length with regard to each family, as well as because of the lack of action by the judicial system to find the victims, identify those responsible for the facts, and punish them, as appropriate. The State asked the Court to set an amount for the reparation of non-pecuniary damage in

<sup>307</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Mejía Idrovo, supra* note 19, para. 150, and *Case of Chocrón Chocrón, supra* note 19, footnote 206.

keeping with the parameters established in the *case of the Serrano Cruz Sisters*.

227. International case law has established repeatedly that the judgment can constitute *per se* a form of reparation.<sup>308</sup> Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage and has established that it “can include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to the individual, as well as other changes of a non-pecuniary nature in the living conditions of the victims or their next of kin.”<sup>309</sup>

228. The Court has verified that the physical and moral integrity of the then children who were victims of forced disappearance in this case were affected, resulting in feelings of loss, abandonment, intense fear, uncertainty, anguish and pain (*supra* paras. 85). In the specific case of Gregoria Herminia Contreras, the Court has verified additional effects arising from her appropriation (*supra* paras. 98 to 102). Also, the Court has established that, owing to the facts in this case, the next of kin of the victims suffered psychological effects and irreversible alterations in their immediate family, uncertainty about the whereabouts of the victims, and a sense of impotence due to the lack of collaboration of the State authorities and the impunity generated for more than three decades (*supra* paras. 120, 121 and 123). Regarding the siblings of the victims, the Court has found that they also endured suffering, that harmed their mental and moral integrity (*supra* paras. 120 and 122). Based on the foregoing, the Court finds it pertinent to establish, in equity, the following amounts in favor of the victims as compensation for non-pecuniary damage:

Name	Relationship	Amount
<b>Mejía Ramírez Family</b>		
Ana Julia Mejía Ramírez	Disappeared victim	US\$ 80.000,00
Carmelina Mejía Ramírez	Disappeared victim	US\$ 80.000,00
Arcadia Ramírez Portillo	Mother	US\$ 50.000,00
Avenicio Portillo	Brother	US\$ 10.000,00
María Nely Portillo	Sister	US\$ 10.000,00
Santos Verónica Portillo	Sister	US\$ 10.000,00
Reina Dionila Portillo de Silva	Aunt	US\$ 25.000,00
<b>Contreras Recinos Family</b>		
Gregoria Herminia Contreras	Disappeared victim, found	US\$ 120.000,00
Serapio Cristian Contreras	Disappeared victim	US\$ 80.000,00
Julia Inés Contreras	Disappeared victim	US\$ 80.000,00
María Maura Contreras	Mother	US\$ 50.000,00
Fermín Recinos Ayala	Father	US\$ 50.000,00
Julia Gregoria Recinos Contreras	Sister	US\$ 10.000,00
Marta Daysi Leiva Contreras	Sister	US\$ 10.000,00
Nelson Geovany Contreras	Brother, deceased	US\$ 10.000,00
Rubén de Jesús López Contreras	Brother	US\$ 10.000,00
Sara Margarita López Contreras	Brother	US\$ 10.000,00
Santos Antonio López Contreras	Brother	US\$ 10.000,00
<b>Rivera Rivera Family</b>		
José Rubén Rivera	Disappeared victim	US\$ 80.000,00
Margarita Dolores Rivera de Rivera	Mother	US\$ 50.000,00
Agustín Antonio Rivera Gálvez	Father	US\$ 50.000,00
Juan Carlos Rivera	Brother, deceased	US\$ 10.000,00
Agustín Antonio Rivera Rivera	Brother	US\$ 10.000,00

<sup>308</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35; *Case of Mejía Idrovo*, *supra* note 19, para. 134, and *Case of Chocrón Chocrón*, *supra* note 19, para. 149.

<sup>309</sup> *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Mejía Idrovo*, *supra* note 19, para. 150, and *Case of Chocrón Chocrón*, *supra* note 19, footnote 210.

José Daniel Rivera Rivera	Brother	US\$ 10.000,00
Milton Rivera Rivera	Brother	US\$ 10.000,00
Irma Cecilia Rivera Rivera	Sister	US\$ 10.000,00
Cándida Marisol Rivera Rivera	Sister	US\$ 10.000,00

## F. Costs and expenses

229. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations established in Article 63(1) of the American Convention.<sup>310</sup>

230. The Commission asked the Court to order the State “to pay the costs and expenses that have arisen and that arise from processing this case in the domestic sphere and before the inter-American human rights system.” The representatives asked the Court to order the State to reimburse the Center for Justice and International Law (CEJIL) for the costs and expenses incurred representing the victims and their next of kin in the international proceedings as of 2001, the amount of US\$31,789.69 (thirty-one thousand seven hundred and eighty-nine United States dollars and sixty-nine cents). In its brief with final arguments, CEJIL updated the amount of the expenses incurred “for producing evidence and preparing for the public hearing,” requesting the payment of an additional US\$17,872.93 (seventeen thousand eight hundred and seventy-two United States dollars and ninety-three cents) for a total of US\$49,662.62 (forty-nine thousand six hundred and sixty-two United States dollars and sixty-two cents). They also asked the Court to order an additional amount for “future expenses” relating to compliance with the judgment and the monitoring procedure. The representatives also submitted a global estimate of the costs and expenses of the Search Association, calculated at US\$230,000.00 (two hundred and thirty thousand United States dollars), incurred during its investigations into the whereabouts of the victims since 1994, the psychosocial support provided since 1996, the legal support provided since 1997, medical expenses and consultations for the victims, and expenses for the case at the domestic level, and for processing it at the international level. In addition, they requested an additional US\$10,985.55 (ten thousand, nine hundred and eighty-five United States dollars and fifty-five cents) for litigation expenses from October 2010 to May 2011. In summary, they requested a total reimbursement of US\$240,985.55 (two hundred and forty-thousand nine hundred and eighty-five United States dollars and fifty-five cents) in favor of the Association.

231. The State asked the Court that the corresponding costs and expenses be duly and sufficiently accredited and that they be proportionate to the amounts established, as a precedent, in the judgment handed down in the *case of the Serrano Cruz Sisters*. Regarding the probative support presented by the representatives, the State observed that there were documents that, in its opinion, were not clearly related to the costs and expenses arising from this case or that did not correspond to expenses incurred exclusively in this case. Therefore, the State asked the Court to assess this documentation prudently, based on the characteristics of the case, taking into account the expenses indicated and authenticated by the parties, provided that the amounts were reasonable. In addition, the State called attention to the expenses and outlays submitted in favor of the victim and the expert witnesses, despite the financial assistance from the Legal Assistance Fund.

232. First, regarding the State’s request that the costs and expenses be adapted to the amounts established as a precedent in the judgment handed down in the *case of the*

<sup>310</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79; *Case of Mejía Idrovo*, *supra* note 19, para. 157, and *Case of Chocrón Chocrón*, *supra* note 19, para. 192.

*Serrano Cruz Sisters*, the Court reiterates that, in keeping with its case law,<sup>311</sup> costs and expenses form part of the concept of reparation since the actions of the victims to obtain justice at both the domestic and the international levels lead to expenditure that must be compensated when the international responsibility of the State is declared in a judgment. With regard to their reimbursement, it is the Court's responsibility to estimate their scope prudently; this includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those arising during the course of the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses reported by the parties, provided that the amount is reasonable.

233. The Court has indicated that, "the claims of the victims or their representatives with regard to costs and expenses and the supporting evidence must be submitted to the Court on the first occasion granted them; in other words, in the pleadings and motions brief. Nevertheless, this claim may be updated subsequently, in keeping with the new costs and expenses incurred during the processing of the case before this Court."<sup>312</sup> Furthermore, the Court reiterates that it is not sufficient to merely submit probative documentation; rather the parties are required to present arguments relating the evidence to the fact that it is considered to represent and, in the case of alleged financial expenses, to establish clearly the items and the justification for them.<sup>313</sup>

234. With regard to the evidence relating to the financial expenditure made by the Search Association, the Court has verified that it incurred expenses related to the litigation at both the domestic and international levels. Those expenses relate to transportation, accommodation, and messenger and communications services, among others, and the Association submitted vouchers for them. In addition, some expenses incurred by the Search Association correspond to the search for the victims in this case and for reuniting Gregoria Herminia Contreras with her family. Lastly, some expenses relate to workshops offered by the Search Association to different individuals, including the victims in this case.

235. Regarding the State arguments about the receipts forwarded by the representatives, the Court observes that: (a) some payment vouchers indicate a reason for the expenditure that is not clearly and precisely connected to this case; (b) some vouchers refer to office supplies and the employee payroll without indicating the specific percentage that corresponds to the expenses in this case, and (c) some payment vouchers are illegible and the sum they are intended to prove cannot be determined. The items to which they refer have been deducted, in fairness, from the calculation made by the Court.

236. Based on the above, the Court has verified that the expenses authenticated by the Search Association ascend to approximately US\$35,402.00 (thirty-five thousand four hundred and two United States dollars). The Court considers it reasonable to add to this sum, an amount for the time, work and resources used to search for the victims for more than 15 years.

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<sup>311</sup> Cf. *Case of Garrido and Baigorria*, *supra* note 310, para. 79; *Case of Mejía Idrovo*, *supra* note 19, para. 161, and *Case of Chocrón Chocrón*, *supra* note 19, para. 196.

<sup>312</sup> *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170 para. 275; *Case of Mejía Idrovo*, *supra* note 19, para. 162, and *Case of Chocrón Chocrón*, *supra* note 19, para. 275.

<sup>313</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 312, para. 277; *Case of Vera Vera et al.*, *supra* note 193, para. 142, and *Case of Salvador Chiriboga v. Ecuador. Reparations and costs*. Judgment of March 3, 2011. Series C No. 222, para. 138.

237. Regarding CEJIL, the proven expenses were approximately US\$18,190.00 (eighteen thousand one hundred and ninety United States dollars), relating to expenditure for travelling to the Inter-American Commission and per diems for a hearing in this case; to El Salvador and Guatemala, in relation to several measures to process this case, and to Panama City to attend the hearing held before the Court in this case. The representatives also incurred accommodation expenses in Panama for the victim's companion and additional days to those covered by the Legal Assistance Fund for a total of US\$540.30 (five hundred and forty United States dollars and thirty cents). In addition, from the vouchers presented by the representatives, the Court observes that some of them do not correspond only to expenses incurred in this case, others are illegible or unconnected to the case and, in fairness, these have been deducted from the calculation made by the Court.

238. The Court also observes that CEJIL requested the proportionate payment of a proven sum of approximately US\$25,165.00 (twenty five thousand one hundred and sixty-five United States dollars). In this regard, the Court will make a prudent assessment of the amount that the State must reimburse for this concept, based on the principles of equity and reasonableness.

239. Consequently, the Court decides to establish, in equity, the amount of US\$70,000.00 (seventy thousand United States dollars) for the *Asociación de Pro-Búsqueda de Niños y Niñas Desaparecidos* for costs and expenses incurred during the work of searching for the victims and the litigation of the case at the domestic and the international level. In addition, the Court establishes, in equity, a total of US\$30,000.00 (thirty thousand United States dollars) for the Center for Justice and International Law (CEJIL) to cover the costs and expenses of the litigation of this case at the international level. These amounts must be paid directly to the representative organizations. The Court considers that, in the proceeding to monitor compliance with this judgment, it can order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.

#### **G. Reimbursement of expenses to the Victims' Legal Assistance Fund**

240. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the inter-American human rights system in order "to facilitate access to the inter-American human rights system to those who currently lack the resources needed to bring their cases before the system."<sup>314</sup> In the instant case, the victims were granted the financial aid required for the presentation of three testimonies during the public hearing held in Panama, charged to the Fund (*supra* paras. 8 and 9).

241. The State had the opportunity to present its observations on the expenditures made in this case, which amounted to US\$4,131.51 (four thousand one hundred and thirty-one United States dollars and fifty-one cents). The State indicated that the details of the expenses, in relation to the items covered, are in keeping with the order of the President of the Court granting the financial assistance. Consequently, in application of Article 5 of the Rules of the Fund, the Court must evaluate whether to order the respondent State to reimburse the Inter-American Court's Legal Assistance Fund for the expenditure incurred.

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<sup>314</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during its thirty-eighth regular session, at the fourth plenary session held on June 3, 2008, "*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*," Operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, the OAS Permanent Council, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*," Article 1(1)

242. Based on the violations declared in this judgment, the Courts orders the State to reimburse the said fund the sum of US\$4,131.51 (four thousand one hundred and thirty-one United States dollars and fifty-one cents) for expenses incurred for the appearance of deponents at the public hearing in this case. This amount must be reimbursed within 90 days of notification of this judgment.

**H. Means of compliance with the payments ordered**

243. The payment of the compensation established in favor of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Julia Inés Contreras, Serapio Cristian Contreras and José Ruben Rivera Rivera must be held in accounts or certificates of deposit in the beneficiaries' name in a solvent Salvadoran banking institution in United States dollars and under the most favorable financial terms allowed by Salvadoran law and banking practice. If, after 10 years, the compensation has not been claimed, the amount will be delivered, together with the accrued interest, to the mothers and/or fathers in equal parts, as appropriate, who will have two years to claim the compensation, after which, if it has not been claimed, it will be returned to the State with the accrued interest.

244. The State shall pay the compensation for pecuniary and non-pecuniary damages, as well as the reimbursement for costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of this judgment and in the terms of the following paragraphs.

245. In the event that a beneficiary has died or dies before the corresponding compensation has been paid, the compensation shall be paid directly to his or her heirs in keeping with the applicable domestic law.

246. The State must comply with its obligations by payment in United States dollars.

247. If, for reasons attributable to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the period indicated, the State shall deposit the said amounts in an account or certificate of deposit in the beneficiaries' name in a solvent Salvadoran financial institution in United States dollars and under the most favorable financial terms allowed by law and banking practice. If, after 10 years, the compensation is still unclaimed, the amounts shall be returned to the State together with any accrued interest.

248. The amounts assigned in this judgment for compensation and reimbursement of costs and expenses shall be paid to the persons and organizations indicated in full, in keeping with the provisions of this judgment, without deductions for possible taxes and charges.

249. If the State falls into arrears with its payments, it shall pay interest on the amount owed corresponding to the Salvadoran bank interest rate on arrears.

**X  
OPERATIVE PARAGRAPHS**

250. Therefore,

**THE COURT**

**DECLARES,**

Unanimously, that:

1. It accepts the acknowledgement of international responsibility made by the State, in the terms of paragraphs 17 to 28 of this judgment.
2. The State is responsible for violating the rights to juridical personality, life, personal integrity, and personal liberty recognized in Articles 3, 4(1), 5(1) and 7 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, in the terms of paragraphs 80 to 94 of this judgment.
3. The State is responsible for violating the prohibition of torture and other cruel, inhuman or degrading treatment, established in Article 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Gregoria Herminia Contreras, in accordance with paragraphs 95 to 102 of this judgment.
4. The State is responsible for violating the right to family life and the protection of the family recognized in Articles 11(2) and 17(1) of the American Convention on Human Rights, in relation to Articles 19 and 1(1) thereof, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, in the terms of paragraphs 103 to 109 of this judgment.
5. The State is responsible for violating the right to family life and protection of the family recognized in Articles 11(2) and 17(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin indicated in paragraph 27 of this judgment, in the terms of paragraphs 103 to 109 hereof.
6. The State is responsible for violating the right to privacy and family life, protection of the family and the right to a name recognized in Articles 11(2), 17(1) and 18 of the American Convention on Human Rights, in relation to Articles 19 and 1(1) thereof, to the detriment of Gregoria Herminia Contreras, in the terms of paragraphs 103 to 118 hereof.
7. The State is responsible for violating the right to personal integrity recognized in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin indicated in paragraph 27 of this judgment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, in accordance with paragraphs 119 to 124 hereof.
8. The State is responsible for violating the right to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, as well as their next of kin indicated in paragraph 27 of this judgment, in the terms of paragraphs 126 to 155, 165 to 172 and 174 to 177 hereof.
9. The State is responsible for violating the right to personal liberty recognized in Article 7(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez, Gregoria Herminia Contreras, Julia Inés Contreras, Serapio Cristian Contreras and José Rubén Rivera Rivera, as well as their

next of kin indicated in paragraph 27 of this judgment, in the terms of paragraphs 156 to 163 and 176 to 177 hereof.

10. It is not in order to issue a ruling on the alleged violation of Article 25(2) of the American Convention on Human Rights, in the terms of paragraph 164 of this judgment, and there are no elements to verify the alleged violation of Article 13 of the American Convention on Human Rights, in accordance with paragraph 173 of this judgment.

## **AND ORDERS**

unanimously, that:

1. This judgment constitutes *per se* a form of reparation.
2. Within a reasonable time, the State must continue effectively and with the greatest diligence the investigations it has commenced, as well as initiate any others necessary in order to identify, prosecute and, as appropriate, punish all those responsible for the forced disappearances of Gregoria Herminia Contreras, Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera, as well as other related illegal acts, as established in paragraphs 183 to 185 and 187 to 188 of this judgment.
3. The State must conduct, as soon as possible, a genuine search, in which it makes every effort to determine the whereabouts of Serapio Cristian Contreras, Julia Inés Contreras, Ana Julia Mejía Ramírez, Carmelina Mejía Ramírez and José Rubén Rivera Rivera, as established in paragraphs 190 to 192 of this judgment.
4. The State must adopt all the appropriate and necessary measures to restore the identity of Gregoria Herminia Contreras, including her first and last names, as well as her other personnel data. In addition, the State must activate and use the available diplomatic mechanisms to coordinate cooperation with the Republic of Guatemala in order to facilitate the correction of the identity of Gregoria Herminia Contreras, including her first and last name and other data, in the records of that State. Similarly, the State must guarantee the conditions for the return of Gregoria Herminia Contreras should she decide to return to El Salvador permanently, in the terms established in paragraphs 194 to 197 of this judgment.
5. The State must provide, immediately, the medical, psychological or psychiatric treatment to the victims that request it and, as appropriate, pay the amount established to Gregoria Herminia Contreras, as established in paragraphs 199 to 201 of this judgment.
6. The State must make the publications ordered, as established in paragraphs 203 and 204 of this judgment.
7. The State must organize a public act to acknowledge international responsibility for the facts of this case, as established in paragraph 206 of this judgment.
8. The State must designate three schools: one with the name of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, another with the name of Ana Julia and Carmelina Mejía Ramírez, and a third with the name of José Rubén Rivera Rivera, in the terms of paragraph 208 of this judgment.

9. The State must make an audio-visual documentary on the forced disappearance of children during the armed conflict in El Salvador, with specific mention of this case, which includes the work carried out by the *Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos*, as established in paragraph 210 of this judgment.

10. The State must adopt the pertinent and appropriate measures to guarantee to agents of justice, as well as to Salvadoran society, public, technical and systematized access to the archives that contain useful information that is relevant to the investigation in cases prosecuted for human rights violations during the armed conflict, as established in paragraph 212 of this judgment.

11. The State must pay the amounts established in paragraphs 225, 228 and 239 of this judgment as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, as appropriate, in the terms of paragraphs 243 to 249 hereof.

12. The State must reimburse the Victim's Legal Assistance Fund of the Inter-American Court of Human Rights the sum expended during the processing of this case, in the terms of paragraph 242 of this judgment.

13. The State must, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

14. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligation under the American Convention on Human Rights, and will conclude this case when the State has complied fully with its operative paragraphs.

Done, in Bogotá, Colombia, on August 31, 2011, in the Spanish and English languages, the Spanish version being authentic.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary