

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF ALVARADO ESPINOZA *ET AL.* V. MEXICO
JUDGMENT OF NOVEMBER 28, 2018
(Merits, reparations and costs)

In the case of *Alvarado Espinoza et al.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:*

Eduardo Vio Grossi, acting President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary;

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

* Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the processing of this case or in the deliberation and signature of this judgment, in keeping with the provisions of Article 19 of the Court's Rules of Procedure.

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I

INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On November 9, 2016, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”), submitted to the jurisdiction of the Court the case of “*Alvarado Espinoza et al.*” against the United Mexican States (hereinafter “the Mexican State”, “the State” or “Mexico”). According to the Commission, the case relates to the alleged forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado and Rocío Irene Alvarado Reyes by state agents in the Ejido Benito Juárez, state of Chihuahua, Mexico, as of December 29, 2009. To date, the whereabouts or fate of the three disappeared presumed victims is unknown. The case also relates to the alleged situation of impunity of the three disappearances, due to which it was determined that the application of the military jurisdiction in this specific case could have violated the right to a competent, independent and impartial authority in order to obtain justice. Lastly, a series of connected violations are alleged derived from the alleged threats and harassment that their families have had to face, and including their forced displacement. Therefore, the Commission concluded that the Mexican State was responsible for the violation of the rights to juridical personality, life, personal integrity and personal liberty of the disappeared presumed victims, pursuant to Articles 3, 4, 5 and 7 of the American Convention on Human Rights (hereinafter “the Convention”); as well as the rights of the direct families of the presumed victims to judicial guarantees and judicial protection, pursuant to Articles 8, 11, 19, 22 and 25, of the Convention. All in relation to Articles 1(1) and 2 of this instrument to the detriment of the disappeared presumed victims and of their families. Furthermore, the Commission concluded that the State was responsible for the violation of Articles I(a) and (b), and IX of the Inter-American Convention on Forced Disappearance of Persons. The presumed victims in this case are: Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, and also their families, described in paragraphs 76 to 78 of this judgment¹ (hereinafter “the presumed victims”), based on the considerations included below in Chapter VI on Facts.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On June 26, 2011, the Centro de Derechos Humanos de las Mujeres (CEDEHM); the Comisión de Solidaridad y Defensa de los Derechos Humanos (COSYDDHAC); Justicia para Nuestras Hjas (JPNH), and the Paso del Norte Human Rights Center (CDHPN) (hereinafter “the petitioners”) lodged the initial petition before the Commission based on the above-mentioned alleged forced disappearance (*supra* para. 1).
- b) *Admissibility Report.* On July 12, 2013, the Commission adopted Admissibility Report No. 48/13,

¹ The Court points out that, based on the information provided by the representatives of the presumed victims, the following next of kin were not included as victims of the case before this Court: (i) María de Jesús Rueda Villanueva (grandmother of Rocío Irene Alvarado Reyes); (ii) Manuel Melquiades Alvarado Herrera (brother of José Ángel Alvarado Herrera); (iii) Mayra Daniela Salais Rodríguez (wife of Manuel Melquiades and sister-in-law of José Ángel Alvarado Herrera), and (iv) D.J.A.S. and X.A.S. (both nieces of José Ángel Alvarado Herrera). This is because, in a brief of March 2, 2017, during the processing of the case, the representatives advised the Court that: “there are five persons that we have been looking for during the whole international procedure and they have never responded to the different requests we have made indicating the importance of being included in these proceedings.” They indicated that this was why they had not provided the powers of attorney of these persons (merits file, f. 131). In addition, during the processing of provisional measures in the matter of *Alvarado Reyes et al. with regard to Mexico*, the National Human Rights Commission (CNDH) indicated in the Risk Assessment requested by this Court in its order on provisional measures of November 14, 2017, that: “[t]he National Human Rights Commission certifies that the representatives of the beneficiaries indicated that Manuel [Melquiades] Alvarado Herrera (brother of José Ángel Alvarado Herrera), his wife and children do not wish to be involved in any way in the proceedings on the contentious case or in the provisional measures in the matter of *Alvarado Reyes [...]*” (*Matter of Alvarado Reyes et al. with regard to Mexico*, processing file, f. 3226). Also, in a communication of November 8, 2018, the Commission indicated that: “note that the family group of Manuel [Melquiades] Alvarado Herrera, through their representatives, has informed the IACHR that they do not wish to be involved in the procedure of provisional measures” (*Matter of Alvarado Reyes et al. with regard to Mexico, supra*, f. 3598).

in which it concluded that petition 880-11 was admissible.²

- c) *Merits Report*. On April 13, 2016, the Commission adopted Merits Report No. 3/16, pursuant to Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 3/16"), in which it reached a series of conclusions and made several recommendations to the State.³
- d) *Notification to the State*. Report No. 3/16 was notified to the State in a communication of May 9, 2016, granting it two months to report on compliance with the recommendations.
- e) *Reports on the Commission's recommendations*. On July 12 and October 25, 2016, the Mexican State presented reports on the measures taken to comply with the recommendations made in Report No. 3/16 of the Commission. After an extension had been granted to comply with the recommendations, the Commission considered that the State "ha[d] made no comprehensive or substantive progress in complying with [them]" and, specifically, "ha[d] made no relevant progress in the search for the three disappeared persons, progress in the investigations [was] minimal, and the State ha[d] not made a concrete proposal on reparation for the victims."
- f) *Submission to the Court*. On November 9, 2016, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in Merits Report "owing to the need to obtain justice for the victims."⁴

3. *Requests of the Inter-American Commission*. Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report (*supra* para. 2.c). In addition, the Commission asked the Court to order the State to adopt certain measures of reparation, which are described and analyzed in Chapter VIII of this judgment.

II PROCEEDINGS BEFORE THE COURT

4. *Notification of the representatives and the State*. The Court notified the submission of the

² In this report, the Commission decided that the petition was admissible with regard to the presumed violation of the rights recognized in Articles 3, 4, 5, 7, 8, 11, 19 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument; Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, and Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") (processing file before the Commission, ff. 2810 to 2821).

³ *Conclusions*. The Commission concluded that the State was responsible for the violation of the rights established in Articles 3, 4, 5, 7, 8, 11, 19, 22 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument; and Articles I(A), I(B). and IX of the Inter-American Convention on Forced Disappearance of Persons, of the persons indicated in the report.

Recommendations. Consequently, the Commission made a series of recommendations to the State:

- Conduct a thorough, impartial, and effective investigation into the whereabouts of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes and, if appropriate, adopt the necessary measures to identify their mortal remains and return them to their next of kin according to their wishes.
- Conduct domestic proceedings on the human rights violations set forth in th[e] report and hold the corresponding trials for the crime of forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes, in an impartial and effective manner and within a reasonable time, in order to clarify the facts completely, identify all those responsible, and impose the corresponding punishments.
- Provide adequate reparation for the human rights violations set out in th[e] report, both pecuniary and non-pecuniary, including just compensation, establish and disseminate the historical truth of the facts in a public act of acknowledgement of responsibility, and implement an adequate support program for their families.
- Order appropriate administrative, disciplinary or criminal measures in response to the acts or omissions of State officials who contributed to the denial of justice and to the current impunity of the facts of the case, including any acts or omissions of officials who may have obstructed investigation procedures.
- Adopt the necessary measures of non-repetition to prevent the recurrence of similar facts. The measures of non-repetition in this case must include legislative, administrative and other types of measures to respond to the problem of forced disappearance in Mexico and its particular incidence in the state of Chihuahua. In addition, legislative, administrative and other types of measures should be taken to strengthen the capacity to investigate cases of forced disappearance of persons and to address the structural factors that lead to impunity in these cases. Legislative, administrative and other types of measures should also be adopted to ensure that the authorities of military criminal justice refrain from obstructing investigations in cases of forced disappearance.

⁴ The Commission appointed Commissioner Enrique Gil Botero and Executive Secretary Paulo Abrão as its delegates before the Court. It also appointed Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Christian González Chacón, Executive Secretariat lawyers, as legal advisers.

case by the Commission to the representatives of the presumed victims (hereinafter “the representatives”) on April 17, 2016,⁵ and to the Mexican State on April 10, 2016.

5. *Brief with pleadings, motions and evidence.* On June 18, 2017, the representatives presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) to the Court. The representatives were in substantial agreement with the Commission’s allegations. In addition to the rights alleged by the Commission, they submitted arguments on the alleged violation of Articles 17 of the American Convention and 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”). In addition, the representatives requested access to the Victim’s Legal Assistance Fund of the Inter-American Court (hereinafter “the Court’s Legal Assistance Fund” or “the Fund”). Lastly, they asked the Court to order the State to adopt different measures of reparation and to reimburse certain costs and expenses.

6. *Legal Assistance Fund.* In an order of December 14, 2017, the Court’s acting President admitted the request submitted by the presumed victims, through their representatives, for access to the Court’s Legal Assistance Fund.⁶

7. *Answering brief.* On November 23, 2017, the State⁷ submitted to the Court its brief answering the submission of the case in the Merits Report of the Inter-American Commission and also the pleadings and motions brief of the representatives (hereinafter “the answering brief”). In this brief, the State included a partial acknowledgement of international responsibility. The State did not present preliminary objections, and the brief was notified to the parties on December 7, 2017.

8. *Observations on the partial acknowledgement of international responsibility by the State.* On January 11 and 12, 2018, the Inter-American Commission and the representatives, respectively, presented their observations on the partial acknowledgement of international responsibility presented by the Mexican State.

9. *Public hearing.* In orders of March 23, 2018,⁸ of the acting President and of April 23, 2018, of the Court,⁹ the parties and the Inter-American Commission were called to a public hearing for the Court to receive their final oral arguments and observations on the merits and eventual reparations and costs, together with the statements of two presumed victims, one witness proposed by the State, and three expert witnesses offered by the Commission, the representatives, and the State. Also, in the order of March 23, 2018, affidavits were required from nine presumed victims, and 9 witnesses (one proposed by the representatives and 8 proposed by the State). And, in the order of April 23, 2018, at the request of the representatives, the Court ordered the substitution of one expert witness. In that order, at the request of the State, the Court also required receiving the opinion of another expert witness during the public hearing. The affidavits were presented by the representatives and the State on April 19, 2018. The public hearing took place on April 26 and 27, 2018, during the Court’s 123rd regular session held at its seat.¹⁰ In addition, the Court required the parties to submit certain

⁵ The difference in date is owing to the DHL date of reception (merits file, ff. 160 and 170).

⁶ Cf. *Case of Alvarado Espinoza et al. v. Mexico. Victim’s Legal Assistance Fund.* Order of the President of the Inter-American Court of December 14, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/alvaradoes_fv_17.pdf

⁷ The State appointed as its Agents: the Mexican Ambassador to Costa Rica, Melquiades Morales Flores; Miguel Ruíz Cabañas Izquierdo, Undersecretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs; Alejandro Alday González, Legal Adviser to the Ministry of Foreign Affairs, and Erasmo A. Lara Cabrera, Director General of Human Rights and Democracy of the Ministry of Foreign Affairs.

⁸ Cf. *Alvarado Espinoza et al. v. Mexico. Call to a hearing.* Order of the acting President of the Inter-American Court of Human Rights of March 23, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/alvarado_23_03_18.pdf

⁹ Cf. *Alvarado Espinoza et al. v. Mexico. Reconsideration of call to a hearing.* Order of the Inter-American Court of April 23, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/alvarado_23_04_18.pdf

¹⁰ There appeared at this hearing: (a) for the Inter-American Commission: the President of the Commission, Margarete May Macaulay, and the Executive Secretariat lawyers, Silvia Serrano Guzmán and Christian González Chacón; (b) for the representatives of the presumed victims: Ruth Fierro Pineda, CEDEHM; Gabino Gómez Escárcega, CEDEHM; María Alejandra Nuño Ruiz Velasco, CEDEHM; Father Oscar Enríquez Pérez, CDHPN; Cesario Tarín Valdés,

information and documentation. On April 24, 2018, the State forwarded the written expert opinion of Carlos Rodríguez Ulloa, which had been provided orally during the hearing.

10. *Amicus curiae*. *Amicus curiae* briefs were received from: (1) Grupo de Acciones Públicas, Legal Clinic at the Universidad del Rosario on April 30, 2018;¹¹ (2) Washington Office on Latin America, on April 25, 2018;¹² (3) ELEMENTA, Consultoría en Derechos on April 25, 2018;¹³ (4) Amnesty International on May 10, 2018;¹⁴ (5) Clinic on Policy Advocacy in Latin America at New York University School of Law (NYU) in Buenos Aires on May 13, 2018;¹⁵ (6) Hermilo de Jesús Lares Contreras, Lawyer and Legal Adviser, on May 10, 2018;¹⁶ (7) Human Rights Commission of the Federal District of Mexico on May 11, 2018;¹⁷ (8) Centro PRODEH on May 11, 2018;¹⁸ (9) Movimiento por Nuestros Desaparecidos en Mexico on May 13, 2018;¹⁹ (10) UN Working Group on Enforced or Involuntary Disappearances (WGEID) on May 14, 2018;²⁰ (11) Carlos María

CDHPN, and Carlos Spector, MexenExs, and (c) for the State of Mexico: Melquíades Morales Flores, Mexican Ambassador and Agent; Alejandro Alday González, Legal Adviser to the Ministry of Foreign Affairs and Agent; Erasmo A. Lara Cabrera, Director General of Human Rights and Democracy of the Ministry of Foreign Affairs and Agent; Mariana Salazar Albornoz, Coordinator of International Public Law; Legal Adviser, Ministry of Foreign Affairs; Carlos Uriel Salas Segovia, Director for Cases, Ministry of Foreign Affairs; Carlos Antonio Cruz Carrillo, Head of the Cases Department of the Ministry of Foreign Affairs; Rosalinda Salinas Durán, Deputy Director General of the Human Rights Unit of the Ministry of the Interior; Viridiana Monserrat González Muñiz, Deputy Director of the Human Rights Unit of the Ministry of the Interior; Brigadier General for Military Justice Carlos Beltrán Benites, Director General of Human Rights of the Ministry of Defense; Major Rogelio Gutiérrez, General Directorate of Human Rights of the Ministry of Defense; Sara Irene Herrerías Guerra, Deputy Prosecutor for Human Rights of the Prosecutor General's Office; Guillermo Fonseca Leal, Coordinator for International Affairs of the Prosecutor General's Office; Miriam Heredia Zertuche, Deputy Director General for International Affairs of the Prosecutor General's Office; José Antonio Pérez Bravo, Coordinator of Advisory Services of the Human Rights Department, Crime Prevention and Community Services of the Prosecutor General's Office; Genaro Adrián Alzate Bahena, Joint Coordinating Prosecutor of the Unit for the Implementation of the Accusatorial Penal Procedural System of the Prosecutor General's Office; Sergio Castro Guevara, Agent of the Public Prosecution Service for Oral Litigations of the Chihuahua Prosecutor General's Office, and Óscar Francisco Holguín González, Chargé d'affaires for political, legal and media affairs of the Mexican Embassy.

¹¹ The brief analyzed the right to the truth in the context of forced disappearances and addressed the problem of the absence of a unanimous international concept of "victim," which places a burden on the next of kin who have to prove "the level of the harm or the effects on themselves" in order to be considered indirect victims. It also indicated the need to establish international standards for reparation.

¹² The brief addressed the militarization and violence during the Chihuahua Joint Operation. It indicated that the amendments to the Code of Military Justice and the Internal Security Act were incompatible with inter-American standards on the use of force.

¹³ The brief dealt with the supposed militarization and resulting gross human rights violations in Mexico. It also addressed the different ways in which men and women are affected by the pattern of violence, and gender-based inequalities in this context.

¹⁴ The brief referred to the absence of limits to the use of military force under the Internal Security Act and the danger this represented for the rights of civilians that could be violated by the military during the fight against organized crime.

¹⁵ The brief analyzed the correlation between the deployment of the armed forces, violence, and human rights violations. It also stressed a pattern of impunity on the part of the Mexican State.

¹⁶ The brief dealt with the obligation of the States to protect the right to public safety and personal safety and, specifically, it underscored this responsibility in the case of women who were vulnerable to the abuse of those rights owing to the sociocultural environment.

¹⁷ The brief offered a critique of the Internal Security Act owing to the failure to ensure human rights in cases of forced disappearance, and suggested that the "*amparo*" or a system similar to *habeas corpus* would increase the power of the courts to assist in the effective search for the disappeared.

¹⁸ The brief indicated that the Internal Security Act continued to perpetuate a pattern of human rights violations because it failed to delimit the time during which the armed forces could be used or where they could go; to establish specific provisions describing their responsibilities and territorial limits, and to establish a clearly defined mission which delimited the tasks of the armed forces.

¹⁹ The brief analyzed the General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons. It mentioned that this law "was influenced" by the "*Movimiento por Nuestros Desaparecidos en Mexico*." The purpose of the law was "to coordinate methods to prevent, punish and eradicate forced disappearance," and also to guarantee reparation to the victims and non-repetition of such acts. However, the "*Movimiento*" indicated that there was a lack of interest and coordination, collaboration and exchange of information among the authorities.

²⁰ The brief focused on human rights violations in Mexico and their relationship to the armed forces and law enforcement agents. This situation had resulted in impunity for those responsible and the absence of impartial, independent and complete investigations.

Pelayo Moller on May 14, 2018;²¹ (12) Asociación Nuestramericana de Estudios Interdisciplinarios de la Crítica Jurídica on May 14, 2018,²² and (13) Faculty of Law, Political Science and Criminology at the Universidad Autónoma de Tlaxcala, Mexico on May 15, 2018.²³ Other briefs were received belatedly and, therefore, were not processed.²⁴

11. *Final written arguments and observations.* On May 28, 2018, the representatives and the State forwarded their respective final written arguments with annexes. On May 25, 2018, the Commission presented its final written observations.

12. *Observations on the annexes to the final arguments and on the amicus curiae.* On June 15, 2018, the representatives and the State forwarded their observations on the annexes forwarded with the final written arguments and on the *amicus curiae*.

13. *Helpful evidence.* On August 29, 2017, the Court required the State to present certain helpful evidence. The information requested was sent on September 14 and 28 and October 16, 2018.

14. *Observations of the representatives and the Commission.* On October 15 and 23, 2018, the representatives and the Commission forwarded their observations on the helpful evidence provided by the State.

15. *Disbursements in application of the Assistance Fund.* On August 29, 2018, a copy of the report on the disbursements from the Victim's Legal Assistance Fund was forwarded to the parties. On September 14, 2018, the State advised that it had no observations to make on the said report.

16. *Supervening evidence.* On January 12, 2018, the representatives forwarded the Internal Security Act to the Court as supervening evidence. This information was transmitted to the State and to the Commission on January 25, 2018. The Commission and the State forwarded their respective communications in which they made no specific observations on the supervening evidence presented by the representatives. Also, on November 20, 2018, the representatives sent the Court various documents as alleged supervening evidence. This information was forwarded to the State and to the Commission on November 21, 2018. The Commission and the State sent their respective observations on November 26, 2018.

17. *Deliberation of this case.* The Court initiated deliberation of this judgment on November 27, 2018.

²¹ The brief described the context of the "Chihuahua Joint Operation" and the supposed human rights violations that it unleashed. It indicated that the Internal Security Act "authorized the armed forces to conduct security operations that were identical to the Chihuahua Joint Operation."

²² The brief, signed by Alma Guadalupe Melgarito Rocha, indicated the obligation of the Mexican State to prevent, investigate and punish the forced disappearance of persons. It mentioned that the armed forces "can contribute to the work of public safety under the principles of exceptionality, to provide assistance, and with civil command," under constant supervision.

²³ The brief indicated that "forced disappearance is not classified appropriately" in Mexican law; that the 2014 reforms of the Code of Military Justice were insufficient to exclude the military jurisdiction from hearing human rights violations. Also, the presumed victims are confronted by the "lack of willingness and capacity [...] of the authorities responsible for the investigation, prosecution and punishment of serious crimes," as in cases of forced disappearances.

²⁴ In its observations on the annexes to the final arguments and the *amicus curiae*, the State alleged that the *amicus curiae* presented by the Public Interest Clinic against People Trafficking of the Instituto Tecnológico Autónomo de México, the UN Working Group on Enforced or Involuntary Disappearances, Carlos María Pelayo Moller and Alma Guadalupe Melgarito Rocha of the Asociación Nuestramericana de Estudios Interdisciplinarios de Crítica Jurídica, Mexico Unido contra la Delincuencia, the Faculty of Law, Political Science and Criminology at the Universidad Autónoma de Tlaxcala and MTS Edwin Eric Urizar Rodas were presented after the respective time limit. The Court notes that the *amicus curiae* presented on May 14, 2018, arrived within the time frame established by the Court, which was the first working day 15 days after the public hearing. Regarding the *amicus curiae* presented on May 15, 2018, the Court notes that, according to Secretariat notes of June 1, 2018, those briefs were not admitted, because they had been received belatedly by the Court (merits file, ff. 2185 to 2197).

III JURISDICTION

18. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Mexico has been a State Party to the Convention since March 24, 1981 and accepted the contentious jurisdiction of this Court on December 16, 1998. In addition, the Mexican State ratified the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002.

IV PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY BY THE STATE

A. Positions in relation to the State's partial acknowledgement of responsibility

19. The **State** acknowledged its international responsibility as follows:

"The Mexican State acknowledges its international responsibility for the violation of Article 2 of the American Convention on Human Rights [because] at the time of the facts there was no legislation on forced disappearance that was compatible with the inter-American standards; thus, domestic law did not contain an appropriate criminal offense."

20. However, the State underlined that "even though it did not have an adequate legislative framework [...] at the time of the facts, it ha[d] now enacted a relevant new law [that was] compatible with inter-American standards." Therefore, it argued that it had remedied its violation of Article 2 and, therefore, considered that it was not necessary for the Court to rule in this regard.

21. Furthermore:

"The Mexican State acknowledge[d] that the investigations in this case were conducted by the military jurisdiction, which contravened Articles 8 and 25 of the American Convention [...], as well as Article 2 of this instrument, [...] because the legislation at the time allowed such facts to be examined by the military jurisdiction."

22. In this regard, the State stressed that, following the reform of the Code of Military Justice of June 13, 2014, "today, it is guaranteed that [...] reports of human rights violations committed by Armed Forces personnel are investigated in the civil jurisdiction." It therefore considered "that it is not necessary for the Court to rule on the said incompatibility in this case, since it has been rectified by the State."

23. The State also indicated that it did not contest the following facts: (i) that the disappeared presumed victims had been deprived of their liberty on December 29, 2009, in the Ejido Benito Juárez, Chihuahua, and that, since that day, there is no information on their fate and/or whereabouts; (ii) that some members of the presumed victims' families witnessed that the group that deprived Nitza Paola, José Ángel and Rocío Irene Alvarado of their liberty wore uniforms "with military characteristics"; (iii) that José Ángel Alvarado Fabela and Jaime Alvarado Herrera and their family groups were victims of threats and harassment, and (iv) that "at the time of the facts, the laws on amparo required that the application be ratified."

24. The **Commission** appreciated the State's acknowledgement of responsibility regarding the alleged lack of legislation on forced disappearance at the time of the facts and observed that "the dispute has ceased with regard to the violation of Article 2 of the American Convention alleged by the representatives."

25. As regards the State's assertion that the current legislation is compatible with the American Convention, the Commission made two observations. It indicated: (a) that the "analysis of whether the current legal definition meets inter-American standards" should not be made "within the framework of the acknowledgement, because it is a supervening situation that is relevant for the analysis of the merits and reparations," and (b) that "the State's indications in this section have a broader scope suggesting that Mexico now has an adequate general legal framework to address the problem of forced disappearance," which it also considered should not be analyzed in the context of the acknowledgement of responsibility "because it relates to the

Court's eventual ruling on more general aspects that remain in dispute, with regard to both the merits and reparations."

26. The Commission also considered that the legal framework to address the problem of forced disappearance formed "part of the dispute regarding the [guarantees] of non-repetition, [in the] broader perspective of forced disappearances in the context of the fight against drug-trafficking," an issue that was identified as one of the aspects of inter-American public order raised by this case. The Commission considered that it "was of great relevance that, in this case, the Court retains the possibility of analyzing and ruling on the compatibility with the Convention of the general measures adopted by the state apparatus – including the legislative measures – to address this serious problem."

27. The Commission appreciated the acknowledgement of responsibility with regard to the examination of the case by military criminal justice, but "noted that the application of military justice is only one of the sources of the State's responsibility for the failure to conduct an adequate investigation into reports of disappearance through competent, independent and impartial authorities." It also observed that the State had not investigated the facts of this case with due diligence, and therefore considered that "it is extremely relevant that the Court issue a complete ruling on this violation." Lastly, the Commission emphasized that, following the amendments to the Code of Military Justice, a component still persisted that was not in keeping with the Convention and the Court would have to analyze this at the stage of reparations – specifically – among the measures of reparation.

28. The **representatives** indicated, regarding the legislation on forced disappearance, that they agreed with the State that Mexico had a general legal framework that is in the process of being implemented.²⁵ However, they affirmed that they disagreed completely with the State's assertion that the violation of Article 2 of the Convention had been remedied, and that "it [was] not necessary for the Inter-American Court to rule in that regard."

29. The representatives referred to the *Case of Radilla Pacheco*²⁶ as a case law precedent. In that case, the Court had indicated that "the lack of an appropriate legal definition of the crime of forced disappearance of persons not only violates Article 2 of the Convention, but is also a direct violation of Articles I and III of the Inter-American Convention on Forced Disappearance of Persons." Consequently, they asked the Court to determine that, since the crime of forced disappearance of persons was not defined appropriately in the law, the State had "violated Article 2 of the American Convention [...], in relation to Article 1(1) of this international instrument and also [...] Articles I and III of the Inter-American Convention on Forced Disappearance of Persons." They considered that, although the acknowledgement of responsibility was a positive step in relation to human rights, the Court should establish that this acknowledgement was "not valid or acceptable for the purposes of the inter-American system because it contravenes case law [...] established by this Court, including several provisions of the Inter-American Convention on Forced Disappearance of Persons."

30. Regarding the incompatibility of investigations by the military jurisdiction with several provisions of the American Convention, the representatives "consider[ed] that it was unnecessary to submit extensive arguments on the State's allegations"; it was sufficient to indicate that the Court had established that the amendments indicated were not sufficient to comply with the State's respective international obligations. Accordingly, they asked the Court not to accept the State's acknowledgment of responsibility "as it continues to violate Articles 8, 25 and 2 of the American Convention in relation to Article 1(1) of this instrument," because they

²⁵ "The General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons was promulgated by the [head of the] Federal Executive on November 16, 2017, published in the Official Gazette of the Federation and, according to its transitory provisions, will enter into force on January 16, this year" (merits file, f. 758).

²⁶ *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 324.

considered that, to date, the amendments to the law have not been sufficient, as indicated by the Court in the order on monitoring compliance with judgment in the cases of *Radilla Pacheco*, *Fernández Ortega et al.*, and *Rosendo Cantú et al.*, all against Mexico.

B. Considerations of the Court

31. In this regard, the Court finds that the State's partial acknowledgement of responsibility makes a positive contribution to these proceedings and to the application of the principles that inspire the American Convention.²⁷ The Court also considers, as in other cases,²⁸ that this acknowledgement produces legal effects in this case.

32. Nevertheless, pursuant to Articles 62²⁹ and 64³⁰ of the Court's Rules of Procedure, and in exercise of its powers for the international judicial protection of human rights, a matter of international public order that exceeds the will of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the inter-American system. In this task, the Court does not merely take note of the acknowledgment made by the State or verify the formal conditions of such acts; rather, it must relate them to the nature and severity 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,³¹ in order to determine, insofar as possible and in the exercise of its jurisdiction, the truth of what happened.³² Thus, the acknowledgement cannot result in limiting, either directly or indirectly, the exercise of the Court's authority to hear the case that has been submitted to it³³ and to decide whether, in this regard, a right or freedom protected by the Convention has been violated.³⁴ To this end, in each specific case, the Court analyzes the situation submitted to it.³⁵

B.1. The facts

33. The State has indicated that it does not dispute the following facts:

- i) that the disappeared presumed victims were deprived of their liberty on December 29, 2009, in the Ejido Benito Juárez, Chihuahua, and that, since that day, there is no information on their fate;
- ii) that some members of the presumed victims' families witnessed that the group that deprived Nitza Paola, José Ángel and Rocío Irene Alvarado of their liberty were wearing uniforms "with military characteristics";

²⁷ Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs.* Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 34.

²⁸ Cf. *Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180, and *Case of López Soto et al. v. Venezuela, supra*, para. 35.

²⁹ 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 legal effects.

³⁰ Article 64. Continuation of the 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.

³¹ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 26.

³² 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, and *Case of Poblete Vilches et al. v. Chile, supra*, para. 26.

³³ Article 62(3) of the Convention establishes: "[t]he jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

³⁴ Article 63(1) of the Convention.

³⁵ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 105, and *Case of Poblete Vilches et al. v. Chile, supra* para. 26.

- iii) that José Ángel Alvarado Fabela and Jaime Alvarado Herrera and their family group were victims of certain threats and acts of harassment, and
- iv) that “at the time of the facts, the amparo law required ratification of the application for amparo.”

34. The State also confirmed that the Internal Security Act has now been enacted and promulgated.

35. The Court considers that the dispute has ceased with regard to the aforementioned facts, based on the statement made by the State and the observations of the Commission and the representatives.

36. However, it notes that various disputes subsist in relation to some facts that the State has not acknowledged, specifically the facts relating to the alleged context of forced disappearances in Mexico, the participation of members of the army in the victims’ disappearance, and the alleged deficiencies in the investigation of the facts. Accordingly, the Court finds it appropriate to analyze the disputed facts in Chapter VI of this judgment.

B.2. The legal claims

37. The Court notes that the State has acknowledged its international responsibility for the violation of Articles 2, 8 and 25 of the American Convention, only with regard to the lack of legislation on forced disappearances at the time of the facts, and the submission of the investigations of those facts to the military jurisdiction for a certain length of time because this was established in the legal framework in force at the time. Regarding the violation of Article 2 of the Convention, the State considered that it had already redressed or rectified this. In the case of the investigation of the facts by the military jurisdiction, the State affirmed that the incompatibility that existed between Mexican laws and the international standards had been addressed, so that it was not necessary for the Court to rule in this regard.

38. With regard to the ineffectiveness of the Amparo Act in relation to forced disappearance at the time of the facts, the State admitted this, but indicated that under the new Amparo Act³⁶ “if an indirect application for amparo is filed against acts of authority in cases of the disappearance of persons, first of all the necessary procedures will be conducted to achieve the appearance of those persons [...] and, if this is not possible, the Federal Public Prosecution Service will be authorized to investigate the facts”; therefore – in the State’s opinion – it “had made the necessary changes with regard to amparo” in a situation of the disappearance of persons.

39. With regard to the Internal Security Act, the State confirmed that this law had now been enacted and promulgated. However, it indicated that the Court could not analyze whether it was in keeping with the Convention because “it was not in force at the time of the facts and was not applied to them.”

40. Regarding the other violations alleged by the Commission and the representatives, the State denied its responsibility and, therefore, the dispute persists with regard to various rights established in Chapter VII. Consequently, taking into account the violations acknowledged by the State, and also the observations of the representatives and of the Commission, the Court considers that this acknowledgement by the State constitutes a partial acquiescence to the legal claims of the Commission and the representatives. Nevertheless, the Court considers it appropriate and necessary to include some considerations on the scope of the violations and the effects of those rights in Chapter VII of the judgment.

41. With regard to the assertions concerning the conventionality of the Laws on Forced Disappearance of Persons³⁷ (hereinafter “the General Law on Forced Disappearance of Persons”),

³⁶ Published in the Official Gazette of the Federation on April 2, 2013.

³⁷ General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons, published in the Official Gazette of the Federation on November 17, 2017.

on Amparo, and on Internal Security, as well as the Code of Military Justice, this Court considers that it will rule on them, as appropriate, when analyzing the merits and/or reparations.

B.3. The reparations

42. In relation to the measures of reparation (Articles 2, 8 and 25 of the American Convention), the Court notes that the State considered that the violations acknowledged had already been redressed by: the General Law on Forced Disappearance of Persons, the Amparo Act and the amendments to the Code of Military Justice, as well as the fact that the case was now being investigated by civil authorities. Regarding the other alleged facts and violations, it did not acknowledge the measures requested by the representatives, but provided information on a series of proposals and measures in favor of some members of the Alvarado family that included humanitarian support and different types of social assistance in the areas of health, education and productive projects, among others.

43. Therefore, in Chapter VIII, the Court will take the necessary decisions with regard to the reparations requested by the Commission and the representatives and will analyze the causal nexus between the eventual violations that are declared as well as the harm caused, and the measures requested by the parties.

B.4. Assessment of the scope of the partial acknowledgement of responsibility

44. Based on the above, the Court finds it necessary to deliver a judgment in which it determines the facts that occurred based on the evidence it has received in these proceedings, to ensure that similar facts are not repeated and, ultimately, to satisfy the purposes of its jurisdiction, because this contributes to making reparation to the presumed victims.³⁸ Similarly, and in order to ensure a better understanding of the State's international responsibility in this case and of the causal nexus between the violations and the reparations that are ordered, the Court deems it pertinent to clarify the scale and the classification of the human rights violations that occurred in this case.³⁹

V EVIDENCE

A. Admissibility of the documentary evidence

45. In this case, as in others, the Court admits the probative value of those documents presented by the parties and by the Commission at the appropriate procedural moment, that were not contested or opposed and the authenticity of which was not challenged.⁴⁰ In addition, the Court finds it pertinent to admit the statements made during the public hearing and by affidavit, insofar as they are in keeping with the purpose defined in the order requiring them.⁴¹

46. Regarding the documents presented by the State with its final arguments,⁴² the helpful evidence and the corresponding observations, the Court notes that these were provided in response to the Court's requests during the public hearing and subsequently under Article 58(b) of the Rules of Procedure, thus the Court finds it appropriate to admit them.

A.1. Alleged supervening facts

³⁸ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of López Soto et al. v. Venezuela, supra* para. 35.

³⁹ Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 163*, para. 54, and *Case of López Soto et al. v. Venezuela, supra*, para. 36.

⁴⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 360, para. 40.

⁴¹ Cf. *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs.* Judgment of March 13, 2018. Series C No. 352, para. 18, and *Case of Terrones Silva et al. v. Peru, supra*, para. 41.

⁴² These documents consisted in the reports submitted by the State of Mexico to the Committee on Enforced Disappearances of the United Nations High Commissioner for Human Rights in 2014, 2015, 2016, 2017 and 2018.

47. Together with their observations on the State's partial acknowledgement of international responsibility, the representatives presented documents concerning the Internal Security Act,⁴³ insofar as it is a supervening law published after the briefs were presented. The State, in its final arguments, contested the inclusion of this documentation considering that the Court did not have jurisdiction to rule on the implementation of the Internal Security Act because it was not in force at the time of the facts and was not applied to them. Likewise, the State asked the Court to reject the references made by the *amicus curiae* to the Internal Security Act and the context of violence and human rights violations.

48. On November 20, 2018, the representatives forwarded the Court various documents provided as supervening evidence in relation to the declaration of unconstitutionality issued by the Supreme Court of Justice of the Nation with regard to the Internal Security Act;⁴⁴ the "National Peace and Security Plan, 2018-2024,"⁴⁵ and the initiative to amend the Constitution presented by a parliamentary group in the Federal Congress.⁴⁶ In its observations, the Commission indicated that this information was pertinent for the analysis of the guarantees of non-repetition "that could be required taking into account the context in which the facts took place and the existence of many factors that had an impact on [their] occurrence." Meanwhile, the State asked the Court to reject these documents because they did not relate to the facts included in the factual framework submitted to the Court's consideration.

49. The Court notes that the above-mentioned documents reveal that while the Internal Security Act and the corresponding decision of the Supreme Court of Justice have legal effects, the others are proposals that have not been adopted by an organ of the State and for the time being have no legal effects. Therefore, the Court will only consider the former as part of the context (*infra* para. 58).

B. Admissibility of the testimonial and expert evidence

50. The Court finds it pertinent to admit the statements and expert opinions provided during the public hearing⁴⁷ and by affidavit,⁴⁸ insofar as they are adapted to the purpose defined by the President in the order that required them⁴⁹ and the purpose of this case.

51. The State contested the admissibility of the statements offered by the representatives and presented both at the hearing and by affidavit. Regarding the statements of María de Jesús Alvarado Espinoza, Jaime Alvarado Herrera, Sandra Luz Rueda Quezada, Deisy Alvarado Espinoza, Mitzy Paola Alvarado Espinoza, Nitza Sitlaly Alvarado Espinoza, José Ángel Alvarado Fabela, Salomón Baltazar Samayoa, Rosa Olivia Alvarado Herrera, Adrián Alvarado Reyes, Alan

⁴³ Internal Security Act, published in the Official Gazette of the Federation of December 21, 2017. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5508716&fecha=21/12/2017.

⁴⁴ Legislation available at: <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=5794>

⁴⁵ Available at: https://lopezobrador.org.mx/wp-content/uploads/2018/11/Plan-Nacional-de-Paz-y-Seguridad_.pdf

⁴⁶ This amendment initiative was referred to the Constitutional Affairs Committee of the Chamber of Representatives for study. Cf. Parliamentary Gazette, year XXI, No. 5159-II, November 20, 2018, Available at: <http://gaceta.diputados.gob.mx/Gaceta/64/2018/nov/20181120-II.html>.

⁴⁷ Regarding the evidence provided during the public hearing, the Court received the statements of presumed victims Jaime Alvarado Herrera and María de Jesús Alvarado Espinoza and the witness proposed by the State, Mariana Colín Ayala, and the opinions of expert witnesses Federico Andreu Guzmán, proposed by the Commission, Salvador Salazar Gutiérrez, proposed by the representatives, and Carlos Rodríguez Ulloa, proposed by the State (merits file, ff. 918 and 1174).

⁴⁸ The Court received the affidavits of Adrián Alvarado Reyes, Alán Rafael Alvarado Reyes, José Ángel Alvarado Fabela, Deisy Alvarado Espinoza, Mitzy Paola Alvarado Espinoza, Nitza Sitlaly Alvarado Espinoza, Obdulia Espinoza Beltrán, Rosa Olivia Alvarado, Salomón Baltazar Samayoa, Sandra Luz Rueda Quesada and the expert opinions of Alejandro Madrazo Lajous, Carlos Martín Beristain, Gabriella Citroni and the Grupo de Investigaciones en Antropología Social y Forense (GIASF), proposed by the representatives. The Court also received the affidavits of the witnesses: Aaron Enríquez Duarte, Víctor Cruz Martínez, José Emilio Serrano Santiago, Efraín Arzola Herrejón, Óscar Arias Ocampo, Marín Adrián Lasso Carbajal, Ramón Iván Sotomayor Siller and Argene Blásquez Morales, proposed by the State (evidence file, affidavits, ff. 30865 to 31228).

⁴⁹ The purposes of all these statements was established in the order of the acting President of the Inter-American Court of March 23, 2018, *supra*. Available at: http://www.corteidh.or.cr/docs/asuntos/alvarado_23_03_18.pdf

Rafael Alvarado Reyes and Obdulia Espinoza Beltrán, the Court notes that the State's observations relate to their content and, consequently, could have an impact on the assessment of their probative weight, but do not affect their admissibility.⁵⁰

VI FACTS

52. In this chapter, the Court will establish the facts of this case, based on the factual framework submitted to its consideration by the Commission, taking into consideration the body of evidence, the arguments of the representatives and the State, and the latter's partial acknowledgement of responsibility, as well as other issues that have not been contested by the parties (*supra* paras. 33 to 35). Accordingly, these will be described in the following sections: (a) the context of disappearances and the existence of a pattern of impunity in Mexico; (b) Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes; (c) the disappearances on December 29, 2009; (d) the domestic proceedings in relation to the facts, and (e) the threats and harassment received by the families following the disappearances.

A. Context

53. Bearing in mind that the violence derived from organized crime and the fight against it by state agents had diverse origins, the Court is aware of the impact that this has had in Mexico, as well as in other countries. This violence is based on numerous factors and it is not incumbent on this Court to refer to all its aspects; merely those relating to the instant case and, in particular, the legal aspects related to the State's actions in this regard.

A.1. The disappearances and the existence of a pattern of impunity in Mexico

A.1.1. Militarization as a public security strategy and the "war on drugs"

54. On December 11, 2006,⁵¹ a few days after the start of the administration of former President Felipe Calderón Hinojosa, the public security strategy, also known as the "war on drugs" or "militarization of public security" was put in practice, designed and implemented as a state response to re-establish public order in the face of the rampant violence linked to organized crime and drug-trafficking in different part of Mexican territory.⁵² This "security strategy" began with the implementation of the "Michoacán Joint Operation," which was followed, starting in 2007, by "Joint Operations" in the states of Baja California, Guerrero, Chihuahua, Durango, Sinaloa, Nuevo León, Tamaulipas and Veracruz, until the said strategy was being implemented in 16 states of national territory in 2012.⁵³ Within the framework of the "war

⁵⁰ Cf. *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244, para. 33, and *Case of the Dismissed Employees of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, para. 78.

⁵¹ Cf. Presidency of the Republic, United Mexican States. Press Conference to announce the Michoacán Joint Operation, "Anuncio sobre la Operación Conjunta Michoacán," Mexico City, December 11, 2006, Available at: <http://calderon.Presidency.gob.mx/2006/12/anuncio-sobre-la-operacion-conjunta-michoacan/>.

⁵² Cf. "Message to the Nation by the President of [Mexico], Felipe Calderón Hinojosa, with his First Annual Report," Mexico City, September 2, 2007, Available at: <http://calderon.Presidency.gob.mx/informe/primer/mensajealanacion/index.html>; UN, Human Rights Council. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 8; UN, Human Rights Council. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, paras. 20 and 22, and Report, *Seguridad Interior, ¿seguridad para quién?* [Internal security: security for who?] issued by "Colectivo Seguridad Sin Guerra" in March 2017 (evidence file, f. 26434).

⁵³ Cf. Presidency of the Republic. [Mexico]. *First Annual Report*, September 1, 2007, p. 26. According to the successive "Annual Reports" delivered by the Head of the Executive to the Mexican General Congress each year following 2007, by 2012 – towards the end of the six-year mandate of the then President of the Republic – a total of 16 "Joint Operations" had been implemented in 16 states (Michoacán, Baja California, Guerrero, Chihuahua, Durango, Sinaloa, Nuevo León, Tamaulipas, Chiapas, Campeche, Tabasco, Quintana Roo, Aguascalientes, Coahuila, Veracruz and San Luis Potosí) with the participation of members of the Ministry of Defense [SEDENA], the Ministry for the Navy [SEMAR] and the Federal Ministry of Public Security [SSPF], as well as the respective municipal and state authorities. Cf. *Annual Reports: (2007)*, p. 26, *(2008)*, p. 23, *(2009)*, p. 34, *(2010)*, pp. 30 and 31, *(2011)*, pp. 36 and 37, and *(2012)*, p. 41.

on drugs” orders were given to deploy members of municipal, state and federal law enforcement agencies and the Armed Forces in “joint operations” to confront these scenarios of violence and criminality by the use of force.⁵⁴ It is calculated that, in 2012, around 50,000 members of the Armed Forces were performing public security tasks in different regions of the country.⁵⁵

55. Moreover, with the change in the Mexican federal administration on December 1, 2012, the Mexican State’s security policy based on the deployment of the military continued⁵⁶ and it has subsisted to date – 2018 – without any substantial changes.⁵⁷

56. Under this strategy, the participation of the Armed Forces has involved the operational deployment in different parts of national territory “of thousands of soldiers in urban areas or at strategic points such as roads and checkpoints,” and they “do not simply act in support of the civil authorities and accept orders from them [...]; but also perform tasks that are the exclusive responsibility of the civil authorities.”⁵⁸ In that context, among other activities, members of the military carried out road blocks and checks on highways and roads, detentions and retentions, searches of homes, individuals and automobiles, often without a warrant issued by a competent civil authority, and “the military forces ha[d] stayed far beyond the duration of the security operations” in the places where they were deployed.⁵⁹

57. The Working Group on Enforced or Involuntary Disappearances [WGEID] stressed that, as

Also, on the implementation of the “joint operations” as a public security policy of the Mexican State, *cf.* Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018 (evidence file, affidavits, f. 30969).

⁵⁴ *Cf.* Presidency of the Republic, United Mexican States. “The Joint Operations,” May 16, 2011, Available at: <http://calderon.Presidency.gob.mx/el-blog/los-operativos-conjuntos/>, and CNDH. *Second Special Report of the CNDH on the effective exercise of the fundamental right to security in our country*, 2008, pp. 6 and 7. Available at: http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2008_segpublica1.pdf. Similarly: Expert opinion of Gabriella Citroni provided on April 18, 2018 (evidence file, affidavits, f. 31061), and Joint expert opinion of Carolina Robledo Silvestre, Erika Liliana López, May-ek Querales Mendoza and Rosalva Aída Hernández Castillo, of the Grupo de Investigaciones en Antropología Social y Forense [GIASF], provided on April 17, 2018 (evidence file, affidavits, f. 31148).

⁵⁵ *Cf.* UN. *Report of the Special Rapporteur on torture*, December 29, 2014, *supra*, para. 20. *Cf.* Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018, *supra* (evidence file, affidavits, ff. 30964 and 30969). Similarly, in its 2015 report on the situation of human rights in Mexico, the Inter-American Commission observed that, in the implementation of this security strategy “Mexican authorities opted to increase the involvement of the Armed Forces – particularly SEDENA and SEMAR – in public security duties, including a policy of confronting organized crime and the deployment of joint operations between the armed forces and state and municipal security agencies.” *Cf.* Inter-American Commission on Human Rights, “Situation of Human Rights in Mexico,” OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 87.

⁵⁶ *Cf.* Government of the Republic, United Mexican States. *National Development Plan 2013-2018*, p. 32. Available at: <http://pnd.gob.mx/>: “The collaboration of the Armed Forces to ensure internal security has played a predominant role in recent years owing to the violence generated by criminal organizations [...].”

⁵⁷ *Cf.* UN. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Mission to Mexico*, April 28, 2014, *supra*, paras. 20; UN. *Report of the Special Rapporteur on torture*, December 29, 2014, *supra*, para. 22; UN. *Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions in follow-up to his mission to Mexico*, A/HRC/32/39/Add.2, May 6, 2016, paras. 13 and 66; UN. *Follow-up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mexico*, A/HRC/34/54/Add.4, February 17, 2017, para. 33; UN. *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico*, A/HRC/37/51/Add.2, February 12, 2018, paras. 12 and 15, and UN. *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico*, A/HRC/39/17/Add.2, June 28, 2018, para. 60. Similarly: *cf.* Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018, *supra* (evidence file, affidavits, f. 30969).

⁵⁸ UN. Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances [WGEID], Addendum, Mission to Mexico*, A/HRC/19/58/Add.2, December 20, 2011, para. 23. Meanwhile the National Human Rights Council (CNDH) indicated that, in its opinion, “the country’s armed forces are constitutionally prohibited from intervening in public security tasks; especially, substituting the functions entrusted to the civil authorities [...] in relation to policing [...]” *Cf.* CNDH. *Second Special Report of the CNDH on the effective exercise of the fundamental right to security in our country*, 2008, *supra*, p. 94. Similarly, expert witnesses Gabriella Citroni and Alejandro Madrazo Lajous both indicated in their affidavits that, in the context of the massive deployment of the armed forces in Mexico, those forces were assigned “tasks that were normally reserved for the police and other civil authorities and they were given special powers” based on “tenuous constitutional support.” *Cf.* Expert opinion of Gabriella Citroni provided on April 18, 2018, *supra* (evidence file, affidavits, f. 31061), and Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018, *supra* (evidence file, affidavits, ff. 30969, 30970, 30972, 30974 and 30975).

⁵⁹ *Cf.* UN. *Report of the WGEID, Mission to Mexico*, December 20, 2011, *supra*, paras. 23 and 26.

part of this strategy, many military personnel headed the civil police or the state ministries of public security;⁶⁰ this was also pointed out by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “the Special Rapporteur on torture”), on the one hand, and the Special Rapporteur on extrajudicial, summary or arbitrary executions (hereinafter “the Special Rapporteur on extrajudicial executions”), on the other.⁶¹

58. On December 21, 2017, the Internal Security Act was adopted and promulgated in Mexico;⁶² however, it was not implemented by its main mechanism (the Declaration on Internal Protection and Security) because several constitutional challenges against its provisions had

⁶⁰ In this regard, in 2011, the WGEID indicated: “Many military personnel are chiefs of state police (in 6 federal entities) or heads of the state ministries of public security (in 14 states). In addition, a significant number of municipal police forces are run by military officials. The Ministry of Defence informed the Working Group that such military personnel, in most cases retirees, were not under its supervision.” Cf. UN. *WGEID Report, Mission to Mexico*, December 20, 2011, *supra*, para. 24.

⁶¹ In 2014, the Special Rapporteur on torture indicated: “The strategy of militarized law enforcement is ongoing, however, as can be seen from the fact that over 32,000 military personnel are still performing tasks customarily performed by civilian forces. Moreover, soldiers who have retired or are on leave have joined civilian security forces and an army-trained police force has been created. This threatens the principles that must govern law enforcement and the guarantees of detainees.” Cf. UN. *Report of the Special Rapporteur on torture, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, *supra*, para. 22. Meanwhile, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in his follow-up report on the progress made by the State in application of the recommendations made following his official visit to Mexico in 2013 (A/HRC/26/36/Add.1), indicated that he had received information that “in some federal entities, military officials had been placed in charge of public security.” Cf. UN. *Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in follow-up to his mission to Mexico*, A/HRC/32/39/Add.2, May 6, 2016, para. 12. In addition, the Court takes note of various recommendations made to Mexico by different international agencies and special procedures addressed to the Mexican State concerning the context of militarization of civil security and the alleged human rights violations that had occurred in its jurisdiction. These recommendations reached similar conclusions on aspects such as: (i) the need to demilitarize the strategies to combat organized crime and adapt the constitutional framework to allow the states to address the defense of civil security in keeping with international standards; (ii) the establishment of efficient mechanisms for the control and progressive nature of the use of force, as well as for transparency and accountability that allow such tasks to be monitored; (iii) the need to amend domestic legislation to provide for the civil judiciary to investigate and eventually punish the violations committed by military personnel in the context of the said tasks and to ensure reparation for the victims; (iv) the combat of impunity by all available means to ensure that investigations and judicial proceedings are expeditious and independent and impartial and, lastly, (v) the need to maintain a clear-cut distinction between military tasks and policing tasks in law-and-order functions. Cf. *inter alia*: UN. Human Rights Committee. *Concluding observations. Mexico*, CCPR/C/79/Add.109, July 27, 1999, para. 9; *Report of the Working Group on Arbitrary Detention on its visit to Mexico (27 October to 10 November 2002)*, E/CN.4/2003/8/Add.3, December 17, 2002, para. 72(e); UN. Human Rights Commission, *Report of the Special Rapporteur on the independence of judges and lawyers, Dato Param Coomaraswamy, submitted in accordance with Commission of Human Rights resolution 2001/39*, E/CN.4/2002/72/Add.1, January 24, 2002, para. 192(d); *Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, Addendum, Mission to Mexico*, E/CN.4/2004/80/Add.2, December 23, 2003, para. 90; UN. *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Mission to Mexico*, E/CN.4/2006/61/Add.4, January 13, 2006, para. 69(a)(vi); UN. Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant*, CCPR/C/MEX/CO/5, April 7, 2010, paras. 11 and 18; UN. Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers Mission to Mexico*, A/HRC/17/30/Add.3, April 18, 2011, paras. 38 and 94(r); *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/19/58/Add.2, December 20, 2011, paras. 90, 91, 96 and 98; UN. Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October-23 November 2012)* CAT/C/MEX/CO/5-6, December 11, 2012, paras. 12(c) and (d), 16(a), 18(b) and 24; UN. CDH, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, A/HRC/26/36/Add.1, April 28, 2014, paras. 24, 29, 30, 52, 90, 100, 103, 105, 106, 107, and UN. CDH, *Report of the Special Rapporteur on torture*, December 29, 2014, paras. 76, 81(b) and (g), and 83(a); *Recommendations made to Mexico by the United Nations High Commissioner for Human Rights, Zeid Ra’ad al Hussein, as a result of his official visit to the country in October 2015*, March 2016, recommendations 3, 4 and 5; available at: http://www.hchr.org.mx/images/doc_pub/RecommendationsMX_AltoComisionadoDH_ES.pdf; IACHR. Interdisciplinary Group of Independent Experts, *Ayotzinapa Report. Investigation and initial conclusions*, 2015, p. 358, and IACHR, *Situation of Human Rights in Mexico*, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 539, recommendation 8.

⁶² Internal Security Act. Adopted by the General Congress of the United Mexican States. Published in the Official Gazette of the Federation on December 21, 2017. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5508716&fecha=21/12/2017. According to article 1 of this law, its purpose was to regulate the State’s function of preserving internal security, and to establish the basis, procedures and methods for coordination between the Federation, the federative entities and the municipalities in this area.

been filed before the Supreme Court of Justice of the Nation and were pending a decision.⁶³ On November 15, 2018, the Plenary of the Supreme Court decided, by a majority, the general unconstitutionality of the Internal Security Act, when it concluded, *inter alia*, that “in essence, [...] the said law was unconstitutional because it contained provisions intended to normalize the use of the Armed Forces in public security matters, which is contrary to constitutional and conventional order [...].”⁶⁴

A.1.2. The increase in criminal violence and the human rights violations associated with the implementation of the “Joint Operations”

59. The Court notes that in the context of the implementation of these security strategies to combat drug-trafficking and organized crime in Mexico, since 2010, the UN Human Rights Committee has expressed its concern owing to the increasing number of reports of human rights violations by military personnel in the places they were deployed to ensure public order, and recommended that tasks related to public security and the investigation of reports of human rights violations be restricted to the exclusive jurisdiction of the civil authorities.⁶⁵

60. Following his visit to Mexico in 2013, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions expressed his concern owing to the persistence of “alarming levels of violence” as well as the excessive use of force and a lack of accountability in Mexico following the 2007 deployment of the military to take on the drug cartels. In this regard, “cities in states such as Chihuahua and Guerrero ha[d] at various stages been classified as some of the most dangerous in the world.” The Special Rapporteur indicated that “102,696 intentional homicides were committed [...] from December 2006 to November 2012, [and] as many as 70,000 of these

⁶³ Cf. Presidency of the Republic, United Mexican States. *Sixth Annual Report, 2017-2018*, September 1, 2018, pp. 78 and 79. Available at: http://cdn.Presidencia.gob.mx/sextoinforme/informe/6_IG_INFORME_COMPLETO.pdf. In this regard, the Court notes that, following the publication of the Internal Security Act, various members of civil society, autonomous public entities, parliamentary fractions of the Congress of the Union, as well as local governments and a political party filed diverse challenges before the Judiciary of the Federation, including the Supreme Court of Justice of the Nation, alleging that the provisions of this law were unconstitutional. These included, in particular, the action on unconstitutionality – based on article 105.II of the Mexican Constitution – filed by the CNDH on January 20, 2018. Cf. Action of unconstitutionality filed by the CNDH. Available at: http://www.cndh.org.mx/sites/all/doc/Acciones/Acc_Inc_2018_LSI.pdf.

⁶⁴ On November 15, 2018, the Plenary of the Supreme Court of Justice of the Nation (SCJN) decided, by nine votes to one, that the Internal Security Act as a whole was unconstitutional. Cf. SCJN. Communiqué No. 149/2018, Available at: <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=5794>. When establishing their individual position in the deliberation of the Act, some of the justices also considered that, pursuant to article 73 (XXIX-M) of the Mexican Constitution, the Federal Legislature did not have jurisdiction to legislate on “internal security,” because this expression was indeterminate and could not be subsumed in the constitutional definition of “national security.” In this regard, it is worth noting that this declaration of total invalidity owing to lack of jurisdiction of the General Congress meant that the merits of the substantive arguments submitted by the petitioners were not analyzed.

⁶⁵ UN. Human Rights Committee, Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant*, CCPR CCPR/C/MEX/CO/5, April 7, 2010, para. 11. Similarly, the Special Rapporteur on extrajudicial executions stated that “following a military approach to public security risks creating a situation where a civilian population is vulnerable to a wide range of abuses. Moreover, there is insufficient accountability for these abuses in the military justice system, which lacks independence and transparency [...].” Cf. UN. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 21. In addition, the WGEID reiterated – among others, its recommendation to the Mexican State “that it consider withdrawing the military from public security operations and the enforcement of criminal law [...].” Cf. WGEID, *Follow-up on the recommendations made by the WGEID in its report on its visit to Mexico from March 18 to 31, 2011*, September 11, 2015, A/HRC/30/38/Add.4, para. 25. Similarly, the UN High Commissioner for Human Rights expressed his concern owing to the seriousness of the human rights situation in the country and recommended, among other measures, the adoption “of a time frame for the withdrawal of the military from public security functions.” Statement of the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, on his visit to Mexico, October 7, 2015, *supra*, and, lastly, the United Nations Special Rapporteur on the situation of human rights defenders on his mission to Mexico indicated that, in Mexico, “the use of the army in a public security role and the lack of a plan for the return to a completely civil security approach raises a number of concerns in terms of democratic governance, and its effectiveness with regard to ending violence.” Cf. UN. *End of mission report of the United Nations Special Rapporteur on the situation of human rights defenders on his mission to Mexico*, Michel Forst, January 24, 2017, p. 4, Available at https://www.hchr.org.mx/images/doc_pub/SRHRD-END-OF-MISSION-STATEMENT-FINAL_ESP.pdf.

were drug-related killings” in a scenario of “systematic and endemic impunity.”⁶⁶ According to the United Nations High Commissioner for Human Rights, by 2015, this figure had increased to 151,233 people killed.⁶⁷

61. Following its visit to Mexico in 2011, the UN Working Group on Enforced or Involuntary Disappearances [WGEID] verified that the strategy of militarization to maintain public order had been accompanied, between 2006 and 2010, by the gradual increase in the number of complaints received by the National Human Rights Commission [CNDH] concerning the Ministry of Defense [SEDENA], in particular for arbitrary detention, torture, cruel, inhuman and degrading treatment, extrajudicial executions and forced disappearances.⁶⁸ According to the CNDH annual reports, between 2007 and 2017, 10,930 complaints against SEDENA⁶⁹ and 2,881 against the Ministry of the Navy [SEMAR] were recorded.⁷⁰ Likewise, over this period, the CNDH issued 121 recommendations to SEDENA and 37 to SEMAR on verifying human rights violations that could be attributed to members of the Armed Forces.⁷¹

62. In 2012 and 2018, the UN Committee for the Elimination of Discrimination against Women (CEDAW) reported that “the public security strategy to combat organized crime, combined with persistent impunity and corruption, have contributed to the intensification of already existing patterns of widespread discrimination and violence against women [in Mexico],”

⁶⁶ Cf. UN. *Report of the Special Rapporteur on extrajudicial executions, Mission to Mexico, supra*, April 28, 2014, paras. 8, 11, 13 and 15.

⁶⁷ Following his visit to Mexico in 2015, the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, stated: “For a country that is not engaged in a conflict, the estimated figures are simply staggering: 151,233 people killed between December 2006 and August 2015, including thousands of transiting migrants. At least 26,000 people missing, many believed to be as a result of enforced disappearances, since 2007. Thousands of women and girls are sexually assaulted, or become victims of the crime of femicide. And hardly anyone is convicted for the above crimes.” Cf. Statement of the UN High Commissioner for Human Rights, on his visit to Mexico, October 7, 2015, Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578>. Meanwhile, expert witnesses Alejandro Madrazo and Gabriella Citroni both indicated that, after 2007, with the implementation of the “Joint Operations” as a central strategy of the State policy of militarized security, this “not only did not reduce the violence, but rather [...] it exacerbated it and provoked a human rights crisis, [forced] displacement and the most egregious violence that the country had suffered in a century.” In the context of the war on drugs and organized crime, “Mexico recorded one of the highest number of disappearances in the world and the highest increase in the absolute number of homicides in the western hemisphere,” equaling or exceeding that of countries at war. Cf. Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018, *supra* (evidence file, affidavits, f. 30979), and Expert opinion of Gabriella Citroni provided on April 18, 2018, *supra* (evidence file, affidavits, f. 31062).

⁶⁸ Cf. UN. WGEID, *Preliminary observations, Mission to Mexico*, March 31, 2011, p. 5, Available at: <https://www.ecoi.net/en/document/1039023.html>; *Report of the WGEID, Mission to Mexico*, December 20, 2011, *supra*, paras. 19 and 25. In this report, the WGEID indicated: “The Commission’s [CNDH] recommendations are often the only public record of investigations into abuses committed by soldiers and, as such, constitute a fundamental tool in highlighting the patterns of human rights violations,” and Cf. UN. Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October-23 November 2012)* CAT/C/MEX/CO/5-6, December 11, 2012, para. 10.

⁶⁹ The CNDH indicated that the number of complaints against the SEDENA for human rights violations submitted to its consideration had evolved as follows: 367 in 2007 (3rd place); 1,230 in 2008 (1st place); 1,791 in 2009 (1st place); 1,415 in 2010 (1st place); 1,695 in 2011 (1st place); 1,503 in 2012 (2nd place); 811 in 2013 (3rd place); 642 in 2014 (3rd place); 622 in 2015 (7th place); 439 in 2016 (8th place), and 415 in 2017 (7th place). Cf. CNDH, *Annual Reports: 2007*, p. 47; *2008*, p. 36; *2009*, p. 28; *2010*, p. 52; *2011*, p. 11; *2012, Volume I*, p. 11; *2013, Volume I*, p. 16; *2014, Volume I*, p. 41; *2015, Executive summary*, p. 17; *2016, Executive summary*, p. 23; and *2017*, p. 32. Available at: http://www.cndh.org.mx/Informes_Anuales_Actividades.

⁷⁰ The number of complaints against the SEMAR for human rights violations recorded by the CNDH were: 31 in 2007 (32nd place); 43 in 2008 (24th place); 42 in 2009 (24th place); 198 in 2010 (11th place); 495 in 2011 (9th place); 418 in 2012 (10th place); 385 in 2013 (10th place); 374 in 2014 (9th place); 378 in 2015 (9th place); 258 in 2016 (9th place), and 259 in 2017 (10th place). Cf. CNDH. *Annual Reports: 2007*, p. 741; *2008*, p. 337; *2009*, p. 339; *2010*, p. 371; *2011*, p. 11; *2012, Volume I*, p. 11; *2013, Volume I*, p. 16; *2014, Volume I*, p. 41; *2015, Executive summary*, p. 17; *2016, Executive summary*, p. 23; and *2017*, p. 32, *supra*.

⁷¹ Cf. CNDH, *Informe Especial sobre las Recomendaciones en Trámite dirigidas a las Autoridades Estatales, Federales and Municipales [Special report on current recommendations to municipal, federal and state authorities]* June 2016, pp. 191 and 196. Available at http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2016/IE_Recommendations.pdf. The period for the analysis of the CNDH in this “Special Report” started on March 15, 2016 (p. 17). Regarding the “Recommendations” to SEDENA (3) and SEMAR (4), in 2017, cf. CNDH, *Annual Report 2017, supra*, pp. 42 and 43.

as well as of “increasing levels and different types of gender-based violence, such as [...] forced disappearances, torture and murders, especially feminicide, by state actors, including law enforcement officials and the security forces [...]”⁷² The CNDH recorded 35,433 victims of internal forced displacement (IFD) in Mexico in 2016, of whom 31,798 were displaced as a result of criminal violence and the actions of the State’s law enforcement agencies. The state of Chihuahua occupied the third place in Mexico for the number of internal forced displacements, with 2,008 victims, and the CNDH underlined that “the authorities have been unable to put a stop to [this phenomenon], and this has led to a lack of protection for the victims.”⁷³

A.1.3. Disappearances that can presumably be attributed to state agents in Mexico

63. In 2011, the WGEID indicated that many of the disappearances in Mexico could be described as enforced due to the direct or indirect involvement in their perpetration of public officials, including military personnel.⁷⁴ In 2012, the UN Committee against Torture expressly referred to the WGEID conclusions and also expressed its concern due to “the increasing number of enforced disappearances that are apparently being committed by public authorities or by criminal or private groups acting with the direct or indirect support of public officials in such states as Coahuila, Guerrero, Chihuahua, Nuevo León and Tamaulipas.”⁷⁵ In this context, the UN High Commissioner indicated that “[p]art of the violence can be laid at the door of the country’s powerful and ruthless organized crime groups [...]. But many enforced disappearances, acts of torture and extra-judicial killings are alleged to have been carried out by federal, state and municipal authorities, including the police and some segments of the army, either acting in their own interests or in collusion with organized criminal groups.”⁷⁶

64. Meanwhile, at the domestic level, in numerous annual reports,⁷⁷ in a special report,⁷⁸ and also in a report addressed to the UN Committee on Enforced Disappearance,⁷⁹ the CNDH has reported the existence of this generalized context of disappearances of persons and of the severity of this problem associated with the scenario of violence in Mexico, particularly from 2007 to date. In 2017, the CNDH concluded that 29,903 disappearances had been recorded

⁷² Cf. UN. CEDAW, *Concluding observations. Mexico*, CEDAW/C/MEX/CO/7-8, August 7, 2012, paras. 11 and 12, and *Concluding observations on the ninth periodic report of Mexico*, CEDAW/C/MEX/CO/9, July 25, 2018, paras. 9 and 10.

⁷³ Cf. CNDH, *Informe Especial sobre Desplazamiento Forzado Interno* [Special report on internal forced displacement] 2016, pp. 3 and 152 to 154. Available at: http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2016_IE_Desplazados.pdf. Nevertheless, the Norwegian Refugee Council (NRC) indicated that, at December 31, 2017, the number of internal forced displacements in Mexico amounted to 215,000 persons, of whom 20,000 were displaced as a result of criminal violence. However, calculations made by a Mexican non-governmental organization estimated that the number of IDP in Mexico could be as many as 345,000 persons in 2017, stressing that, since the Mexican Government did not officially recognize the phenomenon of internal displacement, “estimates relative to population movements have historically been challenging to produce.” Cf. Norwegian Refugee Council. *Global Report on Internal Displacement, 2018*, pp. 2, 38, 49, 60, 95 and 105. Available at: <http://www.internal-displacement.org/global-report/grid2018/downloads/2018-GRID.pdf>

⁷⁴ Cf. UN. *WGEID Report, Mission to Mexico*, *supra*, paras. 17, 20 and 26.

⁷⁵ Cf. UN. Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October-23 November 2012)* CAT/C/MEX/CO/5-6, December 11, 2012, *supra*, para. 12.

⁷⁶ Cf. Statement by the UN High Commissioner for Human Rights, Visit to Mexico, October 7, 2015, *supra*.

⁷⁷ Cf. CNDH. Annual Reports: 2009, p. 55; 2010, p. 60; 2011, p. 57, and 2012, p. 73. In these reports, the CNDH indicated that, over the period from 2009 to 2012, it had received 359 reports of presumed forced disappearances, and had issued 10 recommendations to the state law enforcement agencies, including SEDENA, concerning this egregious violation after the participation of state agents had been proved.

⁷⁸ Cf. CNDH, *Informe Especial sobre Desaparición de Personas and Fosas Clandestinas en Mexico* [Special Report on the disappearance of persons and clandestine graves in Mexico] April 6, 2017, Available at: http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/InformeEspecial_20170406.pdf. See also, CNDH Press communiqué DGC/103/17 of the same date, available at: http://www.cndh.org.mx/sites/all/doc/Comunicados/2017/Com_2017_103.pdf.

⁷⁹ Cf. CNDH, Considerations of the CNDH submitted to the UN Committee on Enforced Disappearances]. paras. 4, 5 and 66. Available at: https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_IFN_MEX_19449_S.pdf.

from 2007 to October 2016 in the official databases and, of these, 82.71% were concentrated in 11 areas of the country, with the state of Chihuahua having the sixth largest number with 1,933 persons disappeared.⁸⁰

65. The CNDH also indicated that, up until 2015, it had received information of 260 reports of the crime of forced disappearance of persons.⁸¹ However, it reiterated its concern owing to the lack of information on the whereabouts of thousands of disappeared persons in Mexico and stressed that the inconsistencies and deficiencies in the available official information in this regard had impeded an adequate assessment of the magnitude of the problem and the possibility of determining precisely “how many of those cases correspond to forced disappearance of persons, which of them can be attributed to persons involved in organized crime, and the number of victims whose absence is due to reasons other than those indicated.”⁸²

A.1.4. *The judicial response in cases of disappearances that can be attributed to state agents*

66. The Court notes that the Office of the High Commissioner for Human Rights⁸³ and several United Nations Treaty Bodies⁸⁴ and Special Procedures⁸⁵ have pointed to the existence in Mexico

⁸⁰ Cf. CNDH, *Informe Especial sobre Desaparición de Personas and Fosas Clandestinas*, 2017, *supra*, paras. 28 and 29. According to this report, the gradual increase in the disappearance of persons in Mexico evolved as follows: in 2007, 662 cases; in 2008, 822 cases; in 2009, 1,401 cases; in 2010, 3,227 cases; in 2011, 4,094 cases; in 2012, 3,343 cases; in 2013, 3,878 cases; in 2014, 4,196 cases; in 2015, 3,768 cases, and to October 2016, 3,805 cases. In addition, 82.71% (23,934) cases of persons reported as disappeared in the civil jurisdiction were concentrated in 11 of the country's states as follows: Tamaulipas 19.22%, 5,563 cases; state of Mexico, 10.31%, 2,984; Jalisco, 8.71%, 2,523; Sinaloa 8.24%, 2,385; Nuevo León 8.20%, 2,374; Chihuahua 6.68%, 1,933; Coahuila, 5.59%, 1,620; Sonora 4.45%, 1,288; Guerrero, 3.99%, 1,155; Puebla 3.73%, 1,080, and Michoacán 3.55%, 1,029 cases.

⁸¹ Cf. CNDH, *Informe Especial sobre Desaparición de Personas and Fosas Clandestinas in Mexico*, 2017, *supra*, *Executive Summary* 2017, para. 33. Available at: http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/InformeEspecial_20170406_Resumen.pdf. The CNDH also stressed “the urgent need for Mexico to undertake the task of systematizing, authenticating and purging its databases, using appropriate methodology and clear criteria that establish the cases in which there are indications of forced disappearance of persons attributed to state agents or to private individuals acting with the support, tolerance or acquiescence of state agents.” Cf. CNDH, Press communiqué No. CGCP/023/15 issued on February 2, 2015, in Geneva, Switzerland. Available at http://www.cndh.org.mx/sites/all/doc/Comunicados/2015/Com_2015_023.pdf. In this regard, expert witness Federico Andreu Guzmán indicated that “one of the major problems with regard to the issue of forced disappearance in Mexico is the absence of consolidated figures at the state level.” Cf. Opinion provided during the public hearing before the Court by expert witness Federico Andreu Guzmán, *supra*, p. 81. Meanwhile, regarding the implications of the methodological deficiencies in the systematization of the information on disappeared persons in Mexico's official sources, expert witness Gabriella Citroni stated: “The determination of the precise number of disappeared persons in Mexico has been a challenge over the last decade and attempts to establish a single complete record (for example, the National Register of Missing or Disappeared Persons) has been plagued with delays and deficiencies.” Cf. Expert opinion of Gabriella Citroni provided on April 18, 2018, *supra* (evidence file, affidavits, f. 31082).

⁸² Cf. CNDH, *Informe Especial sobre Desaparición de Personas and Fosas Clandestinas en Mexico*, *Executive summary*, *supra*, paras. 31 and 32.

⁸³ Cf. Statement of the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, Visit to Mexico, October 7, 2015, *supra*, and *Recommendations to Mexico by the United Nations High Commissioner for Human Rights, Zeid Ra'ad al Hussein, as a result of his official visit to the country in October 2015*, March 2016, Recommendation 1.

⁸⁴ Cf. UN. CEDAW, *Concluding observations of the Committee for the Elimination of Discrimination against Women*, CEDAW/C/MEX/CO/7-8, August 7, 2012, para. 11, and UN. Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October-23 November 2012)* CAT/C/MEX/CO/5-6, December 11, 2012, para. 14.

⁸⁵ Cf. UN: *Report of the Special Rapporteur on the independence of judges and lawyers*, *supra*, April 18, 2011, para. 54; *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Addendum, Mission to Mexico*, A/HRC/17/27/Add.3, May 19, 2011, para. 16; *Report of the WGEID. Mission to Mexico*, December 20, 2011, *supra*, para. 32; *Report of the Special Rapporteur on torture*, December 29, 2014, paras. 32 to 34; WGEID, *Follow-up on the recommendations made by the WGEID in its report on its visit to Mexico from March 18 to 31, 2011, September 11, 2015*, *supra*, paras. 18 and 34; *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in follow-up to his mission to Mexico*, A/HRC/32/39/Add.2, May 6, 2016, para. 64; *Follow-up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mexico*, February 17, 2017, para. 34; IACHR/UN. *Special Report on the Situation of Freedom of Expression in Mexico*, Joint report, June 2018, para. 43. Available at https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf, and UN. *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico*, June 28, 2018, *supra*, para. 64.

of a structural and generalized pattern of impunity, together with a lack of access to justice and reparation for the victims of crimes in general and, in particular, in cases of gross violations in which the participation of local and federal state agents is presumed.

67. Regarding the flaws in the investigations and the absence of a judicial response and reparation in the cases of forced disappearances, following its mission to Mexico in 2011, the WGEID pointed to the existence of a chronic pattern of impunity and the victims' lack of faith in the justice system and in the authorities, including the Armed Forces, and that "sufficient efforts were not being made to determine the fate or whereabouts of persons who have disappeared, to punish those responsible and to guarantee the right to the truth and reparation." The WGEID considered that this revealed "that Mexico was unwilling or unable to conduct effective investigations into such cases."⁸⁶ In 2015, the WGEID reiterated its conclusion that generalized impunity in Mexico subsisted as a chronic pattern and was a factor that promoted the repeated perpetration of forced disappearances,⁸⁷ while the UN Committee on Enforced Disappearances expressed its concern "about the impunity surrounding the numerous cases of enforced disappearance reported, which is evidenced by the near zero level of convictions for the offence."⁸⁸

A.1.5. The situation of violence and insecurity in the region where the facts occurred and implementation of the Chihuahua Joint Operation

68. The facts of the instant case took place in the Ejido Benito Juárez, which belongs to the municipality of Buenaventura and is located in the northwestern region of the state of Chihuahua, bordering on the states of Texas and New Mexico in the United States of America.⁸⁹ The Ejido Benito Juárez was created in 1936, 80 kilometers from the municipal capital, Buenaventura, and 200 kilometers from the state capital, the city of Chihuahua.⁹⁰ As part of this state, the Ejido Benito Juárez forms part of one of the main routes for the trafficking of drugs, weapons, contraband items, and also for the transit of migrants seeking to enter the United States from Mexico illegally.⁹¹ The Ejido Benito Juárez is located in parallel to the Pan-American Highway at the starting point of the roads to the different mountain villages used for the reception and onward transit of drugs to the United States, such as Villa Ahumada and the municipal capital of Buenaventura itself; this means that, together with those localities, among others, it is part of the northwestern Chihuahua drug corridor.⁹²

69. Furthermore, within the territory demarcated and earmarked for the implementation of military operations by the Mexican Army, the Ejido Benito Juárez is located in the sector

⁸⁶ Cf. Report of the WGEID, Mission to Mexico, December 20, 2011, *supra*, para. 76.

⁸⁷ Cf. WGEID, *Follow-up on the recommendations made by the WGEID in its report on its visit to Mexico from March 18 to 31, 2011, September 11, 2015, supra*, para. 18. Similarly, Cf. Expert opinion of Gabriella Citroni provided on April 18, 2018, *supra* (evidence file, affidavits, f. 31059); Opinion provided during the public hearing before the Court by expert witness Federico Andreu Guzmán, *supra*, p. 81, and Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, p. 110.

⁸⁸ Cf. UN. Committee on forced disappearances, *Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention [International Convention for the Protection of All Persons from Enforced Disappearance]*, CED/C/MEX/CO/1, March 5, 2015, para. 27. Similarly: cf. CNDH, *Informe Especial sobre Desaparición de Personas and Fosas Clandestinas en México, supra*, paras. 12, 14, 22 and 96.

⁸⁹ Cf. Report of March 31, 2015, by the International Team of Expert [ITE], in the context of assistance to the Prosecutor General of the state of Chihuahua (evidence file, f. 28882), and Opinion provided during the public hearing before the Court by expert witness Carlos Rodríguez Ulloa, security expert, on April 26, 2018 (transcript of the public hearing, pp. 131 a 132).

⁹⁰ Cf. Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, affidavits, f. 31143).

⁹¹ Cf. Report issued by the Center for Planning, Analysis and Information to Combat Crime [CENAPI-PGR] on the *Case of Alvarado Espinoza et al. v. Mexico* on October 13, 2017 (evidence file, f. 28510), and Statement of José Emilio Serrano Santiago, Director General of Analysis of the CENAPI-PGR, made on April 12, 2018, before the agent of the Federal Public Prosecution Service [AMPF] attached to the Special Prosecutor for the Investigation of Crimes of Forced Disappearance of the PGR [FEIDDF-PGR] (evidence file, affidavits, f. 31195).

⁹² Cf. Expert opinion of the GIASF, provided on April 19, 2018, *supra* (evidence file, affidavits, ff. 31142 and 31143), and Report issued by the CENAPI-PGR on the *Case of Alvarado Espinoza et al. v. Mexico* on October 13, 2017, *supra* (evidence file, f. 28517).

corresponding to the Eleventh Military Region “which covers the states of Coahuila and Chihuahua and, within this, [it is located] in the area corresponding to the [Fifth] Military Zone,” situated in the north of the state of Chihuahua. Regarding this military jurisdictional delimitation, the nearest military garrison to Ejido Benito Juárez is located in the municipality of Nuevo Casas Grandes, to the northwest of Buenaventura, which is the permanent home of the Army’s 35th Infantry Battalion [hereinafter, “the 35th Infantry Battalion” or “the 35th Battalion”].⁹³

70. In this context, the geographical location of the Ejido Benito Juárez was strategically inserted in “a natural corridor for drug-trafficking” in which a series of geographical,⁹⁴ social, economic and cultural⁹⁵ factors converged that had converted this area, from the time of the facts of this case to date, into a favorable scenario for the illegal activities of various rival drug cartels; in particular, the “Carrillo Fuentes” and “Pacífico” organizations. These criminal organizations disputed control of the territory using antagonistic organized crime groups that operated as their “armed branches.”⁹⁶ In this context, the Ejido Benito Juárez “has characterized itself as being a bastion of ‘La Línea,’ which is the armed branch of the Carrillo Fuentes [criminal] organization.”⁹⁷

71. From the time that the facts of this specific case occurred and to date, the struggle for control of these territories by the criminal organizations has resulted in periods of increased violence including armed confrontations, multiple homicides, attacks on the local authorities and, in general, a gradual increase in the frequency of crimes that can be attributed to the said organizations.⁹⁸ This has led to large-scale military operations by the law enforcement authorities of the Mexican State, including in the northwestern area of Chihuahua where the Ejido Benito Juárez is located.⁹⁹

72. In particular, on March 28, 2008, the “Chihuahua Joint Operation” began in Mexico as a state security strategy based on the deployment of military forces to confront the above-mentioned scenario.¹⁰⁰ Its declared purpose was “to combat the lack of public security, and the elevated number of homicides linked to organized crime, mainly as a result of the ongoing struggle for control of the area between the Carrillo Fuentes and Pacífico organizations, in addition to the presence of some Los Zetas cells, especially in Ciudad Juárez.”¹⁰¹ The headquarters for the said “Operation” was the Fifth Military Zone, which covers the northern area of Chihuahua, and it was placed under the coordination of the commander of this military

⁹³ Cf. Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, affidavits, ff. 31146 and 31147 and 31153).

⁹⁴ The International Team of Experts [ITE] concluded that, in order to understand the circumstances in which the facts of the instant case occurred, it was necessary to take into account, among other factors, “the very rugged terrain and the different types of climate and ground [that] make access difficult, limit coverage by the state’s institutions of security and justice, and have converted it into a strategic area for drug cultivation, processing and trafficking.” Cf. Report of March 31, 2015, of the ITE in the context of assistance to the FGE-Chihuahua, *supra* (evidence file, f. 28882).

⁹⁵ According to the GIASF, these factors include “its history of fighting to defend its resources and its agrarian rights and an identity strongly related to its deep-rooted connection to the land and to farming, [...] organizational processes, and the different manifestations of social and political violence that have influenced the dynamics of the ejidos.” Cf. Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, affidavits, f. 31145).

⁹⁶ Cf. Report issued by CENAPI-PGR on October 13, 2017, *supra* (evidence file, f. 28511). This document indicates that the main organized crime groups that are disputing territorial control in the state of Chihuahua, in addition to the “Carrillo Fuentes” and “Pacífico” organizations, are their respective “armed branches” known as “La Línea” and the “Los Aztecas” gang, on the one hand and, on the other, the criminal group called “Gente Nueva” and the gangs known as “Los Mexicles” and “Artistas Asesinos.” Similarly, cf. Opinion provided during the public hearing before the Court by expert witness Carlos Rodríguez Ulloa on April 26, 2018, *supra*, pp. 131 to 134.

⁹⁷ Cf. Report issued by CENAPI-PGR on October 13, 2017, *supra* (evidence file, f. 28517), and Statement made by José Emilio Serrano Santiago, Director General of Analysis of the CENAPI-PGR, on April 12, 2018, before the AMPF of the FEIDDF-PGR, *supra* (evidence file, f. 31197).

⁹⁸ Cf. Report issued by CENAPI-PGR on October 13, 2017, *supra* (evidence file, ff. 28511, 28513 and 28519).

⁹⁹ Cf. Report of the ITE, 2015, *supra* (evidence file ff. 28880 to 28881 and 28892).

¹⁰⁰ Cf. Report of the ITE, 2015, *supra* (evidence file, f. 28891).

¹⁰¹ Cf. Report issued by the CENAPI-PGR on October 13, 2017, *supra* (evidence file, f. 28534).

jurisdiction, whose command center was located in Ciudad Juárez.¹⁰² Initially, 2,500 federal agents participated in the operation, 2,026 of whom were soldiers and “425 federal agents and members of the federal public prosecution services [...]” Gradually, the presence of members of the Army in the Chihuahua Joint Operation increased until, in 2009, there were around 8,500 soldiers and 2,300 federal agents in Ciudad Juárez alone.¹⁰³ Before its name was changed in 2010, 10,000 members of the Armed Forces were taking part in the “Chihuahua Joint Operation” carrying out security-related tasks in the region.¹⁰⁴

73. On October 20, 2009, near the municipality of Buenaventura, Chihuahua, the Commander of the Federal Police, José Alfredo Zilli Peña, and two of his agents who were accompanying him were abducted and subsequently murdered.¹⁰⁵ Following this, around 3,000 members of the Federal Police and the Army who formed part of the “Chihuahua Joint Operation” were deployed to look for them in different places, including Villa Ahumada and the Ejido Benito Juárez.¹⁰⁶ As part of this operation, these agents searched ranches, set up roadblocks on highways, paths, and streams, controlled the entry to the villages and detained several people from the community of Benito Juárez owing to their presumed connection to the killings. In that context, the excesses committed by the agents against the villagers were denounced.¹⁰⁷

74. In January 2010, the name of the “Chihuahua Joint Operation” was changed to the “Chihuahua Coordinated Operation,” “following reassessment of the intervention strategy of the federal forces within the comprehensive strategy against organized crime,”¹⁰⁸ and an additional 1,300 police agents from the Federal Ministry of Public Security were posted to Ciudad Juárez.¹⁰⁹ Finally, on April 9, 2010, the command of the “Chihuahua Coordinated Operation” was transferred to the Federal Ministry of Public Security, while the members of the Mexican Army were posted to the border with the United States of America to carry out surveillance tasks.¹¹⁰ This change in strategy was mainly due to the condemnation by civil society of the presence of the Army in public security activities in the municipalities around Ciudad Juárez and, according

¹⁰² Cf. Presidency of the Republic. United Mexican States. Fourth Annual Report, *supra*, p. 30, and Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, p. 102.

¹⁰³ The “Chihuahua Joint Operation” “[...] involved the deployment of 10 permanent “Combined Operation Bases” headquartered in Ciudad Juárez, mobile control posts, and the reinforcement of the Military Garrison in the municipality of Palomas, plus the provision of special forces [...] and included operations in the cities of Chihuahua, Buenaventura, Janos, Casas Grandes, Nuevo Casas Grandes and Asunción.” Each of them was composed “of an agent of the Federal Public Prosecution Service, soldiers and vehicles from different entities, such as SEDENA, the Prosecutor General’s Office [PGR], the Federal Police [PF], the State Police, and the Municipal Police.” Cf. Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, ff. 31150 and 31151).

¹⁰⁴ Cf. Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, p. 102.

¹⁰⁵ Cf. Unnumbered communication of October 21, 2009, from the General Directorate of Trafficking and Smuggling of the Federal Police (evidence file, criminal case file, ff. 8362 to 8363); Certification of Visual Inspection and Identification of Corpses [of those who in life were known as José Alfredo Zilli Peña, Felipe Arizpe Hernández and Armando Vega López] of October 31, 2009, signed by the AMPF attached to the Combined Unit for Small-scale Drug Trafficking of the PGR in Ciudad Juárez (evidence file, criminal case file, ff. 8737 to 8742), and Unnumbered communication of November 4, 2009, of the General Directorate of Trafficking and Smuggling of the Federal Police (evidence file, criminal case file, f. 8772).

¹⁰⁶ Cf. Press communiqué entitled “*Sigue la búsqueda de ‘Federales’ levantados in Chihuahua*” [Search continues for federal agents kidnapped in Chihuahua], published in “El Siglo de Torreón” (evidence file, criminal case file, f. 12020 and 12021), and Press communiqué entitled “*Hallan cuerpos de los 3 agentes federales que habían sido levantados in Chihuahua*” [Bodies of 3 federal agents kidnapped in Chihuahua found], published in the newspaper “La Jornada” on November 1, 2009 (evidence file, criminal case file, f. 12022 and 12023).

¹⁰⁷ Cf. Report of the ITE, 2015, *supra* (evidence file, ff. 28892 and 28896), and Press communiqué entitled “*Hallan cuerpo de inspector*” [Body of inspector found], of October 24, 2009 (evidence file, criminal case file, f. 12025).

¹⁰⁸ Cf. Report issued by the CENAPI-PGR on October 13, 2017, *supra* (evidence file, f. 28532).

¹⁰⁹ Cf. Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, p. 102.

¹¹⁰ Cf. Report issued by the CENAPI-PGR, *supra* (evidence file, f. 28533), and Statement made by José Emilio Serrano Santiago, Director General of Analysis of the CENAPI-PGR, on April 12, 2018, before the AMPF of the FEIDDF-PGR, *supra* (evidence file, affidavits, f. 31195).

to experts, to the alleged gross human rights violations related to members of the military.¹¹¹

75. In brief, over the time that the “Chihuahua Joint Operation” was executed, the Chihuahua State Human Rights Commission [CEDH-Ch] recorded 457 complaints against members of the SEDENA between 2008 and 2011,¹¹² and these were forwarded for their resolution to the CNDH, as a federal authority. Most of the complaints referred to home searches, arbitrary detentions, torture, disappearances and extrajudicial executions.¹¹³ These complaints “revealed patters of action by members of the military, including the use of vehicles seized from members of organized crime groups during their operations.”¹¹⁴

B. Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera¹¹⁵

76. Nitza Paola Alvarado Espinoza was born on November 2, 1978.¹¹⁶ At the time of her disappearance she was 31 years of age and had a permanent disability consisting in a hemiplegia caused by a stroke, so that she was retired with a pension from the Mexican Social Security Institute.¹¹⁷ Nitza Paola Alvarado Espinoza’s family consists of: (i) her mother, María de Jesús Espinoza Peinado; (ii) her father, Ascensión Alvarado Fabela; (iii) her three daughters, N.S.A.E., M.P.A.E. and D.A.E.; (iv) her sister, María de Jesús Alvarado Espinoza; (v) her brother-in-law, Rigoberto Ambriz Marrufo, and (vi) her four nephews and nieces, R.A.A., I.A.A.A., J.E.A.A. and A.Y.A.A.

77. Rocío Irene Alvarado Reyes was born on August 26, 1991.¹¹⁸ At the time of the facts she was 18 years of age and worked in a grocery store.¹¹⁹ The members of her family are: (i) her mother, Patricia Reyes Rueda; (ii) her daughter, A.M.U.A; (iii) her brothers, A.A.R. and A.R.A.R., and (iv) her grandfather Manuel Reyes Lira.

78. José Ángel Alvarado Herrera was born on March 24, 1979.¹²⁰ At the time of the facts he was 31 years of age and worked as a supervisor for a spare parts company.¹²¹ His family

¹¹¹ Cf. Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, pp. 113 and 114. Similarly, Expert opinion of Gabriella Citroni provided on April 18, 2018, *supra* (evidence file, affidavits, f. 31061). This expert witness indicated that, in the context of the implementation of the “Chihuahua Joint Operation” “gross human rights were committed, including forced disappearances and, in general, the excessive use of force was notorious; [...] it unleashed greater violence and also [...] an absence of accountability in keeping with international standards.”

¹¹² Cf. State Human Rights Commission, Chihuahua [CEDH-Ch]. Annual Report 2008: 167 complaints (p. 39), Available at: http://www.cedhchihuahua.org.mx/portal/Informes/Informe_2008.pdf; Annual Report 2009: 169 complaints (p. 45), Available at http://www.cedhchihuahua.org.mx/portal/Informes/Informe_2009.pdf ; Annual Report 2010: 103 complaints (pp. 34 to 36), Available at: http://www.cedhchihuahua.org.mx/portal/Informes/Informe_2010.pdf; and Annual Report 2011: 18 complaints (p. 111), Available at: http://www.cedhchihuahua.org.mx/portal/Informes/Informe_2011.pdf. Public information..

¹¹³ Cf. Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, affidavits, f. 31151), and Opinion provided during the public hearing before the Court by expert witness Salvador Salazar Gutiérrez, *supra*, p. 105.

¹¹⁴ Expert opinion of the GIASF provided on April 19, 2018, *supra* (evidence file, affidavits, f. 31153).

¹¹⁵ The family members cited by their initials correspond to minors and, since the processing of the provisional measures, their names have been kept confidential. Hereinafter, when citing the sources in the body of evidence of this case, the initials “AMPF” will be used to identify the members of the investigation agencies who are the “federal agents of the Public Prosecution Service” belonging to the different units, departments and public prosecution offices of the PGR, and “AMP” to designate the “agents of the Public Prosecution Service” of the state of Chihuahua, save in the case of exceptions that will be indicated.

¹¹⁶ Communication No. PGR/FEVIMTRA/TRA/0589/2010, of June 23, 2010, signed by the Special Prosecutor for Crimes of Violence against Women and People Trafficking [FEVIMTRA-PGR], addressed to the PGR Director General for International Cooperation (evidence file, f. 92).

¹¹⁷ Cf. Disability report issued by the Mexican Social Security Institute (evidence file, ff. 89 and 90).

¹¹⁸ Birth certificate No. 176 of Rocío Irene Alvarado Reyes issued by Office No. 92 of the Civil Registry of the state of Chihuahua (evidence file, criminal case file, f. 7391).

¹¹⁹ Cf. Communication No. PGR/FEVIMTRA/TRA/0589/2010 of June 23, 2010, signed by the FEVIMTRA-PGR, *supra* (evidence file, criminal case file, f. 13735).

¹²⁰ Birth certificate No. 69 of José Ángel Alvarado Herrera issued by the judge of the Civil Registry of the Ejido Benito Juárez, Buenaventura, Chihuahua (evidence file, f. 7389).

¹²¹ Cf. Certification of employment issued by *Empresa Vientek México S. de R. L. de C.V.* (evidence file, f. 96), and Statement made by María de Jesús Alvarado Espinoza before the Court during the public hearing, *supra*, p. 27.

consists of: (i) his wife, Obdulia Espinoza Beltrán; (ii) his mother, Concepción Herrera Hernández; (iii) his father, José Ángel Alvarado Fabela; (iv) his three children, J.A.E., J.A.A.E. and A.E.B. (A.A.E.);¹²² (v) his brother, Jaime Alvarado Herrera; (vi) his sister-in-law, Sandra Luz Rueda Quezada; (vii) his four nephews and nieces, J.O.A.R., R.G.A.R., C.N.A.R. and J.E.A.R.; (viii) his sister, Rosa Olivia Alvarado Herrera; (ix) his brother-in-law, Félix García García, and (x) his four nephews and nieces, Karina Paola Alvarado Espinoza, F.A.H., J.G.A. and A.G.A.¹²³

79. According to the certifications provided to the Court, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera were cousins because their fathers, Ascensión Alvarado Fabela and José Ángel Alvarado Fabela, respectively, are brothers.¹²⁴ Meanwhile, Rocío Irene Alvarado Reyes was a second cousin of both Nitza Paola and José Ángel Alvarado because her father, Rafael Alvarado Sáenz, was their cousin.¹²⁵

C. The disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera on December 29, 2009

C.1. The detention of Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera

80. On December 29, 2009, between 8.00 and 9.00 p.m., José Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza were in a dark blue double-cabin pick-up truck parked outside the home of the mother of Obdulia Espinoza Beltrán, José Ángel's wife, in the Ejido Benito Juárez. At that time, two private pick-up trucks drew up,¹²⁶ one of them a grey double-cabin Chevrolet diesel truck,¹²⁷ and the other a Hummer¹²⁸ that was white or "khaki or lightish brown."¹²⁹ Around eight or ten individuals got out of the trucks carrying long arms, and wearing helmets and caps, without ski-masks,¹³⁰ and military-type uniforms, some with sand-colored camouflage,¹³¹ "khaki or lightish brown,"¹³² "of the type worn in the desert," and boots of the same color,¹³³ and others of a green color,¹³⁴ and the men spoke with a different accent to those who lived in the area.¹³⁵

81. Most of the men went to the side of the driver, where Nitza Paola was seated, while one of

¹²² According to the order for provisional measures issued by this Court on November 14, 2017, the beneficiary identified in this procedure with the initials "A.A.E" corresponds to the persons indicated by the Commission as a family member of José Ángel Alvarado Herrera in paragraph 62 of its Merits Report with the initials "A.E.B." Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures*. Order of November 14, 2017, *considerandum* 13, and footnote 6. Available at: http://www.corteidh.or.cr/docs/medidas/alvarado_se_07.pdf

¹²³ Cf. Family tree presented by the representatives during the admissibility procedure before Inter-American Commission on December 24, 2012, *supra* (evidence file, f. 1672). See also, footnote 1, with regard to Manuel Melquiades and family.

¹²⁴ Cf. Family tree presented by the representatives, *supra* (evidence file, f. 1672).

¹²⁵ Cf. Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018, and family tree attached (evidence file, affidavits, ff. 31002 and 31050).

¹²⁶ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the Subdirector for Management and Control of Preliminary Inquiries [SMC] of the FEVIMTRA-PGR (evidence file, f. 27919), and Statement made by Obdulia Espinoza Beltrán on January 16, 2013, before the AMPF acting to support the Eleventh Preliminary Investigation Agency of the PGR-Chihuahua [11^aAMPF-PGR] (evidence file, f. 27929).

¹²⁷ Cf. Statement made by Obdulia Espinoza Beltrán on October 27, 2014, before the AMPF of the Special Search Unit for Missing Persons [UEBPD-PGR] (evidence file, f. 27932).

¹²⁸ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, f. 27919).

¹²⁹ Cf. Statement made by Obdulia Espinoza Beltrán on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27929).

¹³⁰ Cf. Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018 (evidence file, affidavits, f. 30911).

¹³¹ Cf. Recommendation 43/11 issued on June 30, 2011, por the National Human Rights Commission [CNDH] (evidence file, ff. 27856 and 27857).

¹³² Statement made by Obdulia Espinoza Beltrán on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27928).

¹³³ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, f. 27919), and Statement made by Obdulia Espinoza Beltrán on October 27, 2014, before the AMPF of the UEBPD-PGR, *supra* (evidence file, f. 27932).

¹³⁴ Cf. Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018, *supra* (evidence file, affidavits, f. 30911).

¹³⁵ Cf. Statement made by Obdulia Espinoza Beltrán on January 16, 2013 before the 11^aAMPF-PGR, *supra* (evidence file, f. 27929).

them approached José Ángel, who had got out of the truck and was standing near the cabin. The individuals proceeded to search the vehicle and following a short exchange, took Nitza Paola by the hair and made her get out of it. When José Ángel tried to defend her, the individual who was beside him hit him in the face with his weapon, following which they made the two of them get into the back of the double-cabin pick-up in which their captors had arrived at the scene, and drove off to an unknown destination.¹³⁶

82. On December 29, 2009, when Obdulia Beltrán, eyewitness to the incident, went to the homes of the parents of her husband, José Ángel, and of the parents of Nitza Paola to tell them what had happened to their family members, María de Jesús Alvarado Espinoza (Nitza Paola's sister), her husband, Rigoberto Ambriz, and M.P.A.E. (Nitza Paola's daughter), went to the scene of the events¹³⁷ and noted that the doors of the pick-up truck from which they had been abducted were open, there were no keys, the stereo had been "torn out" and there was blood on the ground, near the tire.¹³⁸ Subsequently, they returned to the home of Nitza Paola's parents and, together with a friend, began to search the streets and paths of the Ejido, unsuccessfully.¹³⁹

C.2. The detention of Rocío Irene Alvarado Reyes

83. On December 29, 2009, about an hour after the detention of Nitza Paola and José Ángel Alvarado, around 9.00¹⁴⁰ or 10.00 p.m.,¹⁴¹ Rocío Irene Alvarado Reyes was resting with her brothers, A.A.R. and A.R.A.R., who were then 13 and 11 years of age, respectively; her daughter, A.M.U.A, 2 years' old, and her mother, Patricia Reyes Rueda, in their home in the Ejido Benito Juárez. At that time, Mrs. Reyes Rueda heard people arriving at the house and went to look out of the kitchen door, together with her daughter, Rocío Irene.¹⁴² They saw men wearing military-type uniforms who beat on the front door of the house and shouted for the door to be opened or they "would shoot."¹⁴³

84. In response to this order, Rocío Irene and her mother opened the door of the house and, immediately, one of the soldiers pushed Mrs. Reyes Rueda aside, and 8 or 9 hooded individuals

¹³⁶ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, ff. 27919 to 27921 and 27929), and Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018, *supra* (evidence file, affidavits, ff. 30910 and 30911). In the affidavit she submitted to the Court, Mrs. Espinoza Beltrán indicated: "We were in the house [...] and saw when the trucks arrived; well, we heard them and then we looked out, my daughter [...] [J.A.E] and me, and we saw that there were two or three vehicles and my daughter says to me: "they're soldiers, mummy, and they want to take my daddy! [...] and I saw that they were soldiers; my husband was under Paola's pick-up, on one side, outside the cabin, he was standing [*sic*], then one of the soldiers approached, one of them to José Ángel [Alvarado Herrera] and the others to Nitza] Paola who was still on the driver's side. There were around eight or ten soldiers. [...] I remember they were wearing green and brown uniforms and that they did not wear ski-masks [...]"

¹³⁷ Cf. Complaint filed by María de Jesús Alvarado Espinoza on December 31, 2009, before the Auxiliary Agent of the Public Prosecution Service of Buenaventura, Chihuahua [AAMP-Buenaventura] (evidence file, f. 27901); and Statements made on April 18, 2018, by D.A.E. (evidence file, affidavits, f. 30889); M.P.A.E. (evidence file, affidavits, f. 30895), and N.S.A.E. (evidence file, affidavits, f. 30902).

¹³⁸ Cf. Complaint filed by María de Jesús Alvarado Espinoza on December 31, 2009, before the AAMP-Buenaventura, *supra*, f. 27901; Statement made by M.P.A.E. on April 18, 2018, *supra* (evidence file, affidavits, f. 30895), and Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza on April 26, 2018 (transcript of the public hearing, p. 7).

¹³⁹ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 7; and Statement made by D.A.E. on April 18, 2018, *supra* (evidence file, affidavits, f. 30889); Statement made by M.P.A.E. on April 18, 2018, *supra* (evidence file, affidavits, f. 30895), and Statement made by N.S.A.E. on April 18, 2018, *supra* (evidence file, affidavits, f. 30902).

¹⁴⁰ Cf. Statement made by A.R.A.R. on January 15, 2010, before the CNDH (evidence file, f. 27939), and Statement made by A.A.R. on January 15, 2010, before the CNDH (evidence file, f. 29045).

¹⁴¹ Cf. Complaint filed by Patricia Reyes Rueda on December 31, 2009, before the AAMP-Buenaventura (evidence file, f. 27877).

¹⁴² Cf. Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAAMPF-PGR (evidence file, f. 27887).

¹⁴³ Cf. Affidavit made by A.A.R. on April 19, 2018 (evidence file, affidavits, f. 30865), and Affidavit made by A.R.A.R. on April 19, 2018 (evidence file, affidavits, f. 30871).

entered, speaking with a “*chilango*” accent, which was different from that of the local people.¹⁴⁴ They wore military uniforms, some of these were beige¹⁴⁵ or sand-colored¹⁴⁶ and others wore green uniforms and a “darker green uniform,”¹⁴⁷ helmets and long arms with a light¹⁴⁸ inscribed with a serial number.¹⁴⁹ And, after the soldiers had detained her daughter, they withdrew in a diesel, single- or double-cabin pick-up truck,¹⁵⁰ sand-colored,¹⁵¹ grey or black and without headlights.¹⁵²

85. After Patricia Reyes Rueda had opened the door, the said individuals entered the home, they went to the kitchen and the other rooms¹⁵³ and began to search the furniture, causing considerable damage,¹⁵⁴ They told Rocío Irene Alvarado that she was detained,¹⁵⁵ and told her to put on her sneakers¹⁵⁶ while they ordered Patricia Reyes and the three children to shut themselves in the bathroom. Mrs. Reyes Rueda asked them why her daughter, Rocío Irene, was being arrested, and they answered by ordering her to be quiet.¹⁵⁷ Before leaving, Rocío Irene told her family members “not to worry,” “that everything would be all right” and “that she would

¹⁴⁴ Cf. Affidavit made by A.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30865). He indicated that the captors spoke with a “*chilango*” accent (from the central/southern part of the country), like the soldiers who had been in the village.

¹⁴⁵ Cf. Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra*, f. 27887. Also, in her statement before the Agent of the Military Public Prosecution Service attached to the Fifth Military Zone [AMPM-5^aZM], Patricia Reyes Rueda stated that, when she agreed to open the door, one of the soldiers pushed her with his weapon, which was similar to those used by members of the Army, and that they wore desert-type beige uniforms, adding: “[...] I’ve see that type of uniform in the control post [located in Samayaluca, on the road] to Ciudad Juárez; [...] also, outside my house there were soldiers with green uniforms and others with darker green uniforms.” Cf. Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM (evidence file, ff. 27883 and 27884).

¹⁴⁶ Cf. Statement made by A.R.A.R. on January 15, 2010, before the CNDH, *supra* (evidence file, f. 27939), and Affidavit made by A.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30865).

¹⁴⁷ Cf. Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27884).

¹⁴⁸ Cf. Statement made by A.R.A.R. on January 15, 2010, before the CNDH, *supra* (evidence file, f. 27939).

¹⁴⁹ Cf. Affidavit made by A.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30865), and Affidavit made by A.R.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30871).

¹⁵⁰ Cf. Affidavit made by A.R.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30871).

¹⁵¹ Cf. Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27888).

¹⁵² Regarding the characteristics of the vehicles used by the perpetrators of the detention of his family member, A.R.A.R. indicated that one of the vehicles was a diesel single-cabin grey or black pick-up truck without headlights, which had been driving around the Ejido Benito Juárez during previous days with soldiers. Cf. Affidavit made by A.R.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30872).

¹⁵³ Cf. Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27887), and Affidavit made by A.R.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30871).

¹⁵⁴ Cf. Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27887).

¹⁵⁵ Cf. Complaint filed by Patricia Reyes Rueda on December 31, 2009, before the AAMP-Buenaventura, *supra* (evidence file, f. 27877); Complaint AP/PGR/CHIH/JUA/27/2010-VII-A of Patricia Reyes Rueda and María de Jesús Alvarado Espinoza filed on January 6, 2010, before the AMPF attached to the Seventh Bureau of the PGR in Ciudad Juárez, *supra* (evidence file, f. 27881); Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27884), and Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27888).

¹⁵⁶ Cf. Statement made by A.R.A.R. on January 15, 2010, before the CNDH, *supra* (evidence file, f. 27939).

¹⁵⁷ Cf. Complaint filed by Patricia Reyes Rueda on December 31, 2009, before the AAMP-Buenaventura, *supra* (evidence file, f. 27877); Statement made by Patricia Reyes Rueda on January 6, 2010, before the AMPF attached to the Seventh Bureau of the PGR in Ciudad Juárez, Chihuahua, *supra* (evidence file, f. 27881); Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27884), and Statement made by Patricia Reyes Rueda on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27888). In her appearances before these authorities, Patricia Reyes Rueda stated that, when the unknown men told her that Rocío Irene Alvarado was being arrested, she asked the reason for her daughter’s detention and they told her, “to be quiet,” “to shut up and not ask questions” and, finally, “they did not tell her anything.” Despite this, according to the Police Report provided by the Investigation Division of the Federal Police to the Agent of the Federal Public Prosecution Service on January 4, 2011, and prepared “based on an analysis of the records of the said criminal investigation” [*sic*], when arresting Rocío Irene Alvarado Reyes, the captors had allegedly told Patricia Reyes Rueda that it was a detention carried out in the context of “Operation Chihuahua.” Cf. Police Report dated January 4, 2011, provided by the Investigation Division of the Federal Police to the AMPF of the FEVIMTRA-PGR (evidence file, ff. 284 and 287).

be back soon,”¹⁵⁸ after which she left the house in the hands of her captors. To date, the whereabouts of Rocío Irene Alvarado are unknown.

C.3. Actions to search for the three presumed victims following their detention

86. When the disappearance of the three victims occurred, their families filed different reports and undertook search activities to discover their whereabouts.

87. In particular, on December 29, 2009, following the detention of Nitza Paola and José Ángel Alvarado, Obdulia Espinoza went to the home of her in-laws where she recounted what had happened to her brother-in-law, Jaime Alvarado,¹⁵⁹ and he, together with his father, José Ángel Alvarado Fabela, went out to look for them and followed a convoy of two trucks, one of them with the lights turned off and whose characteristics were undistinguishable, and the other a Hummer,¹⁶⁰ in which they supposed that their next of kin were being taken away, but since they were unable to catch up with these vehicles, they decided to return home because they feared they might be attacked.¹⁶¹ Later, at around 9.30 that evening, Jorge Loya (a friend of Nitza Paola), Manuel Reyes Lira and Patricia Reyes Rueda¹⁶² went to the Commander of Public Security and Municipal Highways of the Ejido Benito Juárez (Sectional Police), Mario Castro García, to inform him of the events, following which members of his agency proceeded to look for the three presumed victims in the village without finding them.¹⁶³

88. On December 29, 2009, after advising their families of the detention of Nitza Paola and José Ángel Alvarado, at around 10.30 that evening, Obdulia Espinoza returned to spend the night with her mother, at the place where Nitza Paola Alvarado's truck, from which her next of kin had been abducted, remained abandoned. At around 3.00¹⁶⁴ or 4.00 a.m.¹⁶⁵ on December 30, she heard noises and, on looking out of the window, she saw about six trucks of the judicial police in the road with a tow truck and that the police who had arrived in the trucks were taking photographs of Nitza Paola's vehicle, following which they "hooked it up" and towed it away.¹⁶⁶

89. On December 30, 2009, the family members searched for the three disappeared persons in the municipalities of Villa Ahumada and in Nuevo Casas Grandes, Chihuahua, specifically in the 35th Infantry Battalion and the Federal Investigation Agency [AFI], located in the latter

¹⁵⁸ Cf. Affidavit made by A.A.R. on April 19, 2018, *supra* (evidence file, affidavits, f. 30865), and Affidavit made by A.R.A.R. on April 19, 2018, *supra* (evidence file, f. 30871).

¹⁵⁹ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, f. 27921); Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018, *supra* (evidence file, affidavits, f. 30911); Affidavit made by José Ángel Alvarado Fabela on April 19, 2018 (evidence file, affidavits, f. 30880), and Statement made during the public hearing before the Court by Jaime Alvarado Herrera, on April 26, 2018 (transcript of the public hearing, p. 31).

¹⁶⁰ Cf. Statement made during the public hearing before the Court by Jaime Alvarado Herrera, *supra*, p. 31, and Affidavit made by José Ángel Alvarado Fabela on April 18, 2018, *supra* (evidence file, affidavits, f. 30880).

¹⁶¹ Cf. Statement made during the public hearing before the Court by Jaime Alvarado Herrera, *supra*, p. 31; Account of the facts given by María de Jesús Alvarado Espinoza on February 19, 2010, before the Head of the Unit for the Promotion and Defense of Human Rights of the Ministry of the Interior [UPPDDH-SEGOB] (evidence file, f. 314); Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, f. 27923), and Affidavit made by José Ángel Alvarado Fabela on April 18, 2018, *supra* (evidence file, affidavits, f. 30880).

¹⁶² Cf. Statement made by Mario Castro García on May 24, 2013, before the 11^aAMPF-PGR (evidence file, f. 27973), and Statement made by Mario Castro García on March 9, 2010, before the AMPM-5^aZM (evidence file, f. 27978).

¹⁶³ Cf. Statement made on December 30, 2009, by Mario Castro García before the Director of Public Security and Municipal Highways of Buenaventura, Chihuahua (evidence file, criminal case file, ff. 5753 and 5754); Statement made during the public hearing before the Court by Jaime Alvarado Herrera, *supra*, p. 31, Affidavit made by José Ángel Alvarado Fabela on April 18, 2018, *supra* (evidence file, affidavits, f. 30880), and Statement made by Verónica Colomo Reyes on March 9, 2010, before the AMPM-5^aZM (evidence file, f. 27951).

¹⁶⁴ Cf. Statement made by Obdulia Espinoza Beltrán on January 16, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 27929).

¹⁶⁵ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, f. 27923).

¹⁶⁶ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010, before the SMC of the FEVIMTRA-PGR, *supra* (evidence file, ff. 27923 and 27924).

locality.¹⁶⁷ At the headquarters of the 35th Battalion, a soldier told the family members that the detainees were not there and that he would ask “a commander named Luján” and, if the latter had some information on the disappeared, he would inform them.¹⁶⁸ The family members then went to the offices of the AFI, where the personnel told them that the three disappeared were not there and that, if it was soldiers who had detained them, they would be “brought” before the authorities within 72 hours.¹⁶⁹

90. On December 31, 2009, María de Jesús Alvarado Espinoza went to the State Investigation Agency of the PGJE-Chihuahua [AEI-Chihuahua] in Nuevo Casas Grandes, and noticed that the pick-up truck from which her family members had been abducted on the day of the events was parked in the yard of the premises. María de Jesús Alvarado asked the personnel why the vehicle was in that agency and she was informed that the vehicle “belonged to the soldiers” and that it could not be returned to her. Consequently, she decided to take photographs of the pick-up with her mobile telephone and the guard asked her to erase them “if she did not want to find herself in problems with the soldiers,” who “would detain her,” and they put a guard at the entrance to stop her from entering.¹⁷⁰ The same day, she had an interview with the Agent of the Judicial Police attached to the PGJE-Chihuahua, Horasio Flores Martínez, who denied that the three disappeared person had been detained in that agency.¹⁷¹

91. From December 31, 2009, to January 6, 2010, the family members filed various reports, namely: (i) report on unlawful deprivation of liberty with the AMP of Buenaventura, attached to the PGJE-Chihuahua¹⁷² (*infra* para. 103); (ii) complaint before the CNDH in Ciudad Juárez, Chihuahua, against the SEDENA owing to the disappearance of their next of kin¹⁷³ (*infra* para. 139); (iii) report of the disappearance before the Program for Attention to Complaints and Reports concerning the Juárez Joint Operation in Ciudad Juárez, in which they indicated that Colonel Élfego José Luján Ruiz, Commander of the Army’s 35th Infantry Battalion was the person responsible for the detention of their family members¹⁷⁴ (*infra* para. 142); (iv) report on

¹⁶⁷ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 8; Statement made during the public hearing before the Court by Jaime Alvarado Herrera, *supra*, p. 32; Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM (evidence file, f. 27884), and Account of the facts given by María de Jesús Alvarado Espinoza on February 19, 2010, before the UPPDDH-SEGOB, *supra* (evidence file, f. 315).

¹⁶⁸ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, pp. 8 and 9; Statement made by Verónica Colomo Reyes on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27951), and Statement made by Manuel Reyes Lira on March 9, 2010, before the AMPM-5^aZM (evidence file, f. 27982). According to General Felipe de Jesús Espitia Hernández, Commander of the Fifth Military Zone [5^aZM] at the time, on December 31, 2010, María de Jesús Alvarado, Patricia Reyes Rueda and Manuel Reyes Lira went to the headquarters of the 35th Infantry Battalion and were attended by Infantry Lieutenant Santiago Díaz Pineda, who told them that their next of kin were not detained on the premises of that military unit and asked them why they attributed the disappearance of their next of kin to the 35th Battalion, to which they answered “that they did not blame [that] Unit for the fact; they merely went to ask if they were there [...]” Cf. C.E.I. message of January 7, 2010, addressed to the Commander of the XI Military Region (evidence file, criminal case file, f. 5406).

¹⁶⁹ Cf. Statement made by Verónica Colomo Reyes on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27951), and Statement made by Manuel Reyes Lira on March 9, 2010, before the AMPM-5^aZM (evidence file, f. 27982).

¹⁷⁰ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 8; Statement made by María de Jesús Alvarado Espinoza on February 12, 2010, before the AMP of the PGJE-Chihuahua (evidence file, f. 27908), and Record of the chain of custody of evidence, Folio 1655, of the State Investigation Agency of Chihuahua [AEI-Chihuahua] (evidence file, ff. 1838 to 1850).

¹⁷¹ Cf. Report filed by Patricia Reyes Rueda on January 4, 2010, at the Program for Attention to Complaints and Reports concerning the Juárez Joint Operation in Ciudad Juárez, Chihuahua (evidence file, f. 306), and Statement made by Horasio Flores Martínez on June 9, 2010, before the AMPF of the FEVIMTRA-PGR (evidence file, ff. 28078 and 28079).

¹⁷² Cf. Report by Patricia Reyes Rueda (evidence file, ff. 27877 and 27878), and Report by María de Jesús Alvarado Espinoza (evidence file, ff. 27901 and 27902), both filed before the AMP-Buenaventura on December 31, 2009.

¹⁷³ Cf. Complaint filed on January 4, 2010, by Jaime Alvarado Herrera before the CNDH in Ciudad Juárez, Chihuahua (evidence file, ff. 1833 and 1834).

¹⁷⁴ Cf. Report filed by Patricia Reyes Rueda on January 4, 2010, with the Program for Attention to Complaints and Reports concerning the Juárez Joint Operation, *supra* (evidence file, ff. 305 to 307), and Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27884).

the disappearances before the AMPF in Ciudad Juárez, Jesús Durazo Hoyos¹⁷⁵ (*infra* para. 107); (v) application for indirect amparo before the district judge for amparo in criminal matters in Ciudad Juárez, Chihuahua, based on the unlawful detentions and against various authorities, including the Commander of the 35th Battalion at the time, Colonel Éfego José Luján Ruiz¹⁷⁶ (*infra* para. 137).

92. On January 7, 2010, the Brigadier General of the General Staff, Felipe de Jesús Espitia Hernández, Commander of the Fifth Military Zone [5^aZM] whose jurisdiction the 35th Infantry Battalion was under, ordered the Commander of the Military Garrison of Palomas, Chihuahua, General Jens Pedro Lohmann Iturburu, to conduct a thorough investigation of the events,¹⁷⁷ and the latter sent his report in the following January 15, concluding that: “[...] there [was] no evidence to prove or suppose the presence of military personnel in the “*levantón*” [abduction] that occurred on December 29, 2009, in the Ejido Benito Juárez, municipality of Buenaventura, Chih[huahua].”¹⁷⁸

93. On January 8, 2010,¹⁷⁹ María de Jesús Alvarado Espinoza, Rosa Olivia Alvarado Herrera, Obdulia Espinoza Beltrán, together with their representatives, Emilia González Tercero, Luz Estela Castro Rodríguez and Gabino Gómez, accompanied by General Lohmann,¹⁸⁰ entered the premises of the 35th Battalion, without finding the disappeared. Subsequently, General Lohmann and the family members and representatives went to the vehicle depot of the AEI-Chihuahua in Nuevo Casas Grandes, where they found Nitza Paola Alvarado’s pick-up truck. On returning to the 35th Battalion, General Lohmann asked Major Manuel Gutiérrez, Head of the Personnel, Provisions and Assistance Section of the 35th Battalion,¹⁸¹ whether he was aware that the said vehicle had been seized, to which the latter replied that the personnel of the said military unit had not intervened in the matter.¹⁸²

¹⁷⁵ Cf. Record of report AP/PGR/CHIH/JUA/27/2010-VII-A by Patricia Reyes Rueda and María de Jesús Alvarado Espinoza filed on January 6, 2010, before the AMPF attached to the Seventh Bureau of the PGR in Ciudad Juárez, Chihuahua [7^aAMPF-PGR] (evidence file, ff. 27880 and 27881 and ff. 27904 and 27905).

¹⁷⁶ Cf. Application for amparo filed by José Ángel Alvarado Fabela on January 6, 2010, before the district judge for amparo in criminal matters in Ciudad Juárez, Chihuahua (evidence file, ff. 2625 to 2628).

¹⁷⁷ Cf. F.C.A. message No. 44 of January 7, 2010, addressed to the Commander of the Military Garrison of Palomas, Chihuahua (evidence file, criminal case file, f.5405). In his statement of June 18, 2013, in Preliminary Inquiry AP/PGR/CHIH/JUA/467/2012-XI-A, General Lohmann indicated that it was the Commander of the XI Military Region who ordered him to conduct the investigation into the events. Cf. Statement made by Jens Pedro Lohmann Iturburu on June 18, 2013, before the AMPF, attached to the 11^aAMPF-PGR (evidence file, f. 28394).

¹⁷⁸ Cf. F.C.A. message No. 030/GAO [pp. 2653 to 2656] of January 15, 2010, signed by Brigadier General D.E.M. Jens Pedro Lohmann Iturburu, Commander of the Military Garrison of Palomas, Chihuahua, addressed to the Commander of the 5^aZM (evidence file, ff. 28796 to 28799).

¹⁷⁹ María de Jesús Alvarado testified before the Court that the visit made to the 35th Battalion by General Jens Pedro Lohmann together with the family members took place on January 8, 2010. However, in his statement before the AMPF, General Jens Lohmann indicated that this took place on February 9, 2010. Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 11, and Statement made by Jens Pedro Lohmann Iturburu on June 18, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, f. 28394).

¹⁸⁰ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 11; Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018, *supra* (evidence file, affidavits, f. 30912), and Affidavit made by Rosa Olivia Alvarado Herrera on April 18, 2018 (evidence file, affidavits, f. 30922).

¹⁸¹ Cf. C.E.I. message No. 929 of January 15, 2010, signed by Infantry Colonel Éfego José Luján Ruiz, Commander of the 35th Infantry Battalion, addressed to the Commander of the 5^aZM (evidence file, criminal case file, f. 5610).

¹⁸² Cf. F.C.A. message No. 030/GAO [pp. 2653 to 2656] of January 15, 2010, signed by the Commander of the Military Garrison of Palomas, Chihuahua, addressed to the Commander of the 5^aZM, *supra* (evidence file, f. 28796), and Statement made by Jens Pedro Lohmann Iturburu on June 18, 2013, before the 11^aAMPF-PGR, *supra* (evidence file, ff. 28394 to 28396). In his statement of June 18, 2010, before the AMPM-5^aZM, Infantry Major Manuel Gutiérrez Reyes stated that he was never aware of the supposed seizure of Nitza Paola Alvarado’s pick-up and “above all” that this vehicle had been on the premises of the 35th Infantry Battalion. To the contrary, in her testimony before the Court, María de Jesús Alvarado indicated that when explicitly asked by General Jens Lohmann, “Lieutenant” Manuel Gutiérrez about the eventual participation of military personnel of the 35th Battalion in the seizure of Nitza Paola Alvarado’s pick-up, the latter had answered: “yes, we had that pick-up truck, we had it in the barracks and we made it available here.” Cf. Statement made by Manuel Gutiérrez Reyes on June 18, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff.7427 and 7428), and Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 11.

94. Based on the complaint filed by Jaime Alvarado Herrera on January 4, 2010, before the CNDH, on January 9, 2010, the family members went to the headquarters of the 5ªZM in the city of Chihuahua, where they met with General Felipe de Jesús Espitia Hernández, Commander of that military jurisdiction and in charge of the Chihuahua Joint Operation, and also Major Carlos Sergio López Ruvalcaba, attached to the SEDENA Human Rights Directorate, and Colonel Élfego José Luján Ruiz, Commander of the Army's 35th Infantry Battalion.¹⁸³ During this meeting, Colonel Luján and General Espitia denied that soldiers under their command had taken part in the disappearance of the three presumed victims and, to the contrary, accused María de Jesús Alvarado of robbing homes, and José Ángel Alvarado Herrera of stealing vehicles.¹⁸⁴

C.3.1. The possible location of the three disappeared in the hands of state agents

95. On January 14, 2010, María de Jesús Alvarado Espinoza made a statement before the CNDH and indicated that:

- i. On December 31, 2009, when she went to file her report before the Auxiliary Agent of the Public Prosecution Service of Buenaventura attached to the PGJE-Chihuahua [AAMP-Buenaventura] on the disappearance of her next of kin, the head of that agency, Aarón Enríquez Duarte, told her that he knew they were in the 35th Infantry Battalion, asked her "to be discreet" [*sic*] in this regard,¹⁸⁵ and told her to send a letter to that military unit requesting information,¹⁸⁶ and
- ii. Also, on January 6, 2010, when she went to the AMPF in Ciudad Juárez to file a report on the disappearance of her next of kin,, she heard a conversation between the head of that agency, Jesús Durazo Hoyos, and his secretary, in which he stated that the three disappeared persons were detained on the premises of the "garrison" and that the pick-up from which they had been abducted was being held at the State Investigation Agency in Nuevo Casas Grandes, attached to the PGJE-Chihuahua.¹⁸⁷ In this context, she stated that, when these officials realized that she could overhear their conversation, they closed the door of the room where this was taking place.¹⁸⁸

96. On January 4, 2010, Jaime Alvarado Herrera testified before the CNDH that, when he went

¹⁸³ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 11, F.C.A. message No. 68 of January 9, 2010, signed by the Commander of the 5ªZM, addressed to the Commander of the XI Military Region (evidence file, criminal case file, f.5330), and Report of the Federal Police Investigation Division of January 4, 2011 (evidence file, f.288)

¹⁸⁴ Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 12; Report of the Federal Police Investigation Division addressed to AMPF on January 4, 2011, *supra* (evidence file, f.288); Affidavit made by Obdulía Espinoza Beltrán on April 19, 2018, *supra* (evidence file, affidavits, f.30912), and Statement made by Rosa Olivia Alvarado Herrera on April 18, 2018, *supra* (evidence file, f. 30923).

¹⁸⁵ Statement made by María de Jesús Alvarado Espinoza on January 14, 2010, before the CNDH included in Report CNDH/2/2010/108/Q (evidence file, ff. 311 and 312). Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 7.

¹⁸⁶ Cf. Statement made by María de Jesús Alvarado Espinoza on January 14, 2010, before the CNDH, *supra* (evidence file, ff. 311 and 312), and Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 7. Despite the statement made by María de Jesús Alvarado, Aarón Enríquez Duarte, in his statements of May 24, 2010, October 25, 2010, and April 16, 2018, denied having stated that he was aware of, or knew that the three disappeared persons were detained in the 35th Infantry Battalion and that, since it was María de Jesús Alvarado and Patricia Reyes Rueda who, when coming to file their report, had told him that their family members had been detained by individuals dressed "as soldiers," he had merely "suggested or advised" that they went to the said premises to make inquiries, "[which was] very different from an affirmation or assertion of that fact." Cf. Statements of Aarón Enríquez Duarte on May 24, 2010, before the AMPM-5ªZM (evidence file, f. 28031.); on October 25, 2010, before the FEVIMTRA-PGR (evidence file, f. 28036), and on April 16, 2018, before the FEIDDF-PGR (evidence file, affidavits, f. 31177).

¹⁸⁷ Cf. Account of the facts given by María de Jesús Alvarado Espinoza on February 19, 2010, before the UPDDH-SEGOB, *supra* (evidence file, f. 317). Cf. Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, pp. 7 and 18.

¹⁸⁸ Cf. Account of the facts given by María de Jesús Alvarado Espinoza on February 19, 2010, *supra* (evidence file, f. 317). Meanwhile, on June 10, 2010, Jesús Durazo Hoyos, the head of the AMPF, testified before the FEVIMTRA-PGR that when he received the report of María de Jesús Alvarado Espinoza and Patricia Reyes Rueda he had not heard any comment from his secretaries with regard to the three disappeared persons nor had they stated that they knew their whereabouts. He also denied having made any comment about the pick-up truck from which Nitza Paola Alvarado was taken on the day of her detention or having heard any comment in this regard from his staff. Cf. Statement made by Jesús Durazo Hoyos on June 10, 2010, before the SCM of the FEVIMTRA-PGR (evidence file, f. 28041).

to the offices of the Judicial Police of Nuevo Casas Grandes, he spoke to an official surnamed "Leyva," and informed him of the facts. The official telephoned the AAMP–Buenaventura, Aarón Enríquez Duarte, at which time the latter told him that his three family members were detained on the premises of the 35th Battalion.¹⁸⁹

97. Furthermore, Staff Sergeant and Army Driver, Alberto Hernández de la Cruz, who was employed as the driver of Colonel Élfego Luján Ruiz, Commander of the 35th Battalion, from August 2008 to January 16, 2010, testified before various authorities in relation to the three disappearances, as follows:

- i. On February 5, 2010, he testified before the Agent of the Military Public Prosecution Service that he had "heard" that Colonel Luján Ruiz with soldiers wearing desert and jungle camouflage uniforms had "picked up" "a woman with a disability and a man," characteristics that corresponded to Nitza Paola and José Ángel Alvarado, in the Ejido Benito Juárez. He also indicated in his testimony that, following the disappearance of the three persons, the 35th Battalion was "intervened" by the Commander of the Military Garrison of Puerto Palomas, Chihuahua, General Jens Pedro Lohmann Iturburu, in order to inquire about the possible whereabouts of the three disappeared persons, without finding them on their premises.¹⁹⁰ Staff Sergeant Hernández de la Cruz also indicated that, on January 13, 2010, while returning to the 35th Battalion together with Colonel Luján Ruiz after an inspection visit in Parral, Chihuahua:

"Colonel Luján Ruiz received a phone call on one of the four mobile telephones he carried, and I heard that he was being warned about the presence of the Commander of the Palomas Garrison, [Jens Pedro Lohmann], and noted that Colonel Luján Ruiz, with great concern, asked: '*and, what do you know about the rubbish I ordered you to get rid of, have you dealt with it?*'" and I heard that they told him that it had been dealt with, but do not know what this question referred to, but it really caught my attention [...];¹⁹¹
- ii. Regarding this information, on December 20, 2010, in the context of appeal 61/2010, filed for other events in which personnel of the 35th Battalion commanded by Colonel Luján Ruiz had supposedly participated,¹⁹² the Supreme Military Tribunal assessed the testimony of Staff Sergeant Hernández de la Cruz to be "of no use to the matter we are examining, [...] because it relates to other matters [the disappearance of the three members of the Alvarado family], events that, even though they are evidently of a criminal nature, are not related to the facts we are examining";¹⁹³
- iii. On April 13, 2011, he appeared before the Agent of the Special Military Public Prosecution Service in Ciudad Juárez, Chihuahua, and retracted the statement he had given on February 5, 2010, before

¹⁸⁹ Cf. Report of the facts presented by the CNDH in its Recommendation 43/2011, on September 9, 2011 (evidence file, f. 332), and Statement made during the public hearing before the Court by Jaime Alvarado Herrera, *supra*, p. 12. In this regard, on June 9, 2010, Horasio Flores Martínez, agent of the Judicial Police attached to Nuevo Casas Grandes at the time of the facts, testified before the FEVIMTRA–PGR that, although he did not remember the exact date, the next of kin of the three disappeared went to that agency of the MPF to ask whether their next of kin had been detained by that agency and why Nitza Paola Alvarado's pick-up truck was being held there. He added that he had attended them personally and told them that the vehicle was being held there "because they had received a call from the radio operator on duty that the said vehicle had been abandoned in the village of Benito Juárez," that the three disappeared had not been detained in the said agency, and that he had no information on their whereabouts. Cf. Statement made by Horasio Flores Martínez on June 9, 2010, before the SMC of the FEVIMTRA (evidence file, ff. 28078 and 28079).

¹⁹⁰ Cf. Testimony provided by Alberto Hernández de la Cruz on February 5, 2010, before the AMPM, cited in the decision in Appeal 61/2010, issued by the Supreme Military Tribunal on December 20, 2010 (evidence file, f. 28105).

¹⁹¹ Cf. Testimony provided by Alberto Hernández de la Cruz on February 5, 2010, before the AMPM, *supra* (evidence file, f. 28105).

¹⁹² Regarding those events, the 5th Military Court attached to the 1st Military Region opened Criminal Case 141/2010, on February 22, 2010, against Mauricio Isabel Altamirano, Infantry Second Lieutenant, as well as other soldiers of the 35th Battalion commanded by Colonel Élfego José Luján Ruiz, for their probable participation in the torture, homicide and clandestine burial of the civilians, Jorge Alejandro Yáñez Molina and Jesús Alberto Campos Moreno, on October 18, 2009. During the investigation of those events in the military jurisdiction, Staff Sergeant and Army Driver, Alberto Hernández de la Cruz, gave testimony and indicated the supposed participation of members of that military unit and of Colonel Luján Ruiz in the illegal sale of assets seized from organized crime and that he had "heard that, in the village of Benito Juárez, they had '*levantado* [deprived of liberty] a woman with a disability and a man" (evidence file, criminal case file, ff. 7774 and 7775; 7780 to 7785, and 7872 to 7877).

¹⁹³ Cf. Decision in Appeal 61/2010 issued by the Supreme Military Tribunal on December 20, 2010 (evidence file, criminal case file, f. 7877).

the Agent of the Military Public Prosecution Service (*supra*, numeral i). Regarding the three disappearances, he stated that he did not recall whether he went anywhere with Colonel Luján on the day of the event; that he found out on the commercial radio – station 104.9 – at around 7 a.m. that “they had picked up a man with a disability and a woman in the village of Benito Juárez,” but he did not remember on which day this happened. He added “that he was not there”; that he had not been aware “of the detention”; “that he had no knowledge of this”; “that he was unaware of this, because he was merely a driver”; “that he knew nothing about the incident”; that he had just heard about it on the commercial radio, but had not seen that they had detained “a man with a disability and a woman,” “that he never drove on dirt roads” and that he had “never” driven Colonel Luján to the Ejido Benito Juárez;¹⁹⁴

- iv. On June 30, 2014, he testified before the Specialized Unit, UEBPD–PGR and again retracted his initial statement of February 5, 2010, before the Agent of the Military Public Prosecution Service, mentioning that he had heard about the “*levantón*” [unlawful detention] on the commercial radio but did not recall the date on which this occurred and that he had not mentioned previously how he had heard about the facts because no one had asked him expressly; that he was unaware of the type of disability that the woman he had mentioned in his initial statement suffered from; that Colonel Luján had “never” commented to him on this “*levantón*” and nor had any other member of the 35th Battalion; that he had not been threatened, pressured or promised any financial benefit for refraining from providing details of this “*levantón*” and, finally, that the nervousness that he had observed in Colonel Luján was due to the “stress that existed in the [35th] Battalion owing to the workload,”¹⁹⁵ and
- v. Regarding this last statement, the Agent of the Federal Public Prosecution Service attached to the Special Search Unit for Disappeared Persons of the Prosecutor General’s Office [UEBPD–PGR], when filing criminal charges against Colonel Élfego José Luján on March 31, 2014, for his presumed responsibility in the disappearance of the three presumed victims (*infra* para. 124) considered that:

“[...] The purported retraction of the driver [Alberto Hernández de la Cruz] must be rejected because it is not supported by any evidence and contradicts the circumstances that he described in his first statement and, basically, because the first statement has a greater value as it was provided near to the time of the events, freely and spontaneously, and devoid of elements that might affect its veracity [...].”¹⁹⁶

98. Regarding the presumed detention of the three disappeared persons by military personnel and their delivery into the custody of judicial authorities of the state of Chihuahua, the body of evidence includes different testimonies of state agents, including:

- i. On December 30, 2009, Argene Blásquez Morales, Head of Criminal Policy in the PGR-Chihuahua, received a phone call from someone who identified himself as “Commander of the Federal Police” and indicated that he was aware of a detention that had been carried out by military personnel and requested his intervention in order to be able to interview some individuals who supposedly had been detained by military personnel, who were allegedly related to the disappearance of some agents of his unit. In answer to this request, Ms. Blásquez Morales told him that he should go to the AMPF of Nuevo Casas Grandes because, for jurisdictional reasons, it corresponded to the latter to examine the matter. On ending the call, Argene Blásquez communicated with the head of the said office, Ramón Iván Sotomayor Siller, to inform him that supposed members of the Federal Police “would be visiting him to discuss an institutional situation in relation to persons who, according to them, would be delivered into his custody by military personnel”;¹⁹⁷
- ii. In this regard, Ramón Iván Sotomayor Siller, AMPF in Nuevo Casas Grandes at the time of the three disappearances stated:

¹⁹⁴ Cf. Testimony provided by Alberto Hernández de la Cruz on April 13, 2011, before the AMPM attached to the Preliminary Inquiries Section of the PGJM in Mexico City (evidence file, criminal case file, ff. 8327 to 8332).

¹⁹⁵ Cf. Statement made by Alberto Hernández de la Cruz on June 30, 2014, before the UEBPD–PGR (evidence file, f. 28111).

¹⁹⁶ Charges filed in the absence of a detainee, in Preliminary Inquiry No. AP/PGR/SDHAVSC/M5/66/2013 on March 31, 2014 (evidence file, f. 372).

¹⁹⁷ Cf. Statement made by Argene Blásquez Morales on March 30, 2010, before the Auxiliary AMPM attached to the Fourth Military Zone (evidence file, f. 28017).

"[...] I found out about [the disappearance of the three presumed victims] on the 30th [December 2009], when I received a phone call from the guard, Eduardo Rentería, who told me that Argene [Blásquez Morales] was looking for me urgently; [...] so I called her on my mobile phone immediately. [...] [Argene Blásquez] told me that, that day, a Commander of the Federal Police surnamed "Meza" would be visiting me to question three persons that I was allegedly holding; the persons who were related to the disappearance of two or three agents of the Federal Police. I therefore told her [...] that I was not holding anyone, either the three she mentioned or anyone else and, especially, delivered into my custody [*sic*]; and Ms. Blásquez told me that, during the day the soldiers would deliver these persons to my custody, and Ms. Blásquez reiterated [her request] that I provided assistance to the federal police who would be coming to interview them [...]";¹⁹⁸

- iii. On December 30, 2009, Damaris Baglietto Hernández, Deputy Delegate of the PGR-Chihuahua, found out about the disappearance of the presumed victims owing to a telephone call she received from Ramón Iván Sotomayor Siller, AMPF in Nuevo Casas Grandes. During this call, Agent Sotomayor informed her of the phone call from Argene Blásquez Morales asking about the three disappeared persons, and that he had told her that none of them were in his custody. Agent Sotomayor also informed her that Ms. Blásquez had told him that, "therefore," during the course of that day, "the soldiers" would deliver the detainees into his custody and asked him to facilitate access to those persons by "Commander Meza" so that he could interview them in relation to the disappearance of two or three agents from his unit;¹⁹⁹
- iv. During the same telephone call, after having been informed of the events, Damaris Baglietto told Agent Sotomayor that if "Commander Meza" arrived to interview the detainees, he should first ask him for his investigation warrant. On ending that call, Damaris Baglietto telephoned Colonel Élfego Luján, Commander of the 35th Battalion, between 3 p.m. and 5 p.m.²⁰⁰ asking him not to send "the detainees" to the AMPF of Nuevo Casas Grandes because "they could [*sic*] be dangerous [...] and its facilities did not have security measures"; also, if the Battalion had detained them and delivered them into the custody of the Federal Public Prosecution Service, it should provide a military guard or else support could be provided to guard them on the premises of the 35th Battalion. However, Colonel Luján told her that he was not holding any of them and that the soldiers under his command had not taken part in the events;²⁰¹
- v. At around 10.30 p.m. on December 30, 2009, three men in civilian dress came to see Ramón Iván Sotomayor Siller, AMPF in Nuevo Casas Grandes, in two compact vehicles, one a Chevrolet Aveo and the other a Monza-type. They were armed with AR-15 rifles, and wore boots and blue tactical trousers, a civilian-type jacket and cap, with no identification badge of any kind, although he recognized one of them as a member of the Federal Police because that individual had previously visited the investigation agency in order to "deliver" a vehicle that had been reported as stolen related to a different incident.²⁰² One of these individuals identified himself as "Commander Meza" of the Federal Police, presumably from the Intelligence Unit, and told agent Sotomayor Siller that he wished to interview the three persons supposedly detained in relation to the disappearance of three members of the Federal Police, mentioning the names of Nitza Paola, José Ángel and Rocío Irene Alvarado.²⁰³ Agent Sotomayor told him that none of these three persons were in his custody; therefore the said "Commander" asked him to communicate with the "military garrison" to know when they would be "delivered into his custody." However, Agent Sotomayor refused, arguing that

¹⁹⁸ Statement made by Ramón Iván Sotomayor Siller on March 12, 2010, before the AMPM-5^aZM (evidence file, f. 28024).

¹⁹⁹ Cf. Testimony provided by Damaris Baglietto Hernández on March 12, 2010, before the AMPM-5^aZM (evidence file, f. 28699).

²⁰⁰ Cf. Communication No. SSP "C" 22/2010, of January 21, 2010, signed by Damaris Baglietto Hernández, Deputy delegate for "C" Procedures of the PGR-Chihuahua, addressed to the Commander of the 5^aZM in Chihuahua (evidence file, criminal case file, f. 5885).

²⁰¹ Cf. S.I.I.O. message of January 21, 2010, signed by the Commander of the 35th Infantry Battalion, addressed to the Commander of the 5^aZM (evidence file, criminal case file, f. 5607); Communication No. SSP "C" 22/2010, of January 21, 2010, signed by Damaris Baglietto Hernández addressed to the Commander of the 5^aZM in Chihuahua, *supra* (evidence file, criminal case file, f. 5885), and Testimony provided by Damaris Baglietto Hernández on March 12, 2010, before the AMPM-5^aZM, *supra* (evidence file, ff. 28699 and 28700).

²⁰² Cf. Statement made by Ramón Iván Sotomayor Siller on April 17, 2018, before the AMPF attached to the FEIDDF-PGR (evidence file, affidavits, f. 31220).

²⁰³ Cf. Communication No. 177/2010, of February 22, 2010, signed by Ramón Iván Sotomayor Siller, AMPF assisting the Investigating Agency in Nuevo Casas Grandes, Chihuahua, addressed to Damaris Baglietto Hernández, Deputy delegate for "C" Procedures of the PGR-Chihuahua (evidence file, criminal case file, f. 5450).

he was unable to comply with this request until those persons were eventually delivered into his custody by the corresponding authorities. The supposed members of the Federal Police then left the premises,²⁰⁴ and

- vi. At approximately 12.45 p.m. on January 2, 2010, the three supposed members of the Federal Police again visited the AMPF in Nuevo Casas Grandes and again asked for the three persons who had presumably been detained by the Army. Juan Ciro Valiente, federal investigation agent, received them and informed agent Sotomayor Siller of their presence; the latter ordered him to inform the supposed members of the Federal Police that he was not holding anyone in custody, and was therefore unable to assist them. The three individuals then left the premises.²⁰⁵

99. Regarding the identification and location of the supposed "Commander Meza" of the Federal Police:

- i. On January 22, 2010, the Commander of the 5^aZM asked the Commissioner of the Federal Police in the state of Chihuahua about: the individuals under the command of the supposed "Commander Meza"; the mandate of these individuals on December 30, 2009, in Nuevo Casas Grandes; the information he had with regard to the detention of the three disappeared, and why he wanted to interview them. On January 27, 2010, the Commissioner of the Federal Police responded that there was no commander of the Federal Police with the last name "Meza."²⁰⁶ On receiving this response, the Commander of the 5^aZM informed the military authorities in Mexico City that the Federal Police were concealing information concerning the existence of the supposed "Commander Meza" based on the information provided by Argene Blásquez Morales on the telephone conversation that she had had with this "individual";²⁰⁷
- ii. In statements of March 30, 2011, before the Auxiliary Agent of the Military Public Prosecution Service in Hermosillo and of April 17, 2018, by affidavit before the Court, Argene Blásquez Morales testified that she had no evidence that members of the Army had carried out the detentions of the three disappeared because, at the time, she was physically in Ciudad Juárez and only found out about the events owing to the information that the supposed "Commander Meza" gave her by telephone. She added that it had not occurred to her to doubt that the person who communicated with her by telephone and identified himself as "Commander Meza" was indeed a member of the Federal Police because the telephone number by which she received the said call "was known to various authorities, including many members of the Federal Police" and the said number was related to her institutional functions,²⁰⁸ and
- iii. Lastly, according to the records in the case file, despite a series of steps taken by different authorities during the domestic proceedings, there is nothing that reveals the identification and location of the supposed "Commander Meza of the Federal Police" and of the two individuals who accompanied him; therefore, there is no record of his testimony with regard to the three disappeared.²⁰⁹

C.3.2. *The alleged call for help by Nitza Paola Alvarado*

100. At around 5.30 p.m. on February 3, 2010, Juana Bustamante Ramos, a resident of the Ejido Benito Juárez, received a phone call in which she heard a woman, who she recognized as Nitza Paola Alvarado, crying and who said to her: "help me, help me, don't leave me here, please." Then, she heard the voice of a man "with a *chilango* accent" who apparently said to

²⁰⁴ Cf. Communication No. 177/2010, of February 22, 2010, *supra* (evidence file, criminal case file, ff. 5459 and 5450); Statement made by Ramón Iván Sotomayor Siller on March 12, 2010, before the AMPM-5^aZM (evidence file, ff. 475 and 476), and Statement made by Ramón Iván Sotomayor Siller on April 17, 2018, before the AMPF attached to the FEIDDF-PGR, *supra* (evidence file, affidavits, f. 31221).

²⁰⁵ Cf. Communication No. 177/2010, of February 22, 2010, *supra* (evidence file, criminal case file, f. 5450).

²⁰⁶ Cf. Communication No. PF/CSR/CECH/062/2010, of January 27, 2010, signed by the Commissioner of the Federal Police in Chihuahua, addressed to the Commander of the 5^aZM (evidence file, criminal case file, f. 5341).

²⁰⁷ Cf. Report No. 197 of January 29, 2010, signed by the Commander of the 5^aZM in Chihuahua, addressed to DN-1, S-1 (R.H.) in the D.F. [*sic*] (evidence file, criminal case file, f. 5333).

²⁰⁸ Cf. Statement made by Argene Blásquez Morales on March 30, 2011, before the Auxiliary AMPM attached to the Fourth Military Zone, *supra* (evidence file, ff. 28017 and 28018), and Statement made by Argene Blásquez Morales on April 17, 2018, before the AMPF of the FEIDDF-PGR (evidence file, affidavits, f. 31225).

²⁰⁹ Cf. Description of measures taken to identify the supposed "Commander Meza of the Federal Police" (evidence file, ff. 30852, 30854, 30856 and 30858).

another person in that place: “why did you leave her, fuck you,” after which the call was cut off.²¹⁰

101. On February 12 and 22, 2010, María de Jesús Alvarado appeared before the agents of the Public Prosecution Service of the PGJE-Chihuahua and of the Federal Public Prosecution Service in Ciudad Juárez, respectively, to inform them of this call.²¹¹ Also, on February 13, 2010, Juana Bustamante testified before the former.²¹²

102. In the course of the domestic investigations, a series of measures were taken to locate the telephone number and the place from where this call was made²¹³ and, based on these measures, the Federal Judicial Police drew up a report on June 28, 2010, in which it concluded that the call had been made “for extortion purposes” from a number previously used in other extortion cases from near the Female Social Rehabilitation Center of Santa Martha Acatitla in Mexico City.²¹⁴ Finally, on the basis of this information, the FEVIMTRA-PGR determined that:

“The telephone call in which it appeared that the young woman, Nitza Paola Alvarado Espinoza, was asking for help [has been] ruled out because, after tracing the call, it was confirmed that it was a call relating to a telephone extortion attempt [...].

It was concluded that the telephone call received [...] at 5.30 p.m. on February 3, 2010, was not made by the disappeared young woman, Nitza Paola Alvarado Espinoza, which closes this [...] line of investigation.”²¹⁵

D. Investigations

D.1. Office of the Prosecutor General of the state of Chihuahua [PGJE-Chihuahua]

²¹⁰ Cf. Statement made by a protected witness [corresponding to Juana Bustamante Ramos] on February 13, 2010, before the AMP of the PGJE-Chihuahua (evidence file, criminal case file, ff. 6897 to 6899). Regarding the content of this phone call: cf. Statement made by María de Jesús Alvarado Espinoza on February 12, 2010, before the AMP of the PGJE-Chihuahua, *supra* (evidence file, f. 27907); Statement made by María de Jesús Alvarado of February 22, 2010, before the 7^aAMPF-PGR (evidence file, ff. 27910 and 27911); Statement made by Verónica Colomo Reyes on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27951); Statement made by Manuel Reyes Lira on March 9, 2010, before the AMPM-5^aZM, *supra* (evidence file, f. 27982), and Statement made during the public hearing before the Court by María de Jesús Alvarado Espinoza, *supra*, p. 23.

²¹¹ Cf. Statement made by María de Jesús Alvarado Espinoza on February 12, 2010, before the AMP of the PGJE-Chihuahua, *supra* (evidence file, f. 27907), and Appearance of María de Jesús Alvarado of February 22, 2010, before the 7^aAMPF-PGR (evidence file, ff. 27910 and 27911).

²¹² Cf. Statement made by a protected witness [corresponding to Juana Bustamante Ramos] on February 13, 2010, before the AMP of the PGJE-Chihuahua, *supra* (evidence file, criminal case file, ff. 6897 to 6899).

²¹³ In particular, these measures included those taken by the FEVIMTRA-PGR, especially: (a) request made to the telephone companies TELMEX and Pegaso Comunicaciones y Sistemas on March 31 and April 5, 2010, for information on the name or company name of the owner, “records of incoming and outgoing calls” and “digital location of the geographical positioning or physical location of the telephones in real time” of the telephone lines related to the supposed call for help. Part of this information was forwarded to the authorities on April 16 and 27, 2010, and (b) on May 18, June 23, and June 28, 2010, the Citizens Council for Public Security and the Pursuit of Justice of the Federal District, the CENAPI-PGR and the AFI advised the FEVIMTRA that the telephone number from which this call was made was linked to previous cases of telephone extortions made from two addresses near the Federal Prison of Santa Martha Acatitla in Mexico City. Cf. Communication PGR/FEVIMTRA/TRA/0200/2010, of March 31, 2010 (evidence file, criminal case file, ff. 13205 to 13207); Communication PGR/FEVIMTRA/TRA/0201/2010, of April 5, 2010, both addressed to the Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo of the PGR (evidence file, criminal case file, f. 13209); Communication of April 16, 2010, from the Legal Representative of Pegaso Comunicaciones y Sistemas, S.A. de C.V., addressed to the General Coordinator of Delegations of the PGR (evidence file, criminal case file, f. 13310), and Communication 05380/2010, of April 27, 2010, from the Legal Representative of TELMEX, addressed to the Prosecutor General (evidence file, criminal case file, f. 13330); Communication CCSPJDF/CG/690/2010, of May 18, 2010, from the General Coordinator of the Citizens Council for Public Security and the Pursuit of Justice of the Federal District (evidence file, criminal case file, f. 13383); Communication of June 23, 2010, from the Director of Tactical Analysis of the CENAPI-PGR (evidence file, criminal case file, f. 13730), and Communication AFI/DGIP/DTI/PI/572/2010, of June 28, 2010, from the AFI Technical Investigations Directorate (evidence file, criminal case file, ff. 13741 to 13746).

²¹⁴ Cf. Communication AFI/DGIP/DTI/PI/572/2010, of June 28, 2010, from the AFI-PGR, addressed to the AMPF of the FEVIMTRA-PGR, *supra* (evidence file, ff. 29522 and 29523), and Opinion provided during the public hearing before the Court by Mariana Colín Ayala (transcript of the public hearing, p. 49).

²¹⁵ Cf. Decision on the ineffectiveness of Preliminary Inquiry AP/PGR/FEVIMTRA/TRA009/2010, of September 30, 2011, signed by the AMPF attached to the FEVIMTRA-PGR (evidence file, criminal case file, ff. 16128 and 16131).

103. On December 31, 2009, María de Jesús Alvarado and Patricia Reyes filed their respective reports on the disappearance of their next of kin before the Auxiliary Agent of the Public Prosecution Service of Buenaventura, Chihuahua [AAMP-Buenaventura], Aarón Enríquez Duarte. The two reports were filed jointly for the crime of unlawful deprivation of liberty in Investigation File 124/2009-5326²¹⁶ and subsequently assigned to the Special Search Unit for Absent or Missing Persons [UEIPAE-Chihuahua].²¹⁷

104. The following steps were taken during this investigation:

- i. On January 5, 2010, the Judicial Police of the State Investigation Agency of the PGJE-Chihuahua [AEI-Chihuahua], at the request of the AAMP-Buenaventura in order to clarify the facts,²¹⁸ notified the Public Prosecution Service of the perpetration of criminal acts; and sent four records of interviews conducted with witnesses of the events; one record of the chain of custody of the evidence, and a series of photographs taken of the pick-up truck from which Nitza Paola and José Ángel Alvarado were abducted by their captors on December 29, 2009;²¹⁹
- ii. On February 12, 2010, María de Jesús Alvarado appeared before the AMP of the PGJE-Chihuahua to report the call for help supposedly made by Nitza Paola Alvarado (*supra* para. 101).²²⁰ On February 13, 2010, Juana Bustamante made a statement before this authority, indicating that she had identified the voice of Nitza Paola Alvarado asking for help in that phone call;²²¹
- iii. On February 9, 2010, the legal representative of *Teléfonos de Mexico S.A. de C.V.* (TELMEX) forwarded the report on the name and address of the owner, and also the number on which the supposed call for help from Nitza Paola was received.²²² This information provided the number of the telephone from which the call had been made;²²³
- iv. On February 15, 2010, María de Jesús Alvarado Espinoza asked the UEIPAE-Chihuahua to return the vehicle from which her next of kin were abducted on December 29, 2009,²²⁴ and this was returned on February 16, 2010, after the ownership had been verified;²²⁵
- v. At the request of the PGJE-Chihuahua,²²⁶ the legal representative of the telephone company, *Pegaso Comunicaciones y Sistemas S.A. de C.V.*, advised that it was not possible to provide the personal

²¹⁶ Cf. Record of report of December 31, 2009 (evidence file, criminal case file, volume XI, ff. 4498 and 4499).

²¹⁷ Cf. Communication of the State in the context of the implementation of Precautionary Measures MC-55-10 (evidence file, f. 1946), and Record of working meeting in the context of the implementation of provisional measures of February 18, 2011 (evidence file, f. 2121).

²¹⁸ Cf. Communication 384/2009 of December 31, 2009, addressed to Special Coordinator "B" of the Judicial Police of the AEI-Chihuahua (evidence file, criminal case file, f. 12298).

²¹⁹ Cf. Communication 1656/2010, of January 5, 2010, signed by Óscar Arias Ocampo, Judicial Agent of the State Investigation Agency in Nuevo Casas Grandes, Chihuahua, addressed to the AAMP-Buenaventura (evidence file, criminal case file, f. 12299).

²²⁰ Cf. Statement made by witness identified by their fingerprint on February 12, 2010, before the AMP of the PGJE-Chihuahua (evidence file, criminal case file, f. 12328).

²²¹ Cf. Statement made by witness identified by their fingerprint on February 13, 2010, before the AMP of the PGJE-Chihuahua (evidence file, criminal case file, f. 12330). Juana Bustamante indicated that she identified the voice of the person on the phone as belonging to Nitza Paola because "all [her] life [she] ha[d] lived in [the Ejido Benito Juárez] and knew the family whose next of kin were missing; [she] had even baptized Nitza's daughters." She also stated that she heard "the voice of a man with a *chilango* accent and how he said to another person 'why did you leave her' [...]." Cf. Statement made by María de Jesús Alvarado Espinoza before the Court during the public hearing, *supra*, p. 27.

²²² Cf. Communication CU-030-10 of February 9, 2010, signed by the legal representative of TELMEX, and addressed to the head of the PGJE-Chihuahua (evidence file, criminal case file, f. 12321).

²²³ Cf. Record of "telephone calls" attached to Communication CU-030-10 of February 9, 2010, *supra*, f. 12324.

²²⁴ Cf. Appearance of María de Jesús Alvarado on February 15, 2010, before the AMP attached to the UEIPAE-Chihuahua (evidence file, criminal case file, f. 12333).

²²⁵ Cf. Agreement of February 15, 2010, to return the vehicle signed by the AMP attached to the UEIPAE-Chihuahua (evidence file, criminal case file, f. 12334), and Communication on return of vehicle 246/2010, of February 16, 2010, signed by the AMP attached to the UEIPAE-Chihuahua, and addressed to the Coordinator of the UEIPAE-Chihuahua (evidence file, criminal case file, f. 12338).

²²⁶ Cf. Communication No. PGJE-UEIPAE-CDJ-312/2010, of February 24, 2010, signed by the AMP Coordinator of the UEIPAE-Chihuahua, addressed to the Deputy Prosecutor General of Chihuahua (evidence file, criminal case file, f. 12359), and Communication No. 949/2010, of March 3, 2010, signed by the Deputy Prosecutor General of Chihuahua, addressed to the legal representative of *Pegaso Comunicaciones and Sistemas Movistar, S.A. de C.V.* (evidence file, criminal case file, f. 12360).

data of the telephone number from which the supposed call for help of Nitza Paola Alvarado was made because the phone had been acquired under a pre-payment plan;²²⁷

- vi. On August 31, 2010, various sites in the Ejido Benito Juárez were searched “for possible evidence or information relevant for the investigation, without any success,²²⁸ and
- vii. On February 1,²²⁹ and 23²³⁰ and June 16, 2011,²³¹ the PGJE–Chihuahua requested the collaboration of various authorities to abseil into and investigate several places of interest as the possible site of the remains of the three disappeared victims. These authorities responded that they did not have the equipment required for such investigations.²³²

105. On May 28, 2012, the Prosecutor General of the state of Chihuahua [FGE, previously PGJE–Chihuahua] declined jurisdiction in favor of the state delegation of the Office of the Prosecutor General of the Republic in Chihuahua [PGR–Chihuahua], since the case related to an incident of forced disappearance of persons which, at the time, was established in article 215-A of the Federal Code of Criminal Procedure, considering that:

“[...] [those who] deprived [the three disappeared victims] of liberty were organized; they followed a procedure; they had the infrastructure, financial resources and basic logistics; therefore, this authority presumes, based on the evidence that the said criminal act was carried out by members of the military [...].”²³³

106. As a result of the refusal of jurisdiction, Investigation File 124/2009-5326 was incorporated into Preliminary Inquiry AP/PGR/CHIH/JUA/467/2012 located at the state delegation of the PGR–Chihuahua, and previously opened on February 13, 2012, for the crimes of forced disappearance, abuse of authority, and “anything resulting from this.”²³⁴

D.2. Office of the Prosecutor General of the Republic, Chihuahua Delegation [PGR–Chihuahua]

107. On January 6, 2010, Patricia Reyes Rueda filed a report before the head of the Seventh

²²⁷ Cf. Communication No. 700/2010, of February 24, 2010, addressed to the Prosecutor General of the state of Chihuahua (evidence file, criminal case file, f. 12374), Response to Communication 949/2010, of March 16, 2010, addressed to the PGJE–Chihuahua (evidence file, criminal case file, f. 12375), and Communication 1123/2010, of January 5, 2011, addressed to the Special Prosecutor for Control, Analysis and Evaluation of the FGE–Chihuahua (evidence file, criminal case file, f. 12677).

²²⁸ Cf. Investigation report of August 31, 2010, attached to Communication No. 2410/2010, signed by Coordinator “B” of the Judicial Police of the State Investigation Agency attached to the UEIPAE–Chihuahua (evidence file, criminal case file, ff. 12596 to 12605).

²²⁹ Communication No. PGJE–UEIPAE–CDJ–310/2011, of February 1, 2011, signed by the District Prosecutor of the Special Prosecution Office for Crime Investigation and Prosecution, addressed to the Director General of Ecology and Civil Protection (evidence file, criminal case file, f. 12689).

²³⁰ Communication No. PGJE–UEIPAE–CDJ–487/2011, of February 23, 2011, signed by the AMP–UEIPAE Chihuahua, addressed to the Special Prosecutor of the FEVIMTRA–PGR (evidence file, criminal case file, f. 12690).

²³¹ Cf. Communication No. FGE–UEIPAE–CDJ–1486/2011, of June 16, 2011, signed by the Coordinator of the UEIPAE–Chihuahua, addressed to the Special Prosecutor for Public Security and Crime Prevention (evidence file, criminal case file, f. 12716), and Communication No. FGE–UEIPAE–CDJ–1486/2011, of June 16, 2011, signed by the Coordinator of the UEIPAE–Chihuahua, addressed to the Operations Director of the State Coordinator for Civil Protection of the government of the state of Chihuahua (evidence file, criminal case file, f. 12717).

²³² Cf. Communication 2042/2011, of February 11, 2011, signed by the Director General of Ecology and Civil Protection, addressed to the District Prosecutor of the Special Prosecution Office for Crime Investigation of the PGJE–Chihuahua (evidence file, criminal case file, f. 12694); Communication FEVIMTRA–N/DAP/0136/2011, of April 18, 2011, signed by the AMPF attached to the Northern Regional Office of the FEVIMTRA–PGR, addressed to the Coordinator of the UEIPAE–Chihuahua (evidence file, criminal case file, f. 12695), and Communication No. O.C. 541.2011, of June 17, 2011, signed by the State Coordinator for Civil Protection, addressed to the Special Prosecutor for Public Security and Crime Prevention (evidence file, criminal case file, f. 12719).

²³³ Cf. Waiver of jurisdiction of May 28, 2010, signed by the Special Prosecutor for Crime Investigation and Prosecution, Northern Zone (evidence file, criminal case file, ff. 12771 and 12772).

²³⁴ Cf. Communication No. 1658/2012 of May 28, 2012, signed by the Coordinator of the UEIPAE–Chihuahua [forwarding notification 124/2009 to the Delegation of the PGR–Chihuahua] (evidence file, criminal case file, f. 12290), and Communication No. SSP “A”/388/2012 of May 28, 2012, signed by the AMPF, Head of Subdelegation “A” for Criminal Proceedings addressed to the 11^aAMPF–PGR [ordering that Investigation File 124/2009-5326 be incorporated into Preliminary Inquiry AP/PGR/CHIH/JUA/467/2012] (evidence file, criminal case file, f. 12289).

Agency of the Federal Public Prosecution Service in Ciudad Juárez [7ªAMPF], attached to the PGR–Chihuahua, on the disappearance of her next of kin by members of the Army, which led to the opening of Preliminary Inquiry No. AP/PGR/CHIH/27/2010-VII for the “crime of abuse of authority and/or anything resulting from this.”²³⁵ On the same day, María de Jesús Alvarado Espinoza appeared before the same authority and testified about the events.²³⁶

108. From January 13 to March 2, 2010, the PGR–Chihuahua took a series of measures, including in particular:

- i. On January 13, 2010, the head of the 7ªAMPF requested the State Delegate of the PGR–Chihuahua to waive his jurisdiction to investigate the disappearance of the three victims, considering that:

[...] The facts reported reveal[ed] that they related to an action in which it appeared that members of the Ministry of Defense intervened; consequently, and in compliance with article 57.II of the Code of Military Justice [...], the competent authority to examine those facts is the Office of the Military Prosecutor General [...];²³⁷

- ii. On February 10, 2010, the head of the PGR–Chihuahua admitted the request to waive jurisdiction and ordered that the Preliminary Inquiry be forwarded to the Military Prosecutor and, on February 20, 2010, the file was sent to the Military Garrison of Ciudad Juárez, Chihuahua;²³⁸
- iii. On February 15, 2010, Report AC/PGR/CHIH/NCG/219/2010-C was opened by the AMPF attached to Nuevo Casas Grandes, Chihuahua, as a result of the official note sent by the Technical Secretary of the Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo of the PGR–Chihuahua, in order to investigate the disappearance of the three persons.²³⁹ In the course of this investigation, on March 1, 2010, the head of the Nuevo Casas Grandes Agency of the PGR–Chihuahua asked the Federal Investigation Agency of that locality to clarify the identity of those who had taken part in the events, and required the 35th Infantry Battalion to advise whether it had records of detentions made by members of the battalion in relation to the three disappeared persons. Both institutions responded that they had no record of the information requested.²⁴⁰

109. Finally, on October 22, 2010, an order was given to forward the said Report to the Special Prosecutor for Crimes of Violence against Women and People Trafficking [FEVIMTRA–PGR] because, at that time, the said authority was investigating the events under Preliminary Inquiry AP/PGR/FEVIMTRA/TRA/009/2010.²⁴¹

D.3. Office of the Military Prosecutor General [PGJM]

110. On January 15, 2010, the Agent of the Military Public Prosecution Service attached to the

²³⁵ Cf. Unnumbered communication of January 6, 2010, addressed to the State Delegate of the PGR–Chihuahua (evidence file, criminal case file, f. 5231).

²³⁶ Cf. Statement made by María de Jesús Alvarado Espinoza on January 6, 2010, before the 7ªAMPF (evidence file, criminal case file, f. 5231).

²³⁷ Cf. Decision to waive ordinary jurisdiction in favor of the military jurisdiction of January 13, [2010] of the head of the 7ªAMPF of the PGR–Chihuahua (evidence file, criminal case file, ff. 5238 and 5239).

²³⁸ Cf. Unnumbered communication of February 10, 2010, signed by the Head of the State Delegation of the PGR–Chihuahua in Ciudad Juárez, addressed to the head of the 7ªAMPF of the PGR–Chihuahua (evidence file, criminal case file, ff. 5241 and 5242), and Communication No. 842/2010, of February 20, 2010, signed by the head of the 7ªAMPF of the PGR–Chihuahua, addressed to the Agent of the Military Public Prosecution Service of the Military Garrison of Ciudad Juárez, Chihuahua [AMPM–GMCJ] (evidence file, criminal case file, f. 5226).

²³⁹ Cf. Decision to open Report AC/PGR/CHIH/NCG/219/2010, of February 15, 2010, signed by the Agent of the Federal Public Prosecution Service, head of the Investigation Agency of Nuevo Casas Grandes, Chihuahua [AMPF–NCG] (evidence file, criminal case file, ff. 24240 to 24242), and Communication No. SCRPPA/ST/01573/2010, of February 8, 2010, signed by the Technical Secretary of the Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo of the PGR–Chihuahua (evidence file, criminal case file, f. 24255).

²⁴⁰ Cf. Communication No. 219/2010, of March 1, 2010, signed by the AMPF–NCG, addressed to the head of the Federal Investigation Agency in Nuevo Casas Grandes, Chihuahua (evidence file, criminal case file, f. 24250), and Communication No. 222/2010, of March 1, 2010, signed by the AMPF–NCG, addressed to the Commander of the 35th Infantry Battalion (evidence file, criminal case file, f. 24252).

²⁴¹ Cf. Communication No. 1996/2010, of October 22, 2010, of the AMPF–NCG, addressed to the AMPF attached to the Regional Office of the FEVIMTRA–PGR in Ciudad Juárez (evidence file, criminal case file, f. 13967).

Fifth Military Zone [AMPM-5^aZM] opened Preliminary Inquiry 5ZM/04/2010, based on Official note 2673, in which the Deputy Administrative Head of the National Defense Staff forwarded “incident” [*sic*] reporting the disappearance of the three victims.²⁴²

111. In the context of Preliminary Inquiry 5ZM/04/2010, the AMPM-5^aZM took the following steps, among others:

- i. On January 15, 2010, the Commander of the 35th Battalion advised the Commander of the 5^aZM that the soldiers under his command had not made any detentions on the day of the disappearances and, it was only on December 26, 2009 – three days before the facts – that had it seized a vehicle containing drugs and arms on a road from the village of Ricardo Flores Magón to the Ejido Benito Juárez;²⁴³
- ii. On March 2, 2010, the Commanders of the 23rd Infantry Battalion and the 20th Motorized Cavalry Regiment sent the AMPM-5^aZM photographs of the type of uniform used by members of these operational units – posted to the Fifth Military Zone – from December 29 to 31, 2009, and the list of military personnel on duty between those dates.²⁴⁴ On March 20, 2010, the Commander of the 35th Battalion forwarded the list of the personnel of the unit under his command;²⁴⁵
- iii. On March 9, 2010, a judicial inspection was conducted of Hotel Los Arcos in the Ejido Benito Juárez, the place where, on December 26, 2009, members of the 35th Battalion had spent the night.²⁴⁶ On the same date, Verónica Colomo Reyes, Patricia Reyes Rueda, Manuel Reyes Lira and Marissa Reyes Rueda, family members of the disappeared gave their statements.²⁴⁷ In addition, the testimony was taken of Ernesto Luján Romero, Director of Public Security in Buenaventura, and Mario Castro García and José Bejarano García, Commander and Agent for Public Security and Municipal Highways of the Ejido Benito Juárez,²⁴⁸ and
- iv. On March 12, 2010, the statements were taken of Damaris Baglietto Hernández, Deputy Delegate for Criminal Proceedings “C” of the PGR–Chihuahua; Ramón Iván Sotomayor Siller, AMPF in Nuevo Casas Grandes, and Juan Ciro Valiente, Federal Investigation Agent in Nuevo Casas Grandes, with regard to the supposed “Commander Meza” of the Federal Police.²⁴⁹

112. Owing to the waiver of the ordinary jurisdiction in favor of the military jurisdiction decided on February 20, 2010, in the context of Preliminary Inquiry AP/PGR/CHIH/27/2010-VII (*supra*

²⁴² Cf. Record of the opening of Preliminary Inquiry 5ZM/04/2010, of January 15, 2010 (evidence file, criminal case file, f. 5283), and C.E.I. message No. 044 of January 15, 2010, signed by Major J.M. and G.H. Leal Estévez, A.M.P.M. ADSC. 5/a Z.M. in Chihuahua, Chihuahua (evidence file, criminal case file, f. 5285).

²⁴³ Cf. C.E.I. message No. 929 of January 15, 2010, signed by Colonel Élfego José Luján Ruiz, Commander of the 35th Battalion, addressed to the Commander of the 5^aZM in Chihuahua (evidence file, criminal case file, ff. 5609 to 5611).

²⁴⁴ Cf. Communication No. 3625 of March 2, 2010, signed by the Commander of the 23rd Infantry Battalion (evidence file, criminal case file, ff. 5595 and 5596), and Communication No. 4401 of March 2, 2010, signed by the Commander of the 20th Motorized Cavalry Regiment (evidence file, criminal case file, f. 5600).

²⁴⁵ Cf. Communication No. 4405 of March 10, 2010, signed by the Commander of the 35th Infantry Battalion, (evidence file, criminal case file, ff. 6193 to 6199). This information was sent in response to the requests made by the AMPM-5^aZM to the Commander of the 5^aZM: (i) on January 19, 2010 (evidence file, criminal case file, f. 5561); (ii) Communication No. ZM-196 of February 26, 2010 (evidence file, criminal case file, f. 5563), and (iii) Communication No. ZM-197 of February 26, 2010 (evidence file, criminal case file, f. 5564).

²⁴⁶ Cf. Judicial record of March 9, 2010, signed by the AMPM-5^aZM (evidence file, criminal case file, ff. 5726 to 5728).

²⁴⁷ Cf. Statement made by Verónica Colomo Reyes (evidence file, criminal case file, ff. 5729 to 5731); Statement made by Patricia Reyes Rueda on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5733 to 5735); Statement made by Manuel Reyes Lira on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5739 to 5711), and Statement made by Marissa Reyes Rueda on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5744 and 5745).

²⁴⁸ Cf. Statement made by Ernesto Luján Romero on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5722 and 5723); Statement made by Mario Castro García on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5747 and 5748), and Statement made by José Bejarano García on March 9, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5765 and 5766).

²⁴⁹ Statement made by Damaris Baglietto Hernández on March 12, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5870 to 5873); Statement made by Ramón Iván Sotomayor Siller on March 12, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5875 to 5878), and Statement made by Juan Ciro Valiente on March 12, 2010, before the AMPM-5^aZM (evidence file, criminal case file, ff. 5880 to 5882).

para. 107), Preliminary Inquiry GN/CD.JUAREZ/079/2010 was opened on February 26, 2010, by the Agent of the Military Public Prosecution Service attached to the Military Garrison in Ciudad Juárez [AMPM-GMCJ] for the “crime of abuse of authority, against whosoever [was] found responsible.”²⁵⁰

113. On March 22, 2010, the AMPM-GMCJ ordered the joinder of Preliminary Inquiry 5ZM/04/2010 to Preliminary Inquiry GN/CD.JUAREZ/079/2010 because they “referred to the same facts that were being investigated”; namely, the disappearance of the three victims.²⁵¹

114. On April 8, 2010, the AMPM-GMCJ ordered the referral of Preliminary Inquiry GN/CDJUAREZ/079/2010, to the Special Prosecutor of the Office of the Military Prosecutor General [AMPME-PGJM] for its continuation and determination.²⁵² Consequently, on April 16, 2010, the latter opened Preliminary Inquiry PGJM/AMPME/CDJUAREZ/196-II/2010.²⁵³

115. On opening the investigation, the AMPME-PGJM took several steps, including in particular:

- i. Based on a judicial order, on May 14, 2010, the AMPM-5^aZM conducted a judicial inspection of the premises of the 35th Infantry Battalion in Nuevo Casas Grandes, without locating the three disappeared;²⁵⁴
- ii. By messages dated May 23 and 24, 2010, the Commander and the Staff Officer, respectively, of the 5^aZM advised that the military personnel posted to that military district had not carried out interception operations on December 29, 30 and 31, 2009, on the “principal and secondary” roads leading to the Ejido Benito Juárez and that it did not have white or yellow Hummers and/or pick-up trucks in that garrison;²⁵⁵
- iii. On May 24, 2010, the Auxiliary Agent of the Public Prosecution Service of the PGJE-Chihuahua in Buenaventura, Aarón Enríquez Duarte, testified before the AMPM-5^aZM regarding what he knew about the three detentions by members of the Army;²⁵⁶
- iv. In an official note of November 6, 2010, the Commander of the 35th Battalion sent the AMPME-PGJM the list of names and military rank of the personnel of that military unit who were part of the “weapons and financial offenses service” on December 29, 30 and 31, 2009;²⁵⁷
- v. On March 30, 2011, and by an official order sent to the AMPM attached to the Fourth Military Zone, Argene Blásquez Morales, Head of Criminal Policy of the PGR-Chihuahua, testified about the telephone call she had with the presumed “Commander Meza” of the Federal Police (*supra* para. 99);²⁵⁸
- vi. On April 2, 2011, the Commander of the 35th Battalion sent the AMPME-PGJM certified copies of the documentation related to the record of the movements of military vehicles and soldiers,²⁵⁹ as

²⁵⁰ Cf. Record of opening of Preliminary Inquiry GN/CD.JUAREZ/079/2010, of February 26, 2010 (evidence file, criminal case file, ff. 5274 and 5275), and C.E.I. message No. AP-674 of February 26, 2010, signed by Major J.M. and G.H.A. Gallardo, A.M.P.M. ADSC. GN. Mil. in Ciudad Juárez, Chihuahua (evidence file, criminal case file, f. 5276).

²⁵¹ Cf. Decision of March 4, 2010, ordering the joinder of Preliminary Inquiry 5ZM/04/2010 to Preliminary Inquiry GN/CDJUAREZ/079/2010 (evidence file, criminal case file, f. 5280), and Communication No. ZM-305 of March 22, 2010, signed by the AMPM-5^aZM, addressed to the AMPM-GMCJ (evidence file, criminal case file, f. 5281).

²⁵² Cf. Decision to refer Preliminary Inquiry GN/CD.JUAREZ/079/2010, of April 8, 2010 (evidence file, criminal case file, f. 6288), and Communication No. AP-876 of April 8, 2010, signed by the AMPM-GMCJ, addressed to the AMPME-PGJM (evidence file, criminal case file, f. 6290).

²⁵³ Cf. Decision to open Preliminary Inquiry PGJM/AMPME/CDJUAREZ/196-II/2010, of April 16, 2010 (evidence file, criminal case file, ff. 6294 to 6299).

²⁵⁴ Cf. Record of judicial inspection of May 14, 2010 (evidence file, criminal case file, ff. 7367 to 7380).

²⁵⁵ Cf. Message No. 12938 addressed to the AMPM-5^aZM (evidence file, criminal case file, f. 7396), and Communication No. 13000 of May 24, 2010, issued by the Staff Officer of the Command of the 5^aZM, addressed to the AMPM-5^aZM (evidence file, criminal case file, f. 7398).

²⁵⁶ Cf. Statement made by Aarón Enríquez Duarte on May 24, 2010 (evidence file, criminal case file, ff. 7401 to 7402).

²⁵⁷ Cf. Communication No. 21670 of November 6, 2010 (evidence file, criminal case file, ff. 7234 to 7247).

²⁵⁸ Cf. Statement made by Argene Blásquez Morales on March 30, 2011, before the Auxiliary AMPM attached to the Fourth Military Zone in Hermosillo, Sonora (evidence file, criminal case file, ff. 8251 to 8256).

²⁵⁹ Cf. Communication No. illegible of April 2, 2011, forwarding “logbook entries” for December 29, 30 and 31, 2009, certified by the acting Head of the Personnel, Procurement and Support Section of the 35th Infantry Battalion (evidence file, criminal case file, ff. 8173 to 8183).

well as the type of uniforms used by the military personnel of that unit at the time of the disappearances.²⁶⁰ On April 13, 2011, Staff Sergeant and Army Driver of the 35th Infantry Battalion, Alberto Hernández de la Cruz, testified retracting the testimony he had given on February 5, 2010, before the Agent of the Military Public Prosecution Service (*supra* para. 97),²⁶¹ and

vii. On September 12, 2011, the legal representative of the CNDH filed a report before the AMPM in compliance with Recommendation 43/11.²⁶²

116. On December 29, 2011, the II AMPM of the PGJM decided to close Preliminary Inquiry PGJM/AMPME/CDJUAREZ/196-II/2010, and ordered that it be referred to the AMPF of the PGR, considering that, regarding the disappearance of the three individuals:

“There is no evidence that military personnel committed the said unlawful acts; therefore, in this case, in the opinion of this military representative, neither military discipline nor the law was violated; however, it is very probable that persons who are dedicated to different drug-trafficking activities were involved in the said conduct [...]”²⁶³

D.4. Office of the Prosecutor General of the Republic – Special Prosecutor for Crimes of Violence against Women and People Trafficking [FEVIMTRA-PGR]

117. On March 8, 2010, in response to Communication UPDDH/911/1240/2010, from the head of the Unit for the Promotion and Defense of Human Rights of the Ministry of the Interior [UPDDH-SEGOB], FEVIMTRA-PGR opened Preliminary Inquiry AP/PGR/FEVIMTRA/TRA/009/2010, for the crime of unlawful deprivation of liberty “and anything resulting from this” to the detriment of the three disappeared persons and against the person or persons found responsible.²⁶⁴

118. During the FEVIMTRA-PGR’s investigation into the disappearance of the three persons, the following measures, among others, were taken:

- i. In response to the requirement of AMPF of June 4, 2010,²⁶⁵ on June 9 a judicial inspection was conducted of the place where Nitza Paola and José Ángel Alvarado had been deprived of liberty in the Ejido Benito Juárez, of the house from which Rocío Irene Alvarado had been taken, and also of the premises of the State Investigation Agency of the PGJE-Chihuahua in Nuevo Casas Grandes.²⁶⁶ On the same date, the testimony was taken of Horasio Flores Martínez and Francisco Calvillo, judicial agents from the latter agency, who stated that, following the seizure by the judicial police of the pick-up truck that Nitza Paola Alvarado was driving on the day of her disappearance, members of the Federal Police and of the Mexican Army had come to the agency asking why that vehicle had been seized and gathering information on it (*supra* para. 90);²⁶⁷

²⁶⁰ Cf. Radiogram No. 22416 of December 30, 2009, addressed to Commander P.M. “*Bélgica Uno*” in Basaseachi, Chihuahua (evidence file, criminal case file, ff. 8170 and 8171).

²⁶¹ Cf. Testimony provided by Alberto Hernández de la Cruz on April 13, 2011, before the AMPME-GMCJ (evidence file, criminal case file, ff. 8327 to 8332).

²⁶² Cf. Reception of documents on September 12, 2011, signed by the II AMPM Investigator attached to Mexico City (evidence file, criminal case file, f. 9903), and Communication No. CNDH/DGAJ/1097/2011, of September 9, 2011, signed by the legal representative of the CNDH (evidence file, criminal case file, ff. 9904 to 9935).

²⁶³ Cf. Decision to close the Preliminary Inquiry of December 29, 2011 (evidence file, f. 617).

²⁶⁴ Cf. Decision to open the Preliminary Inquiry of March 8, 2010, signed by the Head of Management and Control of Preliminary Inquiries attached to the FEVIMTRA-PGR (evidence file, criminal case file, f. 12869).

²⁶⁵ Cf. Request for procedures of June 4, 2010 (evidence file, criminal case file, ff. 13516 to 13518).

²⁶⁶ Cf. Decision to conduct a judicial inspection of June 9, 2010, signed by the SMC of the FEVIMTRA-PGR (evidence file, criminal case file, ff. 13542 to 13545, 13550 and 13551).

²⁶⁷ In his statement, Agent Flores Martínez indicated: “[...] Towards the end of November [2009] [...] three uniformed members of the Federal Police came to my office [in the State Investigation Agency in Nuevo Casas Grandes], and asked for me and, as I was in charge of the office [...] they spoke to me about the matter of a pick-up that had been seized by the Judicial Police in the Ejido Benito Juárez [...] and I informed them that one of the agents who had seized this vehicle was Óscar Arias Ocampo [...]. Subsequently, Óscar [Arias] and Commander Calvillo spoke to these members of the Federal Police but did not know which vehicle they arrived in [...]” Meanwhile, Francisco Calvillo testified: “[...] At the beginning of January [2010], a lieutenant of the Mexican Army came to see me [...] and told me that a vehicle had been seized and asked why it had been seized, and I answered him that we had intervened in response to a phone call, and he noted down the vehicle’s data and left; later, several uniformed Federal Police agents came and asked the same questions [...]” Cf. Statement made by Horasio Flores Martínez (evidence file, criminal case

- ii. On June 10, 2010, the testimony of Obdulia Espinoza Beltrán was taken with regard to the disappearance of her next of kin.²⁶⁸ In addition, statements were taken from Jesús Durazo Hoyos, AMPF in Ciudad Juárez, and his secretary, Guadalupe Angélica Escobedo Domínguez, who denied that they were aware of or had made any comments to the family members about the whereabouts of the three disappeared persons when Patricia Reyes Rueda and María de Jesús Alvarado Espinoza had filed their respective reports on January 6, 2010;²⁶⁹
- iii. On July 27, 2010, the collaboration of the Military Prosecutor General was requested to conduct a series of procedures on the premises of the 35th Battalion.²⁷⁰ Given the lack of response from this military authority, the AMPF of the FEVIMTRA repeated the request for his collaboration on August 3 and September 28, 2010;²⁷¹
- iv. At the request of the AMPF of the FEVIMTRA-PGR of August 3, 2010,²⁷² the National Banking and Securities Commission (CNBV) forwarded, attached to its answering communication of August 31, 2010,²⁷³ and January 12, 2011,²⁷⁴ information on the possible existence of bank accounts in the name of any of the three disappeared persons in the National Banking System in order to obtain information to locate their whereabouts;
- v. In response to the request made on August 10, 2010,²⁷⁵ the Municipal Public Security Secretariat of Juárez advised that it did not have a complete copy of the video recordings of the camaras located in the municipalities of Buenaventura and Nuevo Casas Grandes for December 29 and 30, 2009, because this did not fall under the competence of the Emergency and Immediate Response Center of the state of Chihuahua, attached to the said Secretariat;²⁷⁶
- vi. On August 26, 2010, the testimonies were taken of Felipe Morales Avitia and Emmanuel Peralta Robles, Public Security and Traffic Agents in the Ejido Benito Juárez, who witnessed the seizure of

file, ff. 13555 to 13557), and Statement made by Francisco Calvillo Barrio (evidence file, criminal case file, ff. 13560 and 13561), both on June 9, 2010, before the SMC of the FEVIMTRA-PGR.

²⁶⁸ Cf. Statement made by Obdulia Espinoza Beltrán on June 10, 2010 (evidence file, criminal case file, ff. 13576 to 13588).

²⁶⁹ Cf. Statement made by Jesús Durazo Hoyos (evidence file, criminal case file, ff. 13589 to 13591), and Statement made by Guadalupe Angélica Escobedo Domínguez (evidence file, criminal case file, ff. 13596 to 13598), both on June 10, 2010, before the SMC of the FEVIMTRA-PGR.

²⁷⁰ Cf. Request for procedures of July 27, 2010 (evidence file, criminal case file, ff. 13805 and 13806), and Communication No. PGR/FEVIMTRA/TRA/0838/2010, of July 27, 2010 (evidence file, criminal case file, f. 13807). The AMPF of the FEVIMTRA-PGR requested the collaboration of the PGJM to help conduct the following procedures: "[1.] Visit the 35th Infantry Battalion, together with the Expert in Photography, Field Criminalistics, and others as necessary, to conduct an inspection of its premises to search for the [disappeared] persons. [2.] Request that they produce the visitors' ledger for January 2010, certify its content and take the corresponding photographs. [3.] Request that they produce the logbooks of services, reports and incidents for November 29 and 30, 2009, certify their content and take the corresponding photographs. [4.] Request that they produce the records of the vehicles provided by the Battalion's personnel to other units, specifically for December 29, 30 and 31, 2009. [5.] Request that they provide information on the Operations in which personnel of this Battalion participated on December 29, 2009, and, if possible, inspect the corresponding logbook, certify it and take the [corresponding] photographs. [6.] Request that they provide information on the most recent operations carried out in the municipality of Buenaventura, Chihuahua, and the results - in other words, names of persons detained, vehicles found, etc., and [7.] Obtain a list of the personnel of the 35th Battalion, with a color photograph, who were on duty from December 29, 2009, to January 15, 2010, specifying the name of the person(s) in charge [...]."

²⁷¹ Cf. Request for procedure of August 3, 2010 (evidence file, criminal case file, f. 13827); Communication PGR/FEVIMTRA/TRA/0885/2010, of August 3, addressed to the Head of Preliminary Inquiries of the PGJM (evidence file, criminal case file, f. 13827); Request for procedure of September 28, 2010 (evidence file, criminal case file, f. 13928), and Communication No. PGR/FEVIMTRA-N/DAP/0399/2010, of September 28, 2010, addressed to the PGJM (evidence file, criminal case file, f. 13940).

²⁷² Cf. Communication No. PGR/FEVIMTRA/TRA/0883/2010, of August 3, 2010, addressed to the President of the National Banking and Securities Commission [CNBV] (evidence file, criminal case file, ff. 13825 and 13826).

²⁷³ Cf. Communication No. 213/3304716/2010 (evidence file, criminal case file, f. 13910).

²⁷⁴ Cf. Communication No. 213/390593/2011 (evidence file, criminal case file, ff. 14183 to 14230).

²⁷⁵ Cf. Communication No. PGR/FEVIMTRA/TRA/0924/2010, of August 10, 2010, addressed to the head of the Emergency and Immediate Response Center of Chihuahua (evidence file, criminal case file, f. 13839).

²⁷⁶ Cf. Communication No. 166/2010, of August 11, 2010, signed by Insp. P.F. Coordinator CERI 066 of the Municipal Public Security Secretariat of Juárez (evidence file, criminal case file, f. 13847).

the pick-up truck that Nitza Paola Alvarado was driving on the day of her disappearance.²⁷⁷ On October 25, 2010, Aarón Enríquez Duarte, AAMP in Buenaventura, appeared before the FEVIMTRA;²⁷⁸

- vii. On January 4, 2011, the Federal Police provided FEVIMTRA with a police report on the investigation in which it indicated that different organized crime groups that used “articles” similar to those used by the Armed Forces and other police forces operated in the state of Chihuahua, and that the vehicles used in the detention of the three disappeared persons described by the family members were regularly used by the criminal organizations. Therefore, the report concluded that “it was highly probable [that the three disappeared persons] h[ad been] victims of persons involved in organized crime”;²⁷⁹
- viii. On June 13, 2011, official notes were sent to the heads of the Forensic Services of the 32 federal entities requesting information on the existence of records of autopsies, discoveries of human remains, or burials in mass graves of unidentified persons who might correspond to the three disappeared persons, receiving a negative response in each case;²⁸⁰
- ix. On August 9, 2011, the AMPF of the FEVIMTRA-PGR, together with personnel from the PGR-Chihuahua, the AFI and other judicial authorities of the state of Chihuahua conducted a judicial inspection of a “mine shaft” located near the Ejido Benito Juárez.²⁸¹ During this procedure, human remains were located and these were transferred to the Chihuahua Forensic Medicine Service for safekeeping. Following a series of analyses, it was determined that the remains corresponded to four males and that none of them corresponded to the three disappeared persons,²⁸² and
- x. On September 8, 2011, the CNDH filed a complaint before the PGR against personnel of the SEDENA and the SSP for the crimes of forced disappearance of persons and abuse of authority in compliance with Recommendation 43/2011, issued on June 13, 2011. This report was added to the case file because it related to the FEVIMTRA investigation.²⁸³

119. On September 30, 2011, the FEVIMTRA-PGR decided to waive its jurisdiction to examine

²⁷⁷ Cf. Statement made by Felipe Morales Avitia (evidence file, criminal case file, ff. 13863 to 13866), and Statement made by Emmanuel Peralta Robles (evidence file, criminal case file, ff. 13868 to 13871), both on August 26, 2010, before the AMPF attached to the FEVIMTRA-PGR. During their appearance on August 26, 2010, Felipe Morales Avitia and Emmanuel Peralta Robles stated that the pick-up truck that Nitza Paola Alvarado was driving on the day of her disappearance had been seized by judicial police from Nuevo Casas Grandes without the participation of members of the Army.

²⁷⁸ Cf. Statement made by Aarón Enríquez Duarte on October 25, 2010, before the AMPF of the FEVIMTRA-PGR (evidence file, criminal case file, f. 13972). During his appearance, Aarón Enríquez Duarte indicated: “[t]he family members [of the three disappeared persons] mentioned that the persons who took them [...] wore military uniforms, so I told them that if soldiers had taken them, they could go and look for them or ask for information in the 35th Battalion which was located in Nuevo Casas Grandes, because the Galeana District corresponded to that military battalion, but I did not assure them that they would be there [...].”

²⁷⁹ Cf. Police report of the Federal Police Investigation Division of January 4, 2011 (evidence file, criminal case file, ff. 14087 to 14088).

²⁸⁰ Cf. Request for procedures of June 13, 2011 (evidence file, criminal case file, ff. 14688 to 14689); Report No. illegible of June 28, 2011, signed by the Forensic Stomatologist in charge of the Area of Disappeared Persons and Control of Unidentified Corpses of the Office of the Prosecutor General [PGJ] of Puebla (evidence file, criminal case file, f. 14896); Communication No. MF-O/9338/0925/2011, of June 29, 2011, signed by the Director General of Forensic Services of the PGJ-Michoacán (evidence file, criminal case file, f. 14898 to 14900); Communication No. 226/2011, of June 24, 2011, from the Director General of Forensic Services of the PGJ-Colima (evidence file, criminal case file, f. 14904); Communication FEVIMTRA-N/DAP/0190/2011, of June 13, 2011, addressed to the Director of Forensic Services of the PCJ-Southern Baja California (evidence file, criminal case file, f. 14906 to 14907); Communication SEMEFO/220/2011, of June 27, 2011, signed by the head of the Forensic Medicine Service of the PCJ-Southern Baja California (evidence file, criminal case file, f. 14908); Communication FEVIMTRA-N/DAP/0202/2011, of June 13, 2011, addressed to the Coordinator of Forensic Services of the PCJ-Guanajuato (evidence file, criminal case file, ff. 15856 to 15857).

²⁸¹ Cf. Record of judicial inspection of August 9, 2011 (evidence file, criminal case file, ff. 15209 to 15223).

²⁸² Cf. Forensic report folio CESP/CHIH/5486/2011, on Field Criminalistics of August 16, 2011 (evidence file, criminal case file, f. 15351); Forensic report folio 68904 on Forensic Odontology of August 26, 2011 (evidence file, criminal case file, f. 15724). In addition, the Forensic reports on Forensic Anthropology by the FGE-Chihuahua of September 5, 2011, Folio 5477/2011 (evidence file, criminal case file, ff. 15732 to 15751); Folio 5478/2011 (evidence file, criminal case file, ff. 15752 to 15771); Folio 5479/2011 (evidence file, criminal case file, f. 15790), and Folio 5480/2011 (evidence file, criminal case file, ff. 15791 to 15807).

²⁸³ Cf. Communication No. CNDH/DGAJ/1096/2011, of September 8, 2011, of the legal representative of the CNDH, addressed to the head of the PGR (evidence file, criminal case file, ff. 15817 to 15848).

the case in favor of the Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo of the PGR-Chihuahua due to the complaint filed by the CNDH and considering that the nature of the facts investigated in relation to the disappearance of the three individuals “did not reveal facts of gender-based violence against women or girls.”²⁸⁴

120. In its decision to waive jurisdiction, the FEVIMTRA-PGR emphasized the establishment of three lines of investigation, namely: 1. The probable intervention of the Mexican Army in the disappearance of the three victims; 2. The tracing of the telephone call supposedly made by Nitza Paola Alvarado on February 3, 2010, and 3. The probable participation of organized crime in the events. It also emphasized:

“[...] the permanent reticence of the Mexican Army to collaborate with the FEVIMTRA in the clarification of the facts [was] a factor that, in some ways, restricted the range of possibilities in the conduct of the investigations in that jurisdiction” and the absence of indications that might reveal the participation of persons involved in organized crime in the facts “because the population of the municipality of Buenaventura cannot be stigmatized merely because it is part of the state of Chihuahua, a high-risk area owing to the high rates of criminality.”²⁸⁵

[...]

Moreover, the Mexican Army’s participation in the [facts] cannot be ruled out, because they are directly indicated by Obdulia Espinoza Beltrán and Patricia Reyes Rueda, who witnessed the events, and even though the military authorities’ lack of interest in collaborating with the investigation conducted by the FEVIMTRA does not reveal their probable participation, neither does it provide credibility to the limited judicial actions they conducted [...].²⁸⁶

D.5. Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo in Ciudad Juárez, PGR–Chihuahua

121. During Preliminary Inquiry AP/PGR/CHIH/JUA/467/2012-XI-A (or “467/2012”) opened on February 13, 2012, by the Agent of the Federal Public Prosecution Service attached to the Fifth Investigation Bureau in Ciudad Juárez [5^aAMPF-PGR] for the crimes of unlawful deprivation of liberty, abuse of authority and/or anything resulting from this,²⁸⁷ the following measures were taken:

- i. Various statements were taken from the family members of the disappeared and from members of the military.²⁸⁸ Among the latter was the statement made on June 13, 2013, by Colonel Élfego José

²⁸⁴ Cf. Decision to waive jurisdiction owing to the matter of September 30, 2011 (evidence file, criminal case file f. 16139).

²⁸⁵ Cf. Decision to waive jurisdiction of September 30, 2011 (evidence file, f. 16127).

²⁸⁶ Cf. Decision to waive jurisdiction of September 30, 2011 (evidence file, ff. 16118, 16127, 16137 to 16139).

²⁸⁷ Cf. Sheet with information on the opening of the Preliminary Inquiry in the 5^aAMPF-PGR on February 13, 2012 (evidence file, ff. 638 and 639). Regarding the facts, the PGR–Chihuahua admitted the following previous findings: (i) AP/PGR/CHIH/JUA/2503/2011-V-A, opened on August 11, 2011, based on the report filed by María de Jesús Alvarado before the Fifth Investigation Bureau of the PGR in Ciudad Juárez owing to the disappearance of her next of kin “against the person or persons found responsible for the perpetration of the crime of forced disappearance of persons and anything resulting from this,” and (ii) AP/PGR/CHIH/JUA/3634/2011, opened on November 16, 2011, owing to the waiver of jurisdiction by the FEVIMTRA (*supra*, para. **), “against whoever is found responsible for the crime of unlawful deprivation of liberty and/or anything resulting from this” to the detriment of the three disappeared. On November 26, 2011, the first of these inquiries was joinder to the second and, on October 31, 2012, they were both incorporated into Preliminary Inquiry AP/PGR/CHIH/JUA/467/2012-XI-A, opened on February 13, 2012. Cf. Decision to open Preliminary Inquiry AP/PGR/CHIH/JUA/2503/2011-V-A without a detainee of August 11, 2011 (evidence file, annex II.78 to the Merits Report, f. 1071); Decision to open Preliminary Inquiry AP/PGR/CHIH/JUA/3634/2011-XI-A of November 16, 2011, signed by the AMPF of the PGR-Chihuahua (evidence file, criminal case file, f. 16209); Joinder decision of November 24, 2011 (evidence file, criminal case file, ff. 16327 to 16329); Communication DECH/5708/2011, of November 26, 2011, authorizing the joinder, signed by the state delegate of the PGR–Chihuahua (evidence file, criminal case file, ff. 16332 and 16333); Communication No. 4122 of December 5, 2011, signed by the head of the 5^aAMPF-PGR (evidence file, f. 1073), and Communication No. illegible of October 31, 2012, addressed to the head of the Twelfth Investigation Agency (evidence file, ff. 1077 to 1079).

²⁸⁸ Cf. Statements made on January 16, 2013 before the AMPF acting to support the Tenth Preliminary Investigation Agency of the PGR–Chihuahua [11^aAMPF-PGR] by: Patricia Reyes Rueda (evidence file, criminal case file, ff. 16474 to 16476); José Ángel Alvarado Fabela (evidence file, criminal case file, ff. 16483 to 16485); Manuel Reyes

Luján Ruiz, Commander of the 35th Battalion at the time of the facts, who denied his participation or that of his unit in the three disappearances and also indicated that: neither the municipality of Buenaventura nor the Ejido Benito Juárez were under his jurisdiction; that the 35th Battalion carried out patrols in that area when they were ordered to do so by his superior, the Commander of the 5ªZM; that one of his junior officers had informed him of the disappearances by telephone; that an information sheet had been prepared in this regard and, lastly, that they did not undertake operations to search for the disappeared, because this had not been ordered by his superior officers,²⁸⁹ and

- ii. On June 18, 2013, General Jens Pedro Lohmann Iturburu, Commander of the Military Garrison of Palomas, Chihuahua, gave his statement in which he indicated, among other matters, that his superior (the Commander of the XI Military Region) had ordered him to investigate the events of December 29, 2009, and he had begun this on January 9, 2010 (*supra* paras. 92 and 93), and that the instruction he received had been to determine whether members of the army had taken part in the said disappearance, so that his work ended when he found no reference or allusion to the involvement of military personnel.²⁹⁰

122. Finally, on June 30, 2013, the Assistant Prosecutor for Regional Control, Criminal Proceedings and Amparo waived jurisdiction to undertake Preliminary Inquiry 467/2012 in favor of another unit of the PGR – the Assistant Prosecutor for Human Rights, Crime Prevention and Community Services – because he considered that the latter had the specialized human resources required to investigate the crime of forced disappearance of persons.²⁹¹ This waiver was admitted on July 18, 2013.²⁹²

D.6. Office of the Assistant Prosecutor for Human Rights, Crime Prevention and Community Services of the Office of the Prosecutor General of the Republic [PGR]

D.6.1. Preliminary Inquiry AP/PGR/SDHAVSC/M5/66/2013

123. On April 4, 2013, the General Directorate for Attending to and Following up on Recommendations of the Office of the Assistant Prosecutor for Human Rights of the PGR, began Preliminary Inquiry AP/PGR/SDHAVSC/M5/66/2013 (or “66/2013”), based on simple copies of the reports of Patricia Reyes Rueda and María de Jesús Alvarado Espinoza that had given rise to preliminary inquiries AP/PGR/CHIH/JUA/27/2010-VII-A and 124/2009-5326.²⁹³ The reports were turned over to the Special Search Unit for Disappeared Persons [UEBPD-PGR] (also attached to the said Office of the Assistant Prosecutor) to conduct the investigations.²⁹⁴

124. Based on the processing of inquiry 66/2013, on March 3, 2014, the UEBPD-PGR decided to file a criminal action against Colonel Élfego José Luján Ruiz – Commander of the 35th Battalion at the time of the three disappearances – on verifying his probable responsibility for the crime of forced disappearance and asked the federal trial judge on duty to issue the respective arrest warrant.²⁹⁵

Lira (evidence file, criminal case file, ff. 16494 to 16496), and Obdulia Espinoza Beltrán (evidence file, criminal case file, ff. 16496 and 16497).

²⁸⁹ Cf. Statement made by Élfego José Luján Ruiz on June 13, 2013, before the 11ªAMPF-PGR (evidence file, ff. 1155 to 1160).

²⁹⁰ Cf. Statement made by Jens Pedro Lohmann Iturburu on June 18, 2013 before the AMPF-PGR (evidence file, annex 71 to the State’s answering brief, ff. 28394 to 28396).

²⁹¹ Cf. Decision to waive jurisdiction owing to the matter of June 30, 2013, of the 11ªAMPF-PGR (evidence file, ff. 1117 to 1144).

²⁹² Cf. Communication No. DECH/2610/2013 of July 18, 2013, authorizing the waiver of jurisdiction, signed by the state delegate of the PGR-Chihuahua (evidence file, ff. 1167 to 1168).

²⁹³ Cf. Decision to open Preliminary Inquiry AP/PGR/SDHAVSC/M5/066/2013 of April 4, 2013, signed by the AMPF Head of the Vth Bureau of the General Directorate for Attending to and Following up on Recommendations and Conciliations in the area of Human Rights of the PGR (evidence file, judicial file, ff. 4491 to 4494).

²⁹⁴ Cf. Statement made by Salomón Baltazar Samayoa on April 17, 2018 (evidence file, affidavits, f. 30930). This witness worked as head of the UEBPD-PGR from June 21, 2013, to July 31, 2015.

²⁹⁵ Cf. Charge sheet, without detainee, of March 31, 2014, signed by the AMPF head of the Vth Bureau of the AMPF5ªM-UEBPD (evidence file, judicial file, ff. 17016 to 17121).

125. When requesting the arrest warrant against Colonel Luján, the AMPF of the UEBDP–PGR considered that it had been proved that the said military commander had command of the unit (that is, the 35th Battalion) and the existence of statements reporting that, in the exercise of this command:

“[he had] created and encouraged among his subordinates a practice of abuse constituted, among other matters, by house searches, arbitrary detentions, misappropriation of animals, weapons, drugs and vehicles, torture, homicide, summary executions, and concealment of corpses by illegal burials.

In addition, it took into consideration the existence of indications that the 35th Battalion used private vehicles to carry out unlawful detentions, which – in the opinion of the PGR – supported the statements of the witnesses of the disappearances that those who carried them out had military-type uniforms and weapons and travelled in private vehicles [...].”²⁹⁶

126. Owing to these charges, on March 31, 2014, Criminal Case 22/2014-III was opened before the Seventh District Criminal Judge of Ciudad Juárez, Chihuahua [J7ºDtto-Chihuahua], a first instance judicial authority of the federal criminal jurisdiction. On the same date, this judge refused to issue an arrest warrant against Colonel Luján considering that a third of the elements of the *corpus delicti* had not been proved; namely, that this military commander had facilitated or intentionally maintained concealed the three disappeared because, in the opinion of that judge, it had not been proved that members of the Mexican Army had carried out the detentions on the orders of Colonel Luján or that this commander was aware of the victims’ whereabouts.²⁹⁷

127. On March 31, 2014, the AMPF attached to the respective District Court, on being notified of the refusal to issue the requested arrest warrant, filed an appeal against this ruling, which was admitted on April 3, 2014, as criminal appeal 94/2014, before the Fourth Unitary Court of the Seventeenth Circuit in Chihuahua [4ºTU/17ºC–Chihuahua], the higher judicial authority of the federal criminal jurisdiction.²⁹⁸

128. On June 27, 2014, this Unitary Court decided the appeal that had been filed and confirmed the refusal to issue the arrest warrant because it considered that, contrary to the assertions of the AMPF, the district trial judge had assessed correctly all the evidence presented when issuing his ruling and that, based on this assessment, had determined that this was not sufficient to prove one of the elements of the *corpus delicti*.²⁹⁹

129. On September 11, 2014, the victims’ representative, Luz Estela Castro Rodríguez, filed an application for indirect amparo against the ruling in Criminal Appeal 22/2014. This application was admitted as No. 21/2014 by the Third Unitary Court of the Seventeenth Circuit [3ºTU/17ºC–Chihuahua], the first instance judicial authority for amparo proceedings in criminal matters.³⁰⁰

130. On September 17, 2014, the 3ºTU/17ºC–Chihuahua rejected the application, because Luz Estela Castro Rodríguez had not been officially accredited as an intervener in Preliminary Inquiry 66/2013 as her name corresponded to another person who had been recognized as an

²⁹⁶ Cf. Charge sheet, without detainee, of March 31, 2014, signed by the AMPF5ªM–UEBDP, *supra* f. 17025.

²⁹⁷ Cf. Order of March 31, 2014, in Criminal Case 22/2014-III of the J7ºDtto-Chihuahua (evidence file, criminal case file, f. 17155).

²⁹⁸ Cf. Decision of April 3, 2014, issued by the Seventh District Judge of the state of Chihuahua (evidence file, helpful evidence provided by the State, f. 31698); Communication 2971 of April 3, 2014, signed by the J7ºDtto–Chihuahua, addressed to the Judge of the Unitary Circuit Court on duty in Ciudad Juárez (evidence file, helpful evidence provided by the State, f. 31700); record of admission of appeal of April 3, 2014, in Criminal Case 22/2014-III Decision of the J7ºDtto-Chihuahua (evidence file, criminal case file, ff. 17158 and 17159), and Motion No. 45/2014 of April 24, 2014, signed by the AMPF Assistant Executive Prosecutor attached to the Fourth Unitary Court of the Seventeenth Circuit, filing complaints under Criminal Appeal 96/2014 (evidence file, criminal case file, ff. 17265 to 17300).

²⁹⁹ Cf. Judgment of Criminal Appeal 94/2014 of June 27, 2014, issued by the justice of the 4ºTU/17ºC-Chihuahua (evidence file, ff. 28592 to 28696).

³⁰⁰ Cf. Order in application for indirect amparo 21/2014 of December 31, 2014, issued by the 3ºTU/17ºC–Chihuahua (evidence file, f. 1246).

intervener [*sic*].³⁰¹ On September 29, 2014, the representative Luz Estela Castro filed Complaint 328/2014 contesting this rejection of the application before the Seventeenth Collegiate Circuit Court, the higher court to examine this appeal.³⁰² On November 21, 2014, the Collegiate Court considered that the complaint was substantiated and order that the application for amparo be admitted because there was no evident and clear reason not to admit it.³⁰³ As a result of this decision, on December 5, 2014, the 3^oTU/17^oC–Chihuahua admitted the said application for amparo.³⁰⁴

131. On December 31, 2014, the 3^oTU/17^oC–Chihuahua issued a ruling on the merits of the indirect amparo, denying the constitutional protection that had been requested. As grounds for its decision, the justice of the Unitarian Court indicated that it was not true that the judge of the 4^oTU/17^oC–Chihuahua (the higher court that had confirmed the refusal to issue an arrest warrant for Colonel Luján) had considered that the crime was of a transitory nature (as the victims' representative stated). It also decided that it was inadmissible that the said second instance court had omitted to analyze the case based on the international standards for forced disappearance and that it had unduly assessed the evidence submitted to it.³⁰⁵

132. On January 21, 2015, the representative, Luz Estela Castro, filed an appeal for review of that decision refusing to grant the amparo requested. This appeal was examined by the Seventeenth Collegiate Circuit Court as Appeal 80/2015.³⁰⁶

133. On June 9, 2016, the Seventeenth Collegiate Circuit Court in Chihuahua, the higher court to examine applications for amparo in criminal matters, revoked the amparo judgment issued on December 31, 2014, considering that all the evidence provided by the prosecution had not been analyzed, and ordered the 4^oTU/17^oC–Chihuahua to make a new assessment and to issue a new judgment.³⁰⁷ Consequently, on October 7, 2016, the justice of the 4^oTU/17^oC–Chihuahua issued a new ruling in compliance with that order and confirmed the decision of March 31, 2014, issued by the Seventh District Judge in the state of Chihuahua, refusing to issue an arrest warrant against Élfego Luján Ruiz for the crime of forced disappearance of persons (*supra* para. 126).³⁰⁸ As this decision was not contested, it became final on November 7, 2016.³⁰⁹

D.6.2. Preliminary Inquiry AP/PGR/SDHPDSC/UEBPD/M5/50/2013

134. In order to continue searching for the three disappeared and to investigate the probable participation of other public servants in the facts set out in the charge sheet of March 31, 2014, the Assistant Prosecutor for Human Rights, Crime Prevention and Community Services of the PGR also ordered a "*desglose*" [disaggregation] of the investigation.³¹⁰

³⁰¹ Cf. Order of September 17, 2014, issued by the justice of the 3^oTU/17^oC (evidence file, helpful evidence provided by the State, f. 32475).

³⁰² Cf. Complaint filed on September 29, 2014 (evidence file, helpful evidence provided by the State, ff. 32486 to 32490).

³⁰³ Cf. Decision of the Seventeenth Collegiate Circuit Court of November 21, 2014 (evidence file, helpful evidence provided by the State, f. 32522).

³⁰⁴ Cf. Decision of December 5, 2014, signed by the justice of the 3^oTU/17^oC–Chihuahua (evidence file, helpful evidence provided by the State, f. 32526).

³⁰⁵ Cf. Ruling in indirect amparo proceeding 21/2014 of December 31, 2014, issued by the justice of the 3^oTU/17^oC–Chihuahua (evidence file, ff. 1246 to 1375).

³⁰⁶ Cf. Decision of January 21, 2015, signed by the secretary of the 3^oTU/17^oC–Chihuahua (evidence file, helpful evidence provided by the State, ff. 32750 to 32751).

³⁰⁷ Cf. Judgment of June 9, 2016, corresponding to Appeal 80/2015 (evidence file, helpful evidence provided by the State, ff. 32840 to 32842).

³⁰⁸ Cf. Ruling of October 7, 2016, issued by the justice of the 4^oTU/17^oC–Chihuahua, in compliance with the judgment of the Seventeenth Collegiate Circuit Court Chihuahua of June 9, 2016 (evidence file, helpful evidence provided by the State, ff. 33140 and 33141).

³⁰⁹ Cf. Decision of November 7, 2016, signed by the justice of the 3^oTU/17^oC–Chihuahua (evidence file, helpful evidence provided by the State, f. 33294).

³¹⁰ In its answering brief, the State advised that "the term '*desglose*' corresponded to a disaggregation of actions so that an authority other than the one in charge of the case file could examine a specific act that the law established as

135. Owing to this disaggregation, on April 1, 2014, a new preliminary inquiry under the heading AP/PGR/SDHPDSC/UEBPD/M5/50/2013 (or "50/2013") was opened by the Special Search Unit for Disappeared Persons [UEBDP-PGR].³¹¹ Under this inquiry, the PGR incorporated all the measures and judicial actions taken since the very first reports based on the facts of the three disappearances, and continued with the investigation following Preliminary Inquiry 66/2013.³¹²

136. The following measures, among others, were taken under Preliminary Inquiry 50/2013:

- i. Judicial inspection on May 14 and 15, 2014, in the place known as the "Mine Shaft" in the Ejido Benito Juárez, Chihuahua, during which the PGR recovered human remains. Following their forensic analysis, it was determined that these remains did not correspond to any of the three disappeared;³¹³
- ii. On October 21, 2014, the Director of Response to Judicial and Institutional Injunctions of the Ministry of the Interior [DARJMI-SEGOB] was asked to forward a list of all the members of the army with the last name "Meza" who were active between December 2009 and January 2010.³¹⁴ On November 11 that year, the DARJMI-SEGOB advised that it had not found any person with the last name "Meza" who had been posted, assigned or changed their affiliation to Chihuahua between December 2009 and January 2010;³¹⁵
- iii. Judicial inspection of December 4, 2014, by the AMPF, Víctor Cruz Martínez, accompanied by the head of the UEBPD-PGR at the time, Salomón Baltazar Samayoa, of the 2002 grey Chevrolet Silverado, licence plate 6RMW08 of the state of Texas, U.S.A., which was under administration by the Service for the Administration and Disposal of Assets of the Ministry of Finance and Public Credit;³¹⁶
- iv. Judicial inspections of March 4, 2015, conducted by the AMPF, Víctor Cruz Martínez, accompanied by the head of the UEBPD-PGR, Salomón Baltazar Samayoa, in order to access the photographic files and documentary records of the individuals detained by the 35th Infantry Battalion; they were denied access on the same date.³¹⁷ On March 26 that year, they were informed that there was no documentary or photographic record of detainees in the 35th Battalion;³¹⁸

a crime and that differed from the act that was being investigating in the main case file, because the said act related to the jurisdiction of the authority for whom the actions were disaggregated" (merits file, f. 444, para. 453).

³¹¹ Cf. Charge sheet, without detainee, of March 31, 2014, signed by the AMPF5^aM-UEBDP, *supra*, ff. 17120 to 17121. Fourth operative paragraph; Decision to open Preliminary Inquiry 50/2013 of April 1, 2014, ff. 4487 to 4490 and Communication of April 1, 2013, of the AMPF5^aM-UEBDP (evidence file, ff. 1377).

³¹² Cf. Communication of April 1, 201[4], signed by the AMPF, Head of the Vth Bureau of the UEBDP-PGR, addressed to the head of the UEBDP-PGR (evidence file, criminal case file, f. 17166), and decision to open Preliminary Inquiry 66/2013 of April 4, 2013, *supra* ff. 4491 to 4494.

³¹³ Cf. Record of judicial inspection of May 14, 2014 (evidence file, criminal case file, ff. 17321 to 17327). As a result of this judicial inspection, the PGR received the following expert reports on May 26, 2014: (a) forensic photograph report; (b) field criminalistics report, and (c) forensic medicine report (evidence file, judicial file, ff. 19162 to 19333). On June 30, 2014, the anthropological report was received (ff. 19419 to 19475), and on October 9 that year, the DNA report, which determined that the DNA found did not correspond to the genetic profiles of the members of the victims' families (ff. 19755 to 19769).

³¹⁴ Cf. Communication No. PF/SG/CSG/DGRH/DRLO/5257/2014 of October 14, 2014, from the Director of Labor Relations of the Federal Police, addressed to la DARJMI-SEGOB (evidence file, criminal case file, ff. 20763 to 20765); Communication No. PF/DGAJ/DGAAP/DARJMI/7023/2014 of October 20, 2014, signed by the DARJMI-SEGOB, addressed to the AMPF5^aM-UEBDP (evidence file, criminal case file, f. 20762), and judicial certification of October 21, 2014, of the AMPF5^aM-UEBDP (evidence file, criminal case file, f. 20761).

³¹⁵ Cf. Communication No. PF/SG/CSG/DGRH/DRLO/6403/2014 of November 6, 2014, from the Director of Labor Relations of the Federal Police, addressed to the DARJMI-SEGOB (evidence file, criminal case file, f. 20912); Communication No. PF/DGAJ/DGAAP/DARJMI/7507/2014 of November 11, 2014, from the DARJMI-SEGOB addressed to the AMPF5^aM-UEBDP (evidence file, criminal case file, f. 20911), and judicial decision of November 18, 2014, of the AMPF5^aM-UEBDP (evidence file, criminal case file, f. 20910).

³¹⁶ Cf. Record of judicial inspection of December 4, 2014 (evidence file, ff. 28182 to 28184).

³¹⁷ Cf. Record of judicial inspection of March 4, 2015 (evidence file, ff. 1402 to 1414).

³¹⁸ Cf. Record of judicial inspection of March 26, 2015 (evidence file, criminal case file, ff. 22948 to 22950).

- v. On March 12, 2015, Gabriel Flores Meza and David Meza Espinosa testified as witnesses (because their last name was "Meza" and they appeared on the list sent by the Federal Police),³¹⁹ and they denied having taken part in any kind of investigation into the theft of vehicles and the death of the three members of the Federal Police or having any knowledge of the three disappearances,³²⁰ and
- vi. Judicial inspection of March 25, 2015, to locate clandestine graves in the municipalities of Buenaventura and Janos, Chihuahua, without find the disappeared.³²¹

D.6.3. Sixth District Criminal Amparo Court in Ciudad Juárez [Amparo Proceeding 09/2010-I]

137. On January 6, 2010, José Ángel Alvarado Fabela, Jose Ángel Alvarado Herrera's father, filed an application for amparo in Ciudad Juárez, Chihuahua, requesting the provisional and final suspension of "the illegal detention, in the absence of a judicial procedure" of Nitza Paola and José Ángel Alvarado.³²² This application was filed before the Sixth District Criminal Amparo Court in Ciudad Juárez as No. 09/2010-I, and ordered the authorities indicated as responsible, within 24 hours, to submit certifications proving that the detention of Nitza Paola and José Ángel Alvarado had been urgent or that they had been found *in flagrante delicto* or, to the contrary, ordering their immediate release.³²³

138. On January 7, 2010, the federal court required Nitza Paola and José Ángel Alvarado to be brought before the court or information provided on their location so that they could ratify the petition. Since this was not possible, on May 6, 2010, it ordered the suspension of the proceeding.³²⁴ On May 17, 2011, the judge decided that since one year had passed since the said proceeding had been suspended and given the impossibility of locating the two complainants, it was considered that the application for amparo had not been filed.³²⁵

D.7. Other proceedings

D.7.1. National Human Rights Commission [CNDH]³²⁶

139. On January 4, 2010, Jaime Alvarado Herrera filed a complaint against the SEDENA before the CNDH in Ciudad Juárez, Chihuahua, owing to the disappearance of his next of kin.³²⁷

³¹⁹ Cf. Judicial decision of February 12, 2015, of the AMPF5ªM-UEBDP (evidence file, criminal case file, f. 22309); Unnumbered communication on collaboration addressed to la DARJMI-SEGOB (evidence file, criminal case file, f. 22311).

³²⁰ Cf. Statements made on March 12, 2015, before the AMPF5ªM-UEBDP by Gabriel Flores Meza (evidence file, criminal case file, ff. 22878 and 22879), and David Meza Espinoza (evidence file, criminal case file, ff. 22885 to 22887).

³²¹ Cf. Record of judicial inspection of March 25, 2015 (evidence file, judicial file, ff. 22942 to 22947).

³²² Cf. Application for amparo filed by José Ángel Alvarado Fabela on January 6, 2010, before the sitting District Criminal Amparo Judge in Ciudad Juárez, Chihuahua (evidence file, ff. 2625 to 2628). This application indicated that the authorities responsible for the facts claimed were the heads of: 1. The 35th Infantry Battalion headquartered in Nuevo Casas Grandes; 2. The Military Garrison of Ciudad Juárez; 3. The Chihuahua Joint Operation in Ciudad Juárez; 4. The PGR in Ciudad Juárez; 5. The Preliminary Inquiries Department of the PGJE of Casas Grandes, Chihuahua, and 6. The Agency of the Public Prosecution Service for the ordinary jurisdiction in Buenaventura, Chihuahua. And also: 7. Lieutenant or Captain Élfido Luján [*sic*].

³²³ Cf. Decision on provisional suspension of January 6, 2010. Decision of the Secretary of the Sixth District Court in the state of Chihuahua (evidence file, ff. 2367 to 2369).

³²⁴ Cf. Decision of May 6, 2010. Decision of the Sixth District Judge in the state of Chihuahua (evidence file, helpful evidence presented by the State, f. 31621).

³²⁵ Cf. Decision of May 17, 2011. Decision of the Sixth District Judge in the state of Chihuahua (evidence file, helpful evidence presented by the State, f. 31623).

³²⁶ The National Human Rights Commission (CNDH) is a non-judicial, autonomous, public state agency for the defense and protection of human rights. Its mission is to protect, respect, promote, study and disseminate human rights protected by the Mexican legal system, as well as the international treaties applicable to Mexico. If violations are proved, it has the authority to issue recommendations, which include measures addressed at the effective re-establishment of the rights and, if appropriate, the reparation of the harm caused. These recommendations are not binding for the authorities concerned; thus, the latter may or may not accept them; in the latter case, the authority in question may be held accountable before the Chamber of Senators or, in their recesses, the Permanent Committee, or the legislatures of the federal entities, pursuant to articles 15.X and 46.3.a) of the Law on the CNDH, published in the Official Gazette of the Federation on June 29, 1992.

³²⁷ Cf. Complaint filed on January 4, 2010, by Jaime Alvarado Herrera before the CNDH in Ciudad Juárez, Chihuahua (evidence file, ff. 1833 and 1834).

140. On June 30, 2011, the CNDH issued Recommendation 43/11 addressed to the heads of the SEDENA and the Federal Ministry of Public Security [SSPF], as well as to the Governor of Chihuahua, in which it determined the participation of state agents of the SEDENA and of the Federal Police in the arbitrary detention and forced disappearance of the three victims.³²⁸ To reach these conclusions, the CNDH took into account:

- i. The context of militarization in Buenaventura, Chihuahua;
- ii. The testimony of the family members present when the facts occurred;
- iii. The statements of different public officials, and the lack of evidence to prove the actions taken by state agents on the day of the events and to disprove the indications of their possible participation in them and, lastly,
- iv. The lack of actions to clarify the facts and identify those responsible, despite the existence of different investigations in the local, federal and military jurisdictions.

141. Recommendation 43/11 was not accepted by the SSPF,³²⁹ but was accepted by the government of the state of Chihuahua³³⁰ and by the SEDENA.³³¹ As a result of this acceptance, on November 14, 2012, the SEDENA delivered to Obdulia Espinoza Beltrán, Patricia Reyes Rueda and Ascensión Alvarado Fabela (as legitimate beneficiaries of the three disappeared), the sum of 182,003.60 (one hundred and eighty-two thousand and three Mexican pesos and 60/100) as financial support, clarifying in the respective agreement signed with each of the said beneficiaries that this sum was delivered as an act of good faith without this signifying an acknowledgement of responsibility in the three disappearances.³³²

D.7.2. Program for Attention to Complaints and Reports concerning the Juárez Joint Operation [Complaint 886/09]

142. On January 4, 2010, Patricia Reyes Rueda filed a complaint against members of the military “posted in the State” and “Élfido or Elfidio Luján” for the disappearance of her next of kin in the offices of the Program for Attention to Complaints and Reports concerning the Juárez Joint Operation in Ciudad Juárez, Chihuahua, and this was registered as number 886/09.³³³ However, to date, there is no information on the final decision made on this complaint, because the Court has no evidence of its existence.³³⁴

E. The threats and harassment received by the families, their displacements following the three disappearances, and the provisional measures

E.1. The threats and harassment received by the families

³²⁸ Cf. Recommendation 43/2011, of the CNDH issued on June 30, 2011 (evidence file, annex 7 to the State’s answering brief, ff. 27839 to 27875).

³²⁹ Cf. Communication No. SSP/SPPC/DGDH/6035/2011, of August 4, 2011, of the Director General of Human Rights of the SSPF, addressed to the President of the CNDH (evidence file, criminal case file, ff. 4623 to 4639).

³³⁰ Cf. Communication No. FEAVOD/O86/2012 of January 30, 2012, signed by the Special Prosecutor for Attention to Victims of Crime and Injured Parties of the state of Chihuahua, addressed to the Second General Inspector of the CNDH with regard to Communication DE-078/2011, in which the Governor of the state of Chihuahua accepted Recommendation 43/11 of the CNDH (evidence file, criminal case file, f. 4666).

³³¹ Cf. Communication No. DH-R-8356 of August 3, 2011, of the SEDENA Director General of Human Rights, addressed to the President of the CNDH (evidence file, criminal case file, f. 4722). Regarding compliance with Recommendation 43/11, in this communication the SEDENA Director General of Human Rights clarified that “the actions that it should comply with, relating to the investigation of the facts and the reparation of the harm, will be subject to the result of the judicial and administrative investigations by the competent authorities.”

³³² Cf. Agreement in compliance with Recommendation 43/11 signed by SEDENA and Obdulia Espinoza Beltrán, Patricia Reyes Rueda and Ascensión Alvarado Fabela (evidence file, criminal case file, ff. 5139 to 5142), and Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018 (evidence file, affidavits, f. 31015).

³³³ Cf. Complaint 886/09 of January 4, 2010 (evidence file, criminal case file, ff. 6837 to 6839).

³³⁴ On October 16, 2018, the State forwarded a communication in which, in relation to this helpful evidence requested by the Court, it advised that: “following a thorough search by the authorities that might have the information requested, it had only found a copy of complaint 886/09 filed in the offices of the Program for Attention to Complaints and Reports of the Chihuahua Joint Operation in Ciudad Juárez [...]” (merits file, f. 2324).

143. First, on May 13, 2010, the Inter-American Commission submitted a request for provisional measures to the Court, for the State to protect the life and personal integrity of Nitza Paola, Rocío Irene and José Ángel Alvarado.³³⁵ In an order of May 26, 2010, the Court ordered the State to adopt, immediately, all necessary measures to discover the whereabouts of the victims and, then, to protect, their life, and personal integrity and liberty.³³⁶ In an order of November 26, 2010, the Court decided to maintain the measures owing to the lack of concrete results on the part of the state authorities. Moreover, based on the information received regarding acts of harassment against the families, the Court considered that 24 family members were in a situation of risk and decided to expand the measures to include them.³³⁷

144. On January 29, 2011, José Ángel Alvarado Fabela (José Ángel Alvarado Herrera's father) received a call on his mobile telephone in which someone said to him:

"We have your daughter and she is alive; we are going to kill you and your children like dogs; you have 12 hours to leave your home and the town; if not, we will kill you all because you are talking too much."³³⁸

145. On March 16, 2011, the CNDH requested the SEDENA Director for Human Rights to extend the precautionary measures put in place within the framework of MC-55-10 granted on March 4, 2010, by the Inter-American Commission. This request was motivated by the fact that the CNDH had information that the family had received death threats which they attributed to members of the Army.³³⁹ The SEDENA agreed to extend the precautionary measures on March 19, 2011.³⁴⁰

146. In an order of May 15, 2011, the Court determined that, in view of the reported incidents – which revealed a situation of extreme gravity and urgency – the State must adopt the necessary measures to protect the life and personal integrity of another 9 family members.³⁴¹ It also reiterated the measures for the other beneficiaries and ordered the State to plan and implement the measures with the participation of the beneficiaries.³⁴² In this regard, on June 28, 2011, the Inter-American Court held a public hearing with the participation of the parties and the Commission.³⁴³

147. On July 14, 2011, in Ciudad Juárez, Chihuahua, Jaime Alvarado went to the home of his brother, José Ángel Alvarado Herrera, after receiving a phone call telling him that someone was committing a robbery in that house, to see what had happened. When he was riding his bicycle home, a grey Chevrolet pick-up ran into him, intentionally in his opinion.³⁴⁴

148. Based on these facts, on March 5, 2013, Investigation File 2216/3760/2013 was opened in the FGE-Chihuahua; but it was concluded that there was no evidence to establish a direct link

³³⁵ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of May 26, 2010, para. 1.

³³⁶ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of May 26, 2010, *supra*, operative paragraphs 1, 2, and 3.

³³⁷ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of November 26, 2010, operative paragraphs 1, 2 and 3.

³³⁸ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of April 1, 2011. Having seen paragraph 7(d); Statement made before the Court by Jaime Alvarado Herrera during the public hearing, *supra*, p. 34, and Affidavit made by José Ángel Alvarado Fabela on April 19, 2018 (evidence file, affidavits, f. 30882).

³³⁹ Cf. Communication No. V2/1447 of March 16, 2011, signed by the Second Inspector of the CNDH (evidence file, ff. 11957 to 11959).

³⁴⁰ Cf. Communication No. DH-II-2800 of March 18, 2011, of the SEDENA General Directorate of Human Rights (evidence file, ff. 11960 and 11961).

³⁴¹ Cf. *Matter of Alvarado Reyes et al.* Order of May 15, 2011, *supra*, para. 18.

³⁴² Cf. *Matter of Alvarado Reyes et al.* Order of May 15, 2011. *supra*, operative paragraphs 1, 2, 3, 4, 6 and 7.

³⁴³ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of November 23, 2012, paras. 5 to 7.

³⁴⁴ Cf. *Matter of Alvarado Reyes. Provisional measures with regard to Mexico*. Order of November 23, 2012, *considerandum* 17(f), and Statement made before the Court by Jaime Alvarado Herrera during the public hearing, *supra*, p. 34.

between those facts and the disappearance of the three presumed victims.³⁴⁵

149. On August 28, 2011, at around 12 m., a neighbor of Jaime Alvarado heard noises coming from his house, located in Ciudad Juárez, Chihuahua, and therefore contacted Sandra Luz Rueda Quezada (Jaime Alvarado's wife) to advise her that her house was being robbed by individuals that she identified as "officials who were talking in code [...] who were communicating by radio."³⁴⁶ Sandra Luz Rueda stated that when she entered the house:

"Baby talcum powder had been spread everywhere, as if to erase prints [...]. Then, I found a piece of paper stuck to the wall with tape; it was there in the kitchen; and the paper [...] that paper – I found it and did not touch it; I left it until the police arrived."³⁴⁷

This paper said: "We wanted to eliminate you and couldn't, but we have you in our sights, *culero*, and we're going to do you in, you and your miserable family; signed, you know who."³⁴⁸

150. As a result of this incident, on August 31, 2011, the CNDH asked the FGE-Chihuahua to adopt precautionary measures in favor of Jaime Alvarado Herrera and his household.³⁴⁹ However, the SSPF Director General for Human Rights, in his answer to this request, replied that "it [was] not possible to respond to the request because it prejudged the existence of acts of harassment by members of the [Federal] Ministry of Public Security without providing any evidence or indications."³⁵⁰ In addition, Preliminary Inquiry AP/PGR/CHIH/JUA/2758/2011 was opened before the PGR-Chihuahua to investigate the incident.³⁵¹

E.2. The displacements of the families and the threats they received

E.2.1. Family group of Nitza Paola Alvarado Espinoza

151. Following the three disappearances and owing to the fear that similar events could occur, the family group of Nitza Paola Alvarado (*supra*, para. 76), moved from the Ejido Benito Juárez, where they resided, as follows:

- i. N.S.A.E., M.P.A.E., and D.A.E., Nitza Paola Alvarado's daughters, moved to Ciudad Juárez together with their grandfather, Ascención Alvarado Fabela, their aunt, María de Jesús Alvarado, the latter's husband, Rigoberto Ambriz and their four children.³⁵² From that city, they moved, together with their maternal grandparents to Cuernavaca, where they stayed for six months, from January to June 2010, in the care of an aunt;³⁵³
- ii. After this, Nitza Paola Alvarado's three daughters, and also María de Jesús Alvarado, Rigoberto Ambriz Marrufo, their children, María de Jesús Espinoza and Ascención Alvarado Fabela (maternal grandparents) moved to Culiacán, state of Sinaloa, for about a month.³⁵⁴ They then moved to

³⁴⁵ Cf. The State's brief of January 28, 2014, in the context of the implementation of the provisional measures granted by the Court in the *Matter of Alvarado Reyes et al. with regard to Mexico* on November 23, 2012 (evidence file, f. 2250).

³⁴⁶ Statement made by Sandra Luz Rueda Quezada on November 15, 2013, before the AMP of the Special Unit for Crimes against Physical Integrity and Harm of the PGJE-Chihuahua (evidence file, f. 29054), and *Matter of Alvarado Reyes. Provisional measures with regard to Mexico*. Order of November 23, 2012, *supra*, *considerandum* 17(g).

³⁴⁷ Affidavit made by Sandra Luz Rueda Quezada on April 19, 2018 (evidence file, affidavits, f. 30955).

³⁴⁸ Cf. Handwritten note found at the site of the facts on August 28, 2011 (evidence file, file of procedure before the IACHR, f. 3046).

³⁴⁹ Cf. Communication No. V2/56240 of August 31, 2011, signed by the Second Inspector General, addressed to the Prosecutor General of the state of Chihuahua (evidence file, ff. 4647 and 4648).

³⁵⁰ Communication No. SSP/SPPC/DGDH/6557/2011, of September 2, 2011, of the Director General of Human Rights of the Federal Ministry of Public Security, addressed to the Second Inspector of the CNDH (evidence file, ff. 4642 and 4643).

³⁵¹ Cf. Communication No. SJAI/CAIA/DGCI/45190/2011, of September 20, 2011, of the General Directorate of International Cooperation of the PGR, addressed to the head of the UPDDH-SEGOB (evidence file, f. 2299).

³⁵² Cf. Affidavit made by D.A.E. on April 18, 2018 (evidence file, affidavits, f. 30890).

³⁵³ Cf. Affidavits made on April 18, 2018, by: D.A.E., *supra*, f. 30890; M.P.A.E. (evidence file, affidavits, f. 30896), and N.S.A.E. (evidence file, affidavits, f. 30903).

³⁵⁴ Cf. Affidavits made on April 18, 2018, by: D.A.E., *supra* (evidence file, f. 30890); M.P.A.E., (*supra*, f. 30897), and N.S.A.E., *supra* (evidence file, f. 30904).

Hermosillo, state of Sonora, where they remained for two and a half³⁵⁵ or three years.³⁵⁶

- iii. Then, Nitza Paola Alvarado's three daughter lived for about a year in the city of Chihuahua, from October 2012 to September 2013.³⁵⁷ Subsequently, they went to Ciudad Juárez, where they remained two days preparing their departure from Mexican territory for the United States of America.³⁵⁸
- iv. Lastly, in September 2013, Ascensión Alvarado Fabela and Maria de Jesús Espinoza Peinado (Nitza Paola Alvarado's parents); María de Jesús Alvarado Espinoza (sister); Rigoberto Ambriz Marrufo (María de Jesús Alvarado's husband), and their four youngest children, R.A.A., I.A.A.A., J.E.A.A. and A.Y.A.A, and N.S.A.E, M.P.A.E. and D.A.E. (Nitza Paola Alvarado's daughters) travelled to El Paso, in the state of Texas, U.S.A., and requested asylum before the authorities of that country.³⁵⁹ Finally, in 2015, Nitza Paola Alvarado's three daughters were granted permanent residence.³⁶⁰
- v. Meanwhile, in the case of María de Jesús Espinoza Peinado, Ascensión Alvarado Fabela, Rigoberto Ambriz Marrufo and their four children, who also requested political asylum in the U.S.A., they currently reside in Odessa, in the state of Texas, U.S.A.³⁶¹ However, María de Jesús Alvarado Espinoza (who also lived with her family members in Odessa, Texas) came to the Inter-American Court to testify at the public hearing in this case on April 26, 2018, and, on leaving U.S.A. territory, she was refused permission to return and lost her possibility of obtaining asylum, which had been pending a decision.³⁶²

E.2.2. Family group of Rocío Irene Alvarado Reyes

152. Following the disappearance of Rocío Irene Alvarado, her family group (*supra*, para. 77) moved from the Ejido Benito Juárez, where they lived, as follows:

- i. A month after the disappearance of Rocío Irene Alvarado, her mother, Patricia Reyes Rueda, moved from the Ejido Benito Juárez with her sons, A.A.R. and A.R.A.R. (Rocío Irene Alvarado's brothers), and also her granddaughter A.M.U.A. (Rocío Irene Alvarado's daughter), because she was afraid that the events could be repeated, and settled in the city of Chihuahua for a year. Subsequently, she returned to the Ejido Benito Juárez, sold her old home and built a new home to which she moved with her family. They lived there until 2016.³⁶³
- ii. In 2016, Patricia Reyes moved, with her son A.A.R. and her granddaughter A.M.U.A., to the city of Chihuahua to a house provided by the government of the state of Chihuahua, by mutual agreement, in the context of the provisional measures granted by the Court and of which her family group is a beneficiary to date. One year later, as the family was unable to adapt to the new circumstances, they returned voluntarily to the Ejido Benito Juárez.³⁶⁴

³⁵⁵ Cf. Affidavit made by D.A.E. on April 18, 2018, *supra* (evidence file, f. 30891).

³⁵⁶ Cf. Affidavit made by M.P.A.E. on April 18, 2018, *supra* (evidence file, f. 30897).

³⁵⁷ Cf. Affidavits made on April 18, 2018, by: D.A.E., *supra* (f. 30891), and M.P.A.E., *supra* (evidence file, f. 30897).

³⁵⁸ Cf. Affidavit made by D.A.E. on April 18, 2018, *supra* (evidence file, f. 30891).

³⁵⁹ Cf. Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018 (evidence file, affidavits, f. 31013). Also, cf. Affidavits made on April 18, 2018, by: D.A.E., *supra* (evidence file, ff. 30891 to 30892), and M.P.A.E., *supra* (evidence file, ff. 30897 and 30898). According to their respective statements, when they arrived in El Paso, Texas, Nitza Paola Alvarado's three daughters were separated from the rest of their family members by the immigration authorities because they were considered "unaccompanied minors," and were transferred to a shelter in Phoenix, Arizona, U.S.A., for two months. A week before the 18th birthday of N.S.A.E. and M.P.A.E., they were moved from the shelter.

³⁶⁰ Cf. CNDH, *Risk assessment of March 23, 2018, submitted in response to the seventh operative paragraph of the provisional measures ordered by the Court on November 14, 2017, in the Matter of Alvarado Reyes et al. with regard to Mexico* (provisional measures file, f. 3254).

³⁶¹ Cf. CNDH, *Risk assessment of March 23, 2018, supra*, f. 3249, and Affidavit made by D.A.E. on April 18, 2018, *supra* (evidence file, f. 30892).

³⁶² Cf. Statement made before the Court by María de Jesús Alvarado Espinoza during the public hearing on April 26, 2018 (transcript of the public hearing, p. 13).

³⁶³ Cf. CNDH, *Risk assessment of March 23, 2018 (supra ff. 3266 and 3268)*, and Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018, *supra* (evidence file ff. 30998 and 31013).

³⁶⁴ Cf. CNDH, *Risk assessment of March 23, 2018 (supra f. 3266)*, and Affidavit of expert witness Carlos Martín Beristáin provided on April 16, 2018, *supra*, f. 31013.

E.2.3. Family group of José Ángel Alvarado Herrera

153. As a result of the threats that José Ángel Alvarado Fabela received by telephoned on January 29, 2011 (*supra* para. 144), the members of José Ángel Alvarado Herrera's family group, who lived in Ciudad Juárez, decided to leave immediately the same day because they were afraid. Consequently (*supra* para. 78):

- i. José Ángel Alvarado Fabela (father), Concepción Herrera (mother) Obdulia Espinoza Beltrán (wife), J.A.E, J.A.A.E and A.E.B (children); Jaime Alvarado Herrera (brother); Sandra Luz Rueda Quezada (sister-in-law, Jaime Alvarado's wife), J.O.A.R, R.G.A.R, C.N.A.R, J.E.A.R. (nephews and nieces, children of Jaime Alvarado and Sandra Luz Rueda); Rosa Olivia Alvarado Herrera (sister), Félix García García (brother-in-law, Rosa Olivia Alvarado's husband), and Karina Paola Alvarado Espinoza, F.A.H and J.G.A (nephews and nieces, children of Rosa Olivia Alvarado and Félix García) moved to the Ejido Benito Juárez;³⁶⁵
- ii. Then, Rosa Olivia Alvarado Herrera, Félix García García, Karina Paola Alvarado Espinoza, F.A.H. and J.G.A., returned to Ciudad Juárez and rented a house to live in, because they never returned to live in the house they owned in that city as they were afraid owing to the threats they had received.³⁶⁶ Later, Jaime Alvarado, his wife Sandra Luz Rueda and their four children returned to Ciudad Juárez, living in the same rented house.³⁶⁷

154. After Jaime Alvarado had been run over and his family home in Ciudad Juárez raided in 2011 (*supra*, paras. 147 and 149), he moved to Hermosillo, Sonora, where he lived for a year apart from his wife and children, who continued to live in Ciudad Juárez, Chihuahua.³⁶⁸

155. Finally, and as a result of the murder of F.A.H. (Rosa Olivia Alvarado's son) on February 6, 2018,³⁶⁹ and the threats made against Jaime Alvarado in the Ejido Benito Juárez when he went to the funeral,³⁷⁰ José Ángel Alvarado Fabela, Jaime Alvarado, Sandra Luz Rueda and

³⁶⁵ Cf. Affidavit made by José Ángel Alvarado Fabela on April 19, 2018, *supra* (evidence file, ff. 30882 and 30883); Affidavit made by Obdulia Espinoza Beltrán on April 19, 2018 (evidence file, affidavits, f. 30912); Statement made before the Court by Jaime Alvarado Herrera during the public hearing, *supra*, p. 34; Affidavit made by Sandra Luz Rueda Quezada on April 19, 2018 (evidence file, affidavits, f. 30954); Affidavit made by Rosa Olivia Alvarado Herrera on April 18, 2018 (evidence file, affidavits, f. 30924); Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018, *supra* (evidence file, f. 31013), and CNDH, *Risk assessment of March 23, 2018, supra* (ff. 3233 and 3234).

³⁶⁶ Cf. Affidavit made by Rosa Olivia Alvarado Herrera on April 18, 2018, *supra* (evidence file, ff. 30924 and 30925). In this, Rosa Olivia Alvarado indicated: "[...] Manuel [Melquíades Alvarado] went to Flores Magón and the others, we were in Benito Juárez. Manuel stayed there half a year and then moved [to Ciudad Juárez] to work alone without taking his family because he was afraid. He was alone in his house and then, later, they all came; that is, his wife and daughters. [...] I returned to [Ciudad] Juárez to give birth, but I didn't go back to my own house, because I was afraid. I rented another house, here in [Ciudad] Juárez. First, Félix and I came, and Jaqueline, Karina and Fabián (my children) stayed in Benito Juárez, but after I had given birth, the children, all three of them, came back to live with me. Then, Jaime, Sandra and their children returned to Ciudad Juárez. We were all in the same house, except my father and mother who remained in Benito [Juárez] and it was only when my mother became ill that they came to Ciudad Juárez [...]."

³⁶⁷ Cf. Affidavit made by Sandra Luz Rueda Quezada on April 19, 2018, *supra* (evidence file, f. 30954).

³⁶⁸ Cf. Affidavit of expert witness Carlos Martín Beristáin of April 16, 2018, *supra* (evidence file, f. 31013); CNDH, *Risk assessment of March 23, 2018, supra* (f. 3235), and Affidavit made by Sandra Luz Rueda Quezada on April 19, 2018, *supra* (evidence file, f. 30955). In her affidavit, Sandra Luz Rueda Quezada, Jaime Alvarado's wife, informed the Court that on the day on which F.A.H. was murdered (February 6, 2018), she was living in the Ejido Benito Juárez, because she was looking after her mother.

³⁶⁹ Cf. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico*. Order of March 14, 2018, *considerandum* 5.

³⁷⁰ Jaime Alvarado Herrera informed the CNDH that: "After the murder of my nephew Fabián [Alvarado Herrera, Rosa Olivia Alvarado's son], when the family was back in the Ejido Benito Juárez [the place where his funeral and subsequent burial was held], staff of the funeral home that were in charge of the service for Fabian told me that a group of individuals had asked about the family without giving any explanation, but merely commenting: 'you know who has sent us to ask,' so that, for their safety, they were safeguarded in the shelter in which they live at the present time [...]." Cf. CNDH, *Risk assessment of March 23, 2018, supra* (f. 3236). Similarly, in her affidavit for the Court, Sandra Luz Rueda Quezada stated that, following the funeral of F.A.H., she received a phone call from her husband, Jaime Alvarado, who told her: "Get everything ready, because we have to leave [...]. They are looking for us, they went to the funeral home and the boy at the funeral home told us that we should leave because anything could happen [...]." Cf. Affidavit made by Sandra Luz Rueda Quezada on April 19, 2018, *supra* (evidence file, f. 30956).

J.E.A.R. (the 7 year-old son of the last two), moved to a shelter provided by the State Victims Commission.³⁷¹

156. Meanwhile, Reyna Guadalupe and Cindy Nallely Alvarado Rueda, daughters of Jaime Alvarado and Sandra Luz Rueda, currently live in [deleted], while another of her children, J.O.A.R. (who witnesses the murder of F.A.H.) lives in [deleted], Chihuahua. Also, Rosa Olivia Alvarado Herrera moved to El Paso, Texas, U.S.A., with her husband, Félix García García, and their son, A.G.A., where they now live waiting for a decision on their request for asylum in that country owing to the situation of risk resulting from the murder of F.A.H., while one of her daughters, Karina Paola Alvarado Alvarado, remains living in [deleted].³⁷²

157. In the course of the procedure on provisional measures, this Court also ruled on the situation of risk and the displacements of the family members in orders of November 23, 2012, June 23, 2015, November 14, 2017, and March 14, 2018.³⁷³

VII MERITS

158. The instant case relates to the alleged responsibility of the Mexican State based on the forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado and Rocio Irene Alvarado Reyes by state agents in the Ejido Benito Juárez, state of Chihuahua, Mexico, starting on December 29, 2009, in the context of the implementation of the Chihuahua Joint Operation and the alleged fight against organized crime in the area. It also relates to various factors of impunity are alleged to have resulted from the failure to elucidate the facts and punish those responsible. Furthermore, following the disappearances, the family members of the disappeared were harassed and threatened on several occasions and had to move from their place of residence, and this has had other harmful effects.

159. Consequently, and bearing in mind the partial acknowledgement of responsibility made by the State, the Court must determine the scope of the violations that have been proved. To this end, the Court will now examine the arguments submitted by the parties and the Commission, and will develop the pertinent legal considerations with regard to the rights to: (i) recognition of juridical personality (Article 3), life (Article 4), personal integrity (Article 5) and personal liberty (Article 7), all of the American Convention, and I(A) of the Inter-American Convention on Forced Disappearance of Persons (Convention on Forced Disappearance); (ii) In addition, it will analyze the rights to judicial guarantees and judicial protection (Articles 8 and 25), and also the adoption of domestic legal provisions (Article 2), in light of Articles I(b) and IX of the Convention on Forced Disappearance; (iii) regarding the family members, it will also analyze the alleged rights to personal integrity (Article 5), freedom of movement and residence (Article 22), protection of the family (Article 17), protection of honor and dignity (Article 11) and of the child (Article 19), all in relation to Article 1(1) of the American Convention on Human Rights.

VII.1 RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY, LIFE, PERSONAL INTEGRITY AND PERSONAL LIBERTY (ARTICLES 3,³⁷⁴ 4,³⁷⁵ 5³⁷⁶ and 7³⁷⁷ OF THE AMERICAN

³⁷¹ Cf. CNDH, *Risk assessment of March 23, 2018, supra* (f. 3234).

³⁷² Cf. CNDH, *Risk assessment of March 23, 2018, supra* (ff. 3233, 3236 and 3237).

³⁷³ Available at: http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_medidas_provisionales.cfm?lang=es

³⁷⁴ Article 3. Right to Juridical Personality. "Every person has the right to recognition as a person before the law".

³⁷⁵ Article 4. Right to Life. "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...]."

³⁷⁶ Article 5. Right to Human Treatment. "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. [...]."

³⁷⁷ Article 7. Right to Personal Liberty. "1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. [...]."

**CONVENTION, AND I(A)³⁷⁸ OF THE INTER-AMERICAN CONVENTION ON FORCED
DISAPPEARANCE OF PERSONS)**

A. Arguments of the parties and of the Commission

160. The **Commission** concluded in its Merits Report that, in this case, the elements have been proved that allow what happened to Nitza Paola, José Ángel and Rocío Irene Alvarado to be classified as forced disappearance of persons. Regarding the elements of the deprivation of liberty and the direct intervention of state agents or their acquiescence, the Commission argued that the statements of the eyewitness were consistent in indicating that their next of kin were detained by men carrying rifles and wearing military uniforms. The Commission considered that there were elements that pointed to the direct intervention of state agents, such as: (i) the strong presence of army personnel as a result of the "Chihuahua Joint Operation" in the geographical area in which the events occurred; (ii) the consistency of the testimony indicating that those who had detained their next of kin wore the clothes, carried the weapons and used language that identified them as members of the Army; (iii) the statements of public officials that, taken as a whole, strongly suggested that the three presumed victims had been detained on the premises of the 35th Infantry Battalion or in the "Military Garrison," especially, the statements of Driver Sergeant Alberto Hernández, Argene Blásquez, Ramón Iván Sotomayor Siller and Damaris Baglietto, state agents, and (iv) the considerations of the FEVIMTRA-PGR concerning the existence of sufficient evidence that those who carried out the detentions were members of the Army. Based on those considerations, *inter alia*, the Commission concluded that the State had violated Articles 3, 4, 5 and 7, in relation to Articles 1(1) of the Convention, and I(A) of the American Convention on Forced Disappearance of Persons.

161. The **representatives** indicated that they agreed with the Commission's arguments in its report concerning the Mexican State's responsibility for the forced disappearance of the three presumed victims. In particular, they indicated that, in the instant case, it had been proved that at least eight uniformed soldiers armed with rifles detained the three disappeared and, in their opinion, it was "particularly relevant that the two incidents of arbitrary detention involved the use of force." They added that, with regard to Articles 5 and 7 of the Convention, "the State has an additional obligation to protect persons with disabilities," as was the case of Nitza Paola and José Ángel Alvarado. They argued that, in cases of forced disappearance committed in contexts of systematic practices, it is reasonable to infer the violation of Article 4 of the Convention and that, in this specific case, "eight years and five months had passed without any news of the [presumed] victims who, from the outset, were criminalized by the Armed Forces who linked them and their families to groups involved in organized crime" and that, in the Mexican context, in general, and that of Chihuahua, in particular, very few disappeared persons are found alive.

162. The **State** argued that, in this specific case, there was no direct evidence or solid indications to attribute the three disappearances to the State. Thus, they contested the contextual and evidentiary scenario presented by the Commission and the representatives in order to attribute it with international responsibility for the direct perpetration of the disappearances by state agents based, above all, on the following considerations: (i) it argued in its defense that there was no evidence to prove the existence of a systematic pattern of disappearances linked to the implementation of the Chihuahua Joint Operation and, to the contrary, it had been identified that "in Chihuahua, there was a clear context [...] indicative of the presence of organized crime in the region and the perpetration of unlawful activities against the population [...] [using] practices [...] to evade the action of justice, including the evident use of uniforms of the security forces," as well as "*levantones*" [unlawful deprivations of liberty], so that "the fact that armed groups wear military-type uniforms or behave in a similar way to members of the military, can never result *ipso facto* in overwhelming evidence that allows [disappearances] to be attributed to state agents. The State added that "the said reality forms

³⁷⁸ Article I. "The States Parties to this Convention undertake: (a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees. [...]."

an undeniable part of the context experienced in the state of Chihuahua at the time of the facts [that] cannot be ignored”; (ii) it argued that the “Chihuahua Joint Operation” was focused on Ciudad Juárez and not on the Ejido Benito Juárez; that “there is no evidence that points to the existence of a state policy to commit unlawful acts against the population in general”; that the 35th Infantry Battalion was not a direct participant in the said “Operation,” and was not posted as a result of it; rather this military unit was already established in the area prior to the disappearances and is permanent headquartered in Nuevo Casas Grandes, Chihuahua, and that, on the date on which the disappearances in this specific case occurred, no army personnel were deployed in the Ejido Benito Juárez; (iii) it considered that there were particular elements of the three disappearances “that related to unlawful activities specific to organized crime,” such as the murders of Rafael and Alfredo Alvarado Sáenz (father and uncle of Rocío Irene Alvarado) “just over a year before” the disappearances, which “constituted an immediate precedent to the facts [...] [that] should be considered as part of the context” to support the hypothesis that the facts were perpetrated by members of organized crime.

163. Regarding the elements of the alleged forced disappearance, as indicated in its acknowledgement, the State did not deny the deprivation of liberty perpetrated by a group of individuals wearing “military-type” uniforms. However, it argued that there were contradictions in the statements of the eyewitnesses in relation to their descriptions of the characteristics and color of the clothes the captors were wearing, and well as of the vehicles used in the detention of the presumed victims. It indicated that there was no direct evidence or sufficient indications to conclude that the disappearances had been perpetrated by state agents or that there had been acquiescence to the detention and a refusal to provide information on the fate or whereabouts of the presumed victims. It added that the authorities had been consistent in denying that information had been provided to the families confirming that the detentions had been perpetrated by state agents or that they were in the hands of the latter. Therefore, it argued that, at no time had the families been told that the disappeared persons were detained on the premises of the 35th Battalion; rather, based on the information provided by the families when carrying out their search activities and filing reports affirming that those who carried out the detentions were soldiers, the said officials had stated that “if the detention had been carried out by soldiers [...] the most probable place they would be was in the said Battalion [...], which is a referral and not an assertion” (CE., f. 626, para. 922), or “that they should ask in the said place.” Based on these arguments, the State concluded that, since two of the elements of forced disappearance had not been proved, it could not be attributed with the disappearances in this specific case and, consequently, it was not internationally responsible for violations of Articles 3, 4, 5 and 7, in relation to 1 of the Convention, and I(a) of the ICFDP.

B. Considerations of the Court

164. In light of the partial acknowledgement of responsibility, the context of the case and the proven facts (*supra* Chapters IV and VI), the Court notes that a dispute exists between the parties regarding whether, in this case, it has been proved that the presumed forced disappearances can be attributed to the State. Accordingly, first, the Court will establish the general framework within which it will make its analysis and, then, it will address the disputed aspects relating to the elements that constitute forced disappearance. Lastly, as appropriate, it will determine the corresponding responsibilities in relation to the alleged violations of Articles 3, 4, 5 and 7 of the American Convention and Article I(a) of the Inter-American Convention on Forced Disappearance of Persons [ICFDP].

B.1. Forced disappearance as a multidimensional and continuing violation of human rights and its determination

165. In its case law, the Court has developed the multidimensional nature of forced disappearance, as well as its permanent or continuing nature, which subsists while the whereabouts of the disappeared person are not known or until their remains are firmly identified.³⁷⁹

166. Accordingly, the analysis of forced disappearance must encompass the whole series of events that are submitted to the Court's consideration. It is only thus that the legal analysis of forced disappearance is consequent with the complex violation of human rights that it entails,³⁸⁰ with its permanent nature, and with the need to consider the context in which the facts took place, in order to analyze its effects over time and to address its consequences integrally, taking into account both the inter-American and the international *corpus juris* on protection.³⁸¹

167. Owing to certain arguments made by the State, to the effect that "there is no direct evidence or solid indications to attribute it with the disappearance" of the presumed victims in this specific case (*supra* para. 162), the Court deems it pertinent to recall its case law on the criteria applicable to the assessment of evidence in cases such as this one.

168. On this point, the Court has established consistently, since its first contentious case, that for an international court the standards for the assessment of evidence are less rigid than in domestic legal systems, and it has maintained that it is able to evaluate the evidence freely. Therefore, the international human rights jurisdiction should not be confused with the criminal jurisdiction, because States do not appear before the Court as subjects of a criminal action, so that in order to establish that a violation of the rights recognized in the Convention has occurred, it is not necessary that the Court prove, as required under domestic criminal law, that the State is responsible beyond any reasonable doubt, or that it identify individually the agents to whom the violations are attributed; rather it is sufficient to show that acts or omissions have been verified that have allowed the perpetration of those violations or that a state obligation existed with which the State has failed to comply.³⁸²

169. In addition, the Court reiterates, as it has in previous cases, that it must make an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that, despite this, is able to create the conviction of the truth of the alleged facts,³⁸³ especially in view of the nature of the protected legal rights to which the clarification of those facts relate. Therefore, in cases of forced disappearance of persons, the use of circumstantial evidence, indications and presumptions is legitimate and of special importance in order to reveal the concurrence of any of the elements of forced disappearance, because this specific type of violation is characterized by the endeavor to eliminate any factor that would prove the detention, the whereabouts and fate of the victims.³⁸⁴ In keeping with this criterion, the Court attributes a high probative value to the statements of the witnesses, in the context and the circumstances of a case of forced disappearance, with all the difficulties derived from this, where the evidence is essentially composed of indirect and circumstantial testimony based on the very nature of this crime, added to the pertinent logical inferences,³⁸⁵ as well as the links

³⁷⁹ Cf., *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 155 to 157, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of September 26, 2018. Series C No. 360*, para. 134.

³⁸⁰ Cf. *Case of Heliodoro Portugal v. Panamá. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186*, para. 112, and *Case of Terrones Silva et al. v. Peru, supra*, para. 134.

³⁸¹ Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153*, para. 85, and *Case of Terrones Silva et al. v. Peru, supra*, para. 134.

³⁸² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 173, and *Case of Terrones Silva et al. v. Peru, supra*, para. 138.

³⁸³ Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 129, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of November 30, 2016. Series C No. 328*, para. 138.

³⁸⁴ Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 131, and *Case of Terrones Silva et al. v. Peru, supra*, para. 136.

³⁸⁵ Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 130, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of February 15, 2017. Series C No. 332*, para. 110.

to a general practice of disappearances.³⁸⁶

170. In this regard, the Court has indicated that, even though a context of the systematic and generalized practice of forced disappearance exists, determination of the occurrence of a forced disappearance requires the existence of other elements that allow it to be corroborated that the person was deprived of their liberty with the participation of state agents or by private individuals acting with the authorization, support or acquiescence of the State. This Court has determined that “it is not enough to prove that a practice of disappearances exists, in the absence of any other evidence, even though this is circumstantial or indirect, to prove that a person whose whereabouts are unknown was a victim of this crime.”³⁸⁷

171. Based on the above, in light of the aspects disputed by the parties and the Commission, the Court will now determine, based on the different items of evidence, whether the elements that constitute forced disappearance are present in this specific case. These are: (a) the deprivation of liberty; (b) the intervention in, or acquiescence to, the facts by state agents, and (c) the refusal to acknowledge the detention or provide information and reveal the fate or the whereabouts of the person concerned. The Court will then include its general conclusion.

B.2. The forced disappearances in this case

B.2.1. The deprivation of liberty of the three presumed victims

172. The Court recalls that, when examining a presumption of forced disappearance, it is necessary to take into account that the deprivation of liberty of the individual should be understood as merely the commencement of the configuration of a complex violation that extends over time until the victim’s fate and whereabouts are known (*supra* para. 165) and, consequently, the way in which the deprivation of liberty occurred is not important in order to characterize a forced disappeared; in other words, any form of deprivation of liberty meets this first requirement.³⁸⁸ On this point, the UN Working Group on Enforced or Involuntary Disappearances [WGEID] has clarified that “enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention,” an opinion that has been used in preceding cases by this Court.³⁸⁹

173. In light of the arguments of the parties and the Commission, the explicit acknowledgement made by the State, and what has been established in the chapter on the facts, the Court finds it has been sufficiently proved that, on December 29, 2009, the presumed victims were deprived of their liberty in the Ejido Benito Juárez by a group of individuals bearing arms and wearing clothing with military characteristics and travelling in two private trucks, who first perpetrated the detention of Nitza Paola and José Ángel Alvarado, and then went to the home of Rocío Irene Alvarado and deprived her of her liberty, following which they drove off to an unknown destination (*supra* paras. 80 to 85). Consequently, the Court considers that the first requirement for the commencement of the configuration of this gross internationally wrongful act has been met.

B.2.2. The intervention in, or acquiescence to, the facts by state agents

³⁸⁶ Cf. *Case of Fairén Garbi and Solís Corrales v. Honduras. Merits*. Judgment of March 15, 1989. Series C No. 6, para. 15, and *Case of Osorio Rivera and family v. Peru. Preliminary objections, merits, reparations and costs, supra*, para. 146.

³⁸⁷ Cf. *Case of Fairén Garbi and Solís Corrales v. Honduras, Merits, supra*, para. 157, and *Case of Terrones Silva et al. v. Peru, supra*, para. 137.

³⁸⁸ Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs, supra*, para. 232, and *Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of August 20, 2018. Series C No. 355, para. 70.

³⁸⁹ Cf. *inter alia*: WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances, General comment on the definition of enforced disappearances*, A/HRC/7/2, January 10, 2008, para. 7 of para. 26 of the report; *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 28, 2005. Series C No. 138, para. 105; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 232, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 70.

174. The Court must now address the aspects of this case that remain in dispute and determine whether the State's responsibility in the alleged disappearances has been proved. To this end, the Court reiterates the admissibility of using indications and presumptions to demonstrate the concurrence of any of the elements of forced disappearance (*supra* para. 169). To make its analysis, the Court will consider: (i) the proven context; (ii) the participation of the Armed Forces in security tasks; (iii) the statements of the eyewitnesses or hearsay witnesses on the circumstances surrounding the detentions of their next of kin, and (iv) the conclusions reached by different courts and authorities with regard to the perpetrators of the facts.

(i) *The context in which the facts of the case took place*

175. In the instant case, the Court has verified that, when the facts took place, there was a context of a strong military presence in the state of Chihuahua, particularly in the Ejido Benito Juárez, owing to the implementation of the "Chihuahua Joint Operation" as a strategy of the State's response to the criminal violence that was rampant in the area (*supra* para. 72),³⁹⁰ as well as the actions to search for those responsible for the death of three agents of the Federal Police, which the State attributed to members of groups involved in organized crime (*supra* para. 73). In this context, the members of the army deployed for this purpose assumed functions related to the control of public order and, among other investigation methods, resorted to the detention of villagers who were suspected of being associated with criminal activities and with the said murders (*supra* para. 73).

176. On the one hand, the Court takes note of the State's arguments concerning the extremely complex nature of the context of violence in the area, regarding which it was necessary to "implement security actions and the legitimate deployment of the use of force by the State." Nevertheless, the Court also notes that the implementation of the State's strategies to combat organized crime based on the deployment of members of the Army in different parts of Mexican territory has resulted in constant monitoring and expressions of concern and warnings by various international agencies and national and international special mechanisms (*supra* paras. 59 to 67). These warnings, which the State did not contest with evidence disproving their content, described alleged gross human rights violations associated with the actions of members of the military in the context of these strategies, including forced disappearances, arbitrary detentions, and extrajudicial executions, accompanied by chronic impunity, as structural patterns that were common to cases in which the participation of state agents has been proved, constituting a phenomenon of special severity in areas such as Chihuahua (*supra* paras. 59 to 65). In this regard, the Court considers that, apart from its arguments, the State has not provided evidence to the contrary that would disprove this contextual scenario. Consequently, it finds the said context has been proved, and this is a relevant factor for the analysis of this case.

(ii) *The participation of the Armed Forces in public safety tasks*³⁹¹

³⁹⁰ In addition, while the Court was processing of this case, it received different expert opinions, testimonial statements, documentary evidence, and even *amicus curiae* (*supra* para. 10), that reiterated the existence of this context and of the military presence at the time when, and in the place where, the said disappearances occurred (*supra* paras. 72 to 75).

³⁹¹ The Court notes that the concept of "public safety" has gradually been established in the international sphere, originating from the concept of "human security," as this has been developed within the United Nations. Thus, the United Nations Development Program (UNDP) in its "Human Development Report for Central America 2009-2010." understood "public safety" as "a specific method of human security that may be defined initially as the universal protection against violent or predatory crime. Public safety is the protection of certain options or opportunities for everyone – their life, their integrity, their assets – against a specific type of risk (crime) that suddenly and painfully alters the daily life of the victims." Cf. UNDP, *Human Development Report for Central America 2009-2010. Opening up spaces for public safety and human development*, p. 31. See also: OAS. General Assembly, *The Concepts of Public Security and Citizen Security in the OAS Context*, OEA/Ser.P AG/CP/GTDSS-13/11. Document prepared by the Secretariat for Multidimensional Security and adopted on May 11, 2011, at the forty-first regular session. Also: OAS, *Strengthening Citizen Security*, resolution of the General Assembly AG/RES. 1380 (XXVI-0/90). Adopted on June 6, 1996, at the seventh plenary session of the twenty-fifth General Assembly; *Declaration on Security in the Americas*, OEA/Ser.K/XXXVIII, CES/dec.1/03 rev. 1. Adopted on October 28, 2003, in the third plenary session of the Special Conference on Security held in Mexico City, and

177. The Court recalls that, in light of the obligations established in Articles 1(1) and 2 of the Convention, States must ensure public safety and maintain public order, as well as prosecute the crimes committed in their jurisdiction.³⁹² In particular, Article 32(2) of the American Convention establishes that “[t]he rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”³⁹³

178. Consequently, the Court considers that, owing to its nature and complexity, organized crime in all its different forms constitutes, *per se*, a serious threat for the international community, because it attacks the security, stability and democratic governance of the States, hinders their development, and impedes the realization of the human rights of the persons subject to their jurisdiction.³⁹⁴ Nevertheless, when addressing this problem, States must always act within limits and in accordance with procedures that ensure that both public safety and human rights are preserved.³⁹⁵ This means that, when adopting measures against those who are presumed to be undermining internal security and public order, States cannot cite the existence of exceptional situations as an excuse for suppressing or denying rights guaranteed by the Convention, denaturing or depriving them of their real content, or as justification for practicing or tolerating acts that are contrary to peremptory norms of international law, such as torture, forced disappearances and extrajudicial executions, among other gross violations.³⁹⁶

179. In particular, this Court has referred on different occasions to the participation of the armed forces in alterations of public order. For example, the Court recalls that, in the *Case of Montero Aranguren et al. v. Venezuela*, it established that, although the States Parties to the Convention could deploy the Armed Forces to perform tasks over and above those inherently related to armed conflicts, this use of the military should be limited insofar as possible and respond to conditions of strict exceptionality to address situations of criminality or internal violence, because the military forces are trained to defeat an enemy and not to protect and

Commitment to Public Security in the Americas, OEA/Ser.K/XLIX.1 MISPA/doc. 7/08 rev. 4. Adopted on October 8, 2008, at the seventh plenary session held in Mexico City.

³⁹² Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 154, and *Case of the Miguel Castro Castro Prison v. Peru, Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 240.

³⁹³ Cf. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46; *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 35; *Habeas Corpus in Emergency Situations (arts. 27.2, 25(1) and 7.6 American Convention on Human Rights)*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 26. Meanwhile, pursuant to Article 30 of the American Convention, the restrictions of the rights must be established by law, must not be discriminatory, must be based on reasonable criteria, respond to a useful and opportune purpose that make them necessary to meet an urgent public interest, and be proportionate to this purpose. See also: UN, Human Rights Committee, *General Comment No. 27. Freedom of movement (art. 12)* of November 2, 1999, para. 11. Cf. UN. Human Rights Commission, *The Syracuse principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights [ICCPR]*, E/CN.4/1985/4, September 28, 1984, Principle 21.

³⁹⁴ Regarding this characterization, Cf.: OAS. General Assembly, *The Concepts of Public Security and Citizen Security in the OAS Context, supra*, p. 2; OAS. General Secretariat, *Public Security in the Americas: Challenges and Opportunities*, OEA/Ser.D/XXV.2, 2008, pp. 45 and 46; United Nations Development Programme [UNDP]. *Regional Human Development Report 2013-2014. Public security with a human face: diagnosis and proposals for Latin America*, November 2013, p. 76. Available at: <http://www.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf>; World Bank, *Violence in the City. Understanding and Supporting Community Responses to Urban Violence*, 2011, and World Economic Forum, *The Global Competitiveness Report 2012-2013, 2012*, Geneva. Available at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

³⁹⁵ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 124, and *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 240.

³⁹⁶ Cf. *inter alia*: UN. Human Rights Committee, *The Syracuse Principles* of September 28, 1984, *supra*, Principle 32; *Declaration on the Protection of all Persons from Enforced Disappearance*. Adopted by the UN General Assembly in Resolution 47/133 of December 18, 1992, Article 7; Human Rights Committee, *General Comment No. 29. States of Emergency (Art. 4 of the Covenant)*, CCPR/C/21/Rev.1/Add.11, August 31, 2001, paras. 11 and 13(b); Committee against Torture, *General Comment No. 2. Implementation of Article 2 by States Parties*, CAT/C/GC/2 January 24, 2008, para. 5; *Report of the Working Group on Arbitrary Detention*, A/HRC/22/44, December 24, 2012, para. 50; *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, A/HRC/26/36, April 1, 2014, para. 54, and *Provisional Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/70/303, August 7, 2015, paras. 26 and 62. Similarly: Statement made before the Court by expert witness Federico Andreu Guzmán during the public hearing on April 26, 2018 (transcript of the public hearing, p. 75).

control civilians, which is the specific training provided to police forces.³⁹⁷

180. In the *Case of Cabrera García and Montiel Flores v. Mexico*, the Court established that the intervention of the armed forces in public security activities must be based on criteria of strict proportionality, exceptionality and due diligence to safeguard the guarantees established in the Convention, because the fundamental role of the military forces cannot be conciliated with the essential functions of the civil authorities. It also indicated that this may entail a risk to human rights and recalled the words of the UN Special Rapporteurs on Torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers that “[t]he functions of the judicial police should be carried out exclusively by a civilian entity.”³⁹⁸ This was reiterated in the *Case of Osorio Rivera v. Peru*, in a situation where the Armed Forces were entrusted with functions addressed at restricting the personal liberty of civilians.³⁹⁹

181. In addition, this issue has been addressed by the Human Rights Committee,⁴⁰⁰ the Committee against Torture,⁴⁰¹ the Working Group on Enforced or Involuntary Disappearances,⁴⁰² the Special Rapporteurs on torture, and on extrajudicial, summary or arbitrary executions jointly,⁴⁰³ the Office in Colombia of the United Nations High Commissioner for Human Rights,⁴⁰⁴ and the Inter-American Commission on Human Rights,⁴⁰⁵ among others. These international

³⁹⁷ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 78. Similarly, following his visit to Mexico, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions indicated: “[...] in any country, soldiers involved in policing are notoriously unable to relinquish the military paradigm [...]. The primary objective of the military is to subdue the enemy through the use of superior force.” En 2016, he repeated this opinion, when he indicated “the risk of abuse by agents unable to relinquish the military paradigm and the lack of accountability for such abuses in the military justice.” Cf. UN. Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, A/HRC/26/36/Add.1, April 28, 2014, para. 21, and *Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions in follow-up to his mission to Mexico*, A/HRC/32/39/Add.2, May 6, 2016, para. 11.

³⁹⁸ Cf. UN: *Joint report of the Special Rapporteur on torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82*, E/CN.4/1995/111, January 16, 1995, para. 117(a) and 120; *Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Colombia*, E/CN.4/1998/39/Add.2, March 30, 1998, para. 185, and IACTHR, *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, paras. 86, 87 and 89.

³⁹⁹ Cf. *Case of Osorio Rivera and family v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 122.

⁴⁰⁰ Cf. *United Nations Human Rights Committee, Consideration of reports submitted by States Parties pursuant to Article 40 of the Covenant. Concluding observations on: Sri Lanka*, CCPR/C/79/Add.56, July 23, 1995, para. 30; *Yemen*, A/50/40, October 3, 1995, para. 260; *Mauritius*, CCPR/C/79/Add.60, June 4, 1996, para. E; *Brazil*, CCPR/C/79/Add.66, July 24, 1996, para. 22; *Germany*, CCPR/C/79/Add.73, November 18, 1996, para. 11; *Bolivia*, CCPR/C/79/Add.74, May 1, 1997, para. 28; *France*, CCPR/C/79/Add.80, August 4, 1997, para. 16; *Belarus*, CCPR/C/79/add.86, November 19, 1997, para. 9; *Sudan*, CCPR/C/79/Add.85, November 19, 1997, para. 12; *Algeria*, CCPR/C/79/Add.95 August 18, 1998, paras. 6, 7 and 9; *the Former Yugoslav Republic of Macedonia*, CCPR/C/79/Add.96, August 18, 1998, para. 10; *Chile*, CCPR/C/79/Add.104, March 30, 1999, para. 10; *Cameroon*, CCPR/C/79/Add.116, November 4, 1999, para. 20; *Guyana*, CCPR/C/79/Add.121, April 25, 2000, para. 10; *the Kyrgyz Republic*, CCPR/CO/69/KGZ, July 24, 2000, para. 7; *Kuwait*, CCPR/CO/KWT, July 27, 2000, para. 13; *Venezuela*, CCPR/CO/71/VEN, April 26, 2001, para. 8; *the Philippines*, CCPR/CO/79/PHL, December 1, 2003, paras. 8 and 12, and *Concluding observations on the fourth periodic report CCPR/C/PHL/CO/4*, November 13, 2012, para. 17. Also: *Preliminary observations on Peru*, CCPR/C/79/Add.67, July 25, 1995, para. 22, and *General Comment No. 32. Article 14. Right to equality before courts and tribunals and to a fair trial*. CCPR/C/GC/32, August 23, 2007, para. 22.

⁴⁰¹ Cf. *Concluding observations, conclusions, and recommendations of the UN Committee against Torture: Egypt* (para. 88) and *Ecuador* (para. 105), A/49/44, November 15, 1993; *Guatemala*, A/56/44, November 23, 2000, paras. 72(b) and 76(b), and CAT/C/XXV/Concl.6, November 23, 2000, para. 10(b and (d), and *Honduras*, CAT/C/HND/CO/1, June 23, 2009, para. 20.

⁴⁰² Cf. UN. *Report of the WGEID. Addendum Report on the visit to Colombia in 1988*, E/CN.4/1989/18/Add.1, February 6, 1989, paras. 132 and 133.

⁴⁰³ Cf. *Joint report of the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, supra*, para. 185.

⁴⁰⁴ Cf. *Reports of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*: E/CN.4/2003/13, February 24, 2003, para. 169, and E/CN.4/2004/13, February 17, 2004, paras. 78 and 123.

⁴⁰⁵ Cf. IACHR. *Second report on the situation of human rights in Colombia*, OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993, Chapter III “The political and legal system in Colombia,” section F (“The state of siege legislation”),

bodies and special procedures all agree in pointing out that the participation of the armed forces in the functions of the judicial police may be contrary to certain principles of the rule of law such as the separation of powers, the independence and autonomy of the courts, and subordination to civil authorities. Therefore, they agree on the need to implement accountability mechanisms by means of independent agencies for all the security forces engaged in public order operations and tasks.⁴⁰⁶

182. Consequently, as a general rule, the Court reaffirms that maintaining internal public order and public safety should, above all, be reserved to civil police agencies.⁴⁰⁷ However, when the armed forces exceptionally intervene in security tasks, their participation must be:

- a) *Exceptional*, so that any intervention is justified and exceptional, temporary and restricted to what is strictly necessary in the circumstances of the case;⁴⁰⁸
- b) *Subordinated and supplementary* to the work of civil agencies, and their tasks may not extend to functions inherent to the institutions for the administration of justice or the judicial police;⁴⁰⁹
- c) *Regulated*, by legal mechanisms and protocols on the use of force, under the principles of exceptionality, proportionality and absolute necessity⁴¹⁰ and based on the relevant training,⁴¹¹ and

and *Third report on the situation of human rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev.1, February 26, 1999, Chapter V "Administration of justice and rule of law," section B.

⁴⁰⁶ Cf. UN: *Report of the WGEID. Question of the human rights of all persons subjected to any form of detention or imprisonment*. E/CN.4/1990/13, January 24, 1990, para. 22, and *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on the administration of justice through military tribunals*, A/68/285, August 7, 2013, paras. 35, 38, 86 and 90. Similarly: Opinion provided during the public hearing before the Court by expert witness Federico Andreu Guzmán on April 26, 2018 (transcript of the public hearing, p. 78).

⁴⁰⁷ The Court also notes that other specialized regional agencies have addressed the issue of the use of armed forces for tasks related to internal public order. Among these, the Council of Europe [CE], through its Parliamentary Assembly, has emphasized that "national security is the armed forces' main duty. This essential function must not be diluted by assigning the armed forces auxiliary tasks [related to internal security], save in exceptional circumstances" and supervised by civil authorities. In this regard the CE Venice Commission has highlighted the importance of mechanisms for civil oversight as a crucial component of the democratic supervision of the armed forces and has recommended that any decision to deploy them for internal matters should be subject to the limits of proportionality and subsidiarity. Cf. Council of Europe: Parliamentary Assembly, *Democratic oversight of the security sector in member states*, Recommendation 1713 (2005), June 23, 2005, paras. 9 and 31; Venice Commission, *Preliminary Report on Civilian Command Authority over the Armed Forces in their National and International Operations*, CDL-DEM(2006)003, Study no. 389/2006 of October 5, 2006, section 3; *Study on Democratic Control of Armed Forces: What acts or issues are under control and when to control?* CDL-DEM(2007)006, Study No. 389/2007 of September 26, 2007, pp. 10 to 12, and *Report on the Democratic Control of the Armed Forces*, CDL-AD(2008)004, adopted by the Venice Commission at its 74th Plenary Session (March 14 and 15, 2008), paras. 34, 76, 78, 100, 116 and 199.

⁴⁰⁸ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, *supra*, para. 78, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, paras. 86. Also: Cf. Council of Europe: Parliamentary Assembly, *Recommendation 1713 (2005)*, Doc. 10972, *supra*, paras. 9, 23, 27 and 31; Inter-American Commission on Human Rights. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 105, and Expert opinion of Alejandro Madrazo Lajous provided on April 19, 2018 (evidence file, affidavits, f. 30968).

⁴⁰⁹ Cf. *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 86, and *Case of Osorio Rivera and family v. Peru*, *supra*, para. 122.

⁴¹⁰ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 80. Also: Cf. IACHR, *Report on Citizen Security and Human Rights*, *supra*, December 31, 2009, para. 116; UN. *Report of the Working Group on enforced or involuntary disappearances. Mission to Mexico*, December 20, 2011, *supra*, para. 91; UN, *Report of the Special Rapporteur on torture*, December 29, 2014, *supra*, para. 81(g), and *Recommendations to Mexico by the United Nations High Commissioner for Human Rights, Official visit to the country in October 2015*, March 2016, *supra*, Recommendation 5.

⁴¹¹ Cf. *inter alia*: UN: *Code of Conduct for Law Enforcement Officials*. Adopted by the United Nations General Assembly in its Resolution 34/169 of December 17, 1979; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from August 27 to September 7, 1990; IACtHR: *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, paras. 81, 82, 85 and 267, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 275, para. 330, and IACHR: *Report on Citizen Security and Human Rights*, *supra*, paras. 114 and 117.

d) *Supervised*, by competent, independent and technically capable civil authorities.⁴¹²

183. In addition, the Court reiterates its case law that the State must provide simple and expeditious remedies so that human rights violations can be denounced; moreover, such complaints must be examined by the ordinary jurisdiction and not the military jurisdiction;⁴¹³ moreover, they must be investigated effectively and those responsible punished.⁴¹⁴

184. In the instant case, the alleged detentions were carried out by members of the Armed Forces in the context of the "Chihuahua Joint Operation," owing to which the military presence in the area had been increased since October 2009, and – several days before the disappearances – various witnesses had seen military forces driving through the Ejido Benito Juárez in one of the trucks involved in the detentions (*supra* para. 73 and *infra* para. 186).

185. The Court notes that the implementation of the "Joint Operation" that is the subject of this case was not based on a regulation or protocol that established the exceptional and temporary nature of military activities, and other safeguards required for this type of intervention (*supra* para. 182 and 183) or, above all, independent oversight of its activities, as revealed, among other evidence by Complaint 886/09 filed before the "Program for Attention to Complaints" of the "Operation" and the referral of the case to the military jurisdiction (*supra* para. 112 and *infra* paras. 231 to 236).

(iii) *The statements of eyewitnesses and hearsay witnesses concerning the facts*

186. The Court recalls that it is a proven fact that, during the domestic proceedings, eyewitness statements were taken from members of the family who identified members of the Army as perpetrators of the detention of the disappeared due to the type of clothing worn and the weapons carried by the captors (*supra* paras. 80 and 84). The Court also notes that, in several statements, the family members stated that they had identified this military clothing, which

⁴¹² Cf. UN. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005. Principles 35(c) and 36(c); *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/72/523, October 12, 2017, para. 54, and *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide*, A/HRC/37/65, June 6, 2018, paras. 41 to 48. Also, *cf.* Expert opinion of Gabriella Citroni provided on April 18, 2018 (evidence file, affidavits, f. 31065), and Statement made before the Court by expert witness Federico Andreu Guzmán during the public hearing on April 26, 2018 (transcript of the public hearing, p. 78).

⁴¹³ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* para. 273; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 176; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 160, and *Case of Cabrera García and Montiel Flores v. Mexico. supra*, para. 197; UN: *Report of the WGEID. Question of the human rights of all persons subjected to any form of detention or imprisonment*, E/CN.4/1992/18, December 30, 1991, para. 367; Human Rights Committee. *Concluding observations. Mexico*, July 27, 1999, *supra*, para. 9; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, submitted pursuant to Commission on Human Rights resolution 1993/71*, E/CN.4/1994/7, December 7, 1993, para. 697; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35. Addendum: Visit to Mexico*, E/CN.4/2000/3/Add.3, November 25, 1999, para. 107(b) and (f); Economic and Social Council, *Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, E/2005/30, August 10, 2005, Principles 11 to 14; *Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux. Issue of the administration of justice through military tribunals*, E/CN.4/2006/58, January 13, 2006, Principio 9 "Trial of persons accused of serious human rights violations," paras. 32 to 35; *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on the administration of justice through military tribunals, supra*, para. 106, and *Report of the Special Rapporteur on torture, Juan E. Méndez*, December 29, 2014, *supra*, para. 81(b), and *Recommendations to Mexico by the United Nations High Commissioner for Human Rights, Zeid Ra'ad al Hussein, supra*, Recommendation 3.

⁴¹⁴ Cf. UN: *Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, pursuant to Commission on Human Rights resolution 1993/71, supra*, December 7, 1993, para. 688; Human Rights Committee, *Concluding observations. Mexico*, July 27, 1999, *supra*, para. 9, and *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on the administration of justice through military tribunals, supra*, paras. 64 to 69. Also Cf. IACHR. *Report on Citizen Security and Human Rights, supra*, para. 127.

corresponded to that used by some units of the Army (*supra* para. 111), as well as one of the trucks used by those who detained the three disappeared; for example:

- i. Patricia Reyes Rueda and her son, A.A.R., indicated that when the individuals left their home after detaining Rocío Irene Alvarado, they looked out of a window and saw the truck in which their next of kin was placed, and recognized this as the same vehicle they had seen driving soldiers around the Ejido Benito Juárez prior to the detention;⁴¹⁵
- ii. Also, Marissa Reyes Rueda and Manuel Reyes Lira (Rocío Irene Alvarado's aunt and grandfather) testified that, when Patricia Reyes advised them by telephone of the detention of Rocío Irene Alvarado, they went to the site of the incident and their family members told them that "the soldiers had arrived in a special truck." Based on the description given by the eyewitnesses, those two family members recognized the said vehicle as the grey truck they had seen driving members of the Mexican Army around the Ejido Benito Juárez in the days preceding the facts,⁴¹⁶ and
- iii. On October 27, 2014, Patricia Reyes Rueda and Obdulia Espinoza Beltrán appeared before the AMPF attached to the UEBPD-PGR. During this procedure, the investigating authority showed them the expert appraisal with photographs dated October 16, 2014, of a grey, double-cabin pick-up truck that had been in the custody of the 35th Infantry Battalion of the Army from June 1, 2009, to February 10, 2010, because it had been seized in relation to unlawful activities that were the subject of another criminal investigation. On seeing those photographs, both witnesses indicated that it was the same vehicle used by the captors on the day of the events to abduct their next of kin.⁴¹⁷ Furthermore, after examining a series of photographs of members of the Army dressed in beige and green uniforms and wearing caps corresponding to those used by members of the 23rd Infantry Battalion and the 20th Motorized Cavalry Regiment of the Army on the day of the disappearance of their next of kin and sent by their respective Commanders in the context of the investigations (*supra* para. 111(ii)),⁴¹⁸ Obdulia Espinoza indicated that the men who had detained

⁴¹⁵ Cf. Statement made by Patricia Reyes Rueda on January 16, 2013 before the AMPF-PGR acting to support the Tenth Preliminary Investigation Agency of the PGR-Chihuahua (evidence file, annex 14 to the State's answering brief, f. 27888), and Affidavit made by A.R.A.R. on April 19, 2018 (evidence file, affidavits, f. 30872).

⁴¹⁶ Cf. Statement made by Marissa Reyes Rueda on February 21, 2010, before the Second Inspector General of the CNDH in Report CNDH/2/20/01/08/Q (evidence file, annex II.112 of the Merits Report, ff. 1595 and 1597); Statement made by Marissa Reyes Rueda on March 9, 2010, before the AMPM-5^aZM (evidence file, annex 28 to the State's answering brief, f. 27946), and Statement made by Manuel Reyes Lira on March 9, 2010, before the AMPM-5^aZM (evidence file, annex 34 to the State's answering brief, f. 27981).

⁴¹⁷ Cf. Statement made by Patricia Reyes Rueda on October 27, 2014, before the AMPF attached to the Special Search Unit for Disappeared Persons [UEBPD-PGR] (evidence file, f. 27892), and Statement made by Obdulia Espinoza Beltrán on October 27, 2014, before the AMPF attached to the UEBPD-PGR (evidence file, f. 27932). Regarding the seizure and state custody of the vehicle that Patricia Reyes and Obdulia Espinoza identified as the one used during the detention of their next of kin, see: Certification of June 1, 2009 (evidence file, f. 28174); Communication 802/2009 of June 1 2009, addressed to Colonel Éfego José Luján Ruiz, Commander of the 35th Battalion (evidence file, f. 27834); Seizure decision of June 1, 2009, of the AMPF-PGR in Nuevo Casas Grandes, Chihuahua (evidence file, f. 28177); Record of hand-over procedure – receipt of the 35th Infantry Battalion of January 21, 2010, signed by Colonel Éfego José Luján Ruiz (evidence file, f. 27963); Communication 104/2010, of February 10, 2010, addressed to the Director General of the Property Embargo and Administration Service of the Ministry of Finance and Public Credit (evidence file, f. 28169); Administrative deed of transfer of seized property No. A/PGR/ADM/CJS/CJS/01275/10/03 of March 2, 2010 (evidence file, f. 28202); Communication 21239 of October 7, 2014, signed by the Commander a.i. of the 35th Infantry Battalion, addressed to the AMPF-PGR head of the Investigation Agency in Nuevo Casas Grandes (evidence file, f. 28171), and Record of Judicial inspection of December 4, 2014, signed by the AMPF-PGR head of the 5th Bureau of the UEBPD-PGR (evidence file, f. 28182).

⁴¹⁸ Cf. C.E.I. message No. 817/01 of January 31, 2010, of the Commander of the Fifth Military Zone in Chihuahua and P.M. (Op. Coord. Chih) in Ciudad Juárez (evidence file, criminal case file, ff. 5313 and 5314); Communication No. ZM-197 of February 26, 2010, of the AMPM-5^aZM, addressed to the Commander of the Fifth Military Zone in Chihuahua (evidence file, criminal case file, f. 5564); C.E.I. message No. 5356 of March 1, 2010, signed by the Head of the S-2 of the Headquarters of the Fifth Military Zone in Chihuahua, Chihuahua, addressed to the Commanders of the 35th Infantry Battalion, the 23rd Infantry Battalion and the 20 Motorized Cavalry Regiment of the Army (evidence file, criminal case file, f. 5593); Communication No. 3625 of March 2, 2010, signed by Colonel David López Uvalle, Commander of the 23rd Infantry Battalion of the Army, addressed to the AMPM-5^aZM in response to Communication No. ZM-197 of February 26, 2010, and sending six photographs of soldiers wearing the pixelated-type uniforms used by this military unit on December 29, 30 and 31, 2009 (evidence file, criminal case file, ff. 5595 and 5596); Communication No. 4401 of March 2, 2010, signed by Juan Pablo Figueroa Estrada, Cavalry Colonel, Commander of the 20th Motorized Cavalry Regiment of the Army, addressed to the AMPM-5^aZM in response to C.E.I. message No. 5356 of March 1, 2010, and sending one

Nitza Paola and José Ángel Alvarado were wearing uniforms that were “beige with brown patches” while Patricia Reyes indicated that the most of the men who detained her daughter, Rocío Irene, wore “green pixelated” uniforms, while two or three of them wore “light colored uniforms with brown” like those in the photographs they were shown.⁴¹⁹

187. Owing to the State’s objections concerning possible contradictions in the statements of the family members with regard to the precise details of the color and characteristics of the clothing worn by the captors, as well as of the vehicles used in the detention of the disappeared (*supra* para. 163), the Court finds it pertinent to indicate, as it has in previous cases,⁴²⁰ that it is reasonable to consider that the family members have not recalled the circumstances surrounding this event in exact detail, owing to its traumatic nature for the victims. Therefore, when examining the statements made in similar cases, it has been essential to take into account the special situation of tension, stress and other particular circumstances that may affect the deponent, in which a certain lack of precision and disorientation is reasonable and does not disprove what the witnesses say, as long as they are consistent about the main facts that they recount.

188. The Court observes that the eyewitness, Obdulia Espinoza Beltrán, Patricia Reyes Rueda, A.R.A.R. and A.A.R., are consistent in indicating: (i) that, on December 29, 2009, a group of between 8 and 10 individuals wearing uniforms and bearing weapons with military characteristics deprived the disappeared of their liberty, and (ii) that, after perpetrating the detentions, the individuals got into two vehicles, one of them a double-cabin pick-up truck and the other a Hummer, in which they left for an unknown destination taking the presumed victims with them (*supra*, paras. 80 and 85). Also, the statements of Patricia Reyes Rueda, A.R.A.R., Manuel Reyes Lira and Marissa Reyes Rueda all agree in identifying one of the private vehicles, which at one time was in state custody – specifically in the custody of the Army (*supra* para. 186) – as one of the vehicles used in the deprivation of liberty of their next of kin and in which they had seen uniformed members of the Army driving around the Ejido Benito Juárez in the days leading up to the events. Consequently, the Court concludes that these testimonial statements provide valid additional evidence, because the facts they describe are consistent and contribute to determining the participation of state agents in the disappearance of the three presumed victims.

189. Regarding the State’s arguments concerning the hypothesis that the facts were perpetrated by organized crime⁴²¹ and not state agents, the Court observes that these are based on presumptions⁴²² due to the supposed personal precedents of some of the victims and their

photographs of the uniform and cap used by the soldiers attached to the said military unit on December 29, 30 and 31, 2009 (evidence file, criminal case file, ff. 5600 and 5601).

⁴¹⁹ Cf. Statement made by Patricia Reyes Rueda on October 27, 2014, before the AMPF attached to the UEBPD-PGR, *supra*, f. 27892, and Statement made by Obdulia Espinoza Beltrán on October 27, 2014, before the AMPF attached to the UEBPD-PGR, *supra* (evidence file, f. 27932).

⁴²⁰ Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, *supra*, para. 384.

⁴²¹ On the basis of: (i) the supposed use of apocryphal uniforms of the security forces by members of organized crime; (ii) the presumed participation of Rafael Alvarado Sáenz, Rocío Irene Alvarado’s father, in drug-trafficking activities and his resulting murder on June 6, 2008, by members of organized crime groups, and (iii) “a possible relationship” between Rocío Irene Alvarado and a member of the “La Línea” criminal group known as “El Junior” (*supra*, para. 162).

⁴²² These are: a statement made by Patricia Reyes Rueda, several statements made in the domestic sphere, a newspaper article, a report of the State issued by the CENAPI-PGR and its interpretation by a public official. Cf. Statement made by Patricia Reyes Rueda on June 10, 2015, before the AMPF attached to the UEBPD-PGR (evidence file, f. 27896); Record of interview of Marín Adrián Lasso Carbajal by the Judicial Police of Nuevo Casas Grandes, Chihuahua, undated (evidence file, f. 28398); Statement made by Gabriel Tena Loya on November 20, 2009, before the AMPF-PGR (evidence file, annex 95 to the State’s answering brief, f. 28794); Statement made by Marín Adrián Lasso Carbajal on April 16, 2018, before the AMPF attached to the FEIDDF-PGR (evidence file, affidavits, f. 31215); Press communiqué entitled “El 28 de diciembre [sic] el Ejército probablemente desapareció a mis familiares, sus nombres son: José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza y Rocío Irene Alvarado Reyes,” published on “@juárez” on May 30, 2011 (evidence file, f. 27899); Report issued by the CENAPI-PGR on the *Case of Alvarado Espinoza et al. v. Mexico* on October 13, 2017, *supra* (ff. 28509 to 28571), and Statement made by Efraín Arzola Herrejón, Analyst of Control and

families with members of the “La Línea” criminal group, which are insufficient and are not consistent to disprove the other lines of investigation. In this regard, the Court notes that, even in the domestic sphere, that line of investigation has not produced any results to date, so that it is contradictory to use the ineffectiveness of the investigations as an excuse to reject or contest the other thesis (*infra*, para. 246).⁴²³

190. The Court also notes that, in its defense and in order to attribute the three disappearances to members of organized crime, the State argued that “one of the tactics of the criminal organizations established in the territory of the state of Chihuahua was to use official uniforms, badges and weapons belonging to the different federal units involved in law enforcement.” To support this argument, it provided the Court with statistics on the seizure of apocryphal uniforms, weaponry and supplies of the security forces seized from organized crime in the state of Chihuahua between December 1, 2006, and October 12, 2017.⁴²⁴ However, in response to a question on this issue posed by the Court during the public hearing, the State acknowledged that in almost 11 years, only one person had been detained in the municipality of Buenaventura (to which the Ejido Benito Juárez belongs) for this type of incident. Consequently, the Court finds that it has not been proved that this exceptional scenario occurred in the instant case.

191. Furthermore, the Court notes that the body of evidence contains other elements that point towards the possible participation of the State: (i) the statement made by Staff Sergeant and Army Driver Alberto Hernández de la Cruz, the chauffeur of the Commander of the 35th Battalion at the time of the facts, testifying that he had heard that this military leader and soldiers under his command had taken part in the detention in the Ejido Benito Juárez “of a woman with a disability and a man,” inferring that this was related to the disappearances of Nitza Paola and José Ángel Alvarado (*supra* para. 97(i)); (ii) the statements of María de Jesús and Jaime Alvarado in which they indicated that state agents had told them that they had information that their next of kin had been detained by members of the 35th Infantry Battalion and were in state custody (*supra* paras. 90 to 94), and (iii) the testimony of Argene Blásquez, Ramón Iván Sotomayor Siller and Damaris Baglietto Hernández, state agents, who declared that, in the course of the measures that the supposed “Commander Meza” of the Federal Police took before them to interview the disappeared, he stated that he was aware that members of the Army had carried out the said detentions (*supra* para. 98). Regarding the assessment of that testimony, the Court notes that it was repeatedly rejected by the domestic courts, considering it “insufficient as evidence” without providing a reasonable justification in this regard, fragmenting the evidence as a whole, and detracting from its effectiveness under the rules for the assessment of evidence applicable in cases of forced disappearance. In particular, the Court notes that, in the case of witness Staff Sergeant Hernández, the State did not provide evidence of having conducted any investigation to determine why he later retracted his testimony and to verify the truth of the information contained in his testimonies (*supra* para. 97), especially in view of the following circumstances:

- i. After this witness had given his first statement before the military jurisdiction on February 5, 2010, in the proceedings on other criminal acts in which state agents had supposedly participated (*supra* para. 97(i)), the Supreme Military Tribunal described his testimony as “ineffective” and rejected the whole of it without taking into consideration the possible importance of the information provided in this testimony for the clarification of the three disappearances, such as that it might identify a possible pattern of action by the perpetrators of both incidents and, eventually, offer indications of the probable perpetrators – especially since the statement was provided only 38 days after the disappearances occurred (*supra* para. 97(ii)), and

Strategic Information of the CENAPI-PGR, on April 12, 2018, before the AMPF attached to the FEIDDF-PGR (evidence file, affidavits, ff. 31201 to 31206).

⁴²³ Cf. *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs, supra*, paras. 168 and 169.

⁴²⁴ Cf. Report issued by the CENAPI-PGR, on October 13, 2017, *supra* (evidence file, ff. 28526 to 28531).

- ii. That, approximately 14 months after he had provided his initial statement, this witness retracted it before the Agent of the Military Public Prosecution Service during questioning by the military judicial authority and without providing any apparent justification (*supra* para. 97(iii)).⁴²⁵

192. Consequently, the Court considers that, in light of the prevailing context at the time of the facts, the above-mentioned statements of the family members and state agents categorically prove the participation of state agents in the detentions examined.

(iv) The observations of different domestic entities

193. As indicated in the respective chapter (*supra* paras. 103 to 142), the Court recalls that various bodies examined the probable participation of a senior military commander of the 35th Infantry Battalion and of soldiers under his command in the forced disappearance of the three presumed victims, including: (i) the Office of the Military Prosecutor General (*supra* paras. 110 to 116); (ii) the FEVIMTRA (*supra* para. 120); (iii) the CNDH (*supra* paras. 139 to 141); (iv) several organs of the Federal Judiciary (*supra* paras. 126 to 133); (v) the UEBPD-PGR (*supra* paras. 123 to 125), and (vi) the International Team of Experts, assisting the Public Prosecution Service.⁴²⁶

194. The Court notes that, in its waiver of jurisdiction of September 30, 2011, the FEVIMTRA did not reject the hypothesis of the participation of members of the military in the three disappearances and underscored the Army's reticence and lack of collaboration, which constituted a permanent obstacle to the investigations (*supra* paras. 119 and 120). Also, on March 31, 2014, the Public Prosecution Service attached to the UEBPD-PGR filed criminal charges against the Commander of the 35th Battalion considering that his participation in the disappearances had been proved and requested the respective arrest warrant (*supra* para. 124). Similarly, the International Team of Experts considered that the unlawful deprivation of liberty of [the presumed victims] could [have been] carried out by members of the Army in the context of the "Chihuahua Joint Operation."⁴²⁷

195. Nevertheless, the Court notes that the State has argued in its defense that the domestic organs had "already ruled that the disappearances could not be attributed [...] to state agents," indicating, as grounds for its arguments, the decisions of the Seventh District Judge (*supra* para. 126); the Fourth Unitary Court of the Seventeenth Circuit (*supra* para. 128) and the Third Unitary Court of the Seventeenth Circuit (*supra*, para. 131) in which, in response to the request for an arrest warrant by the Public Prosecution Service, these judicial organs determined that there was insufficient evidence to prove the criminal responsibility of the Commander of the 35th Battalion at the time, based on his presumed participation in the three disappearances.⁴²⁸

⁴²⁵ Cf. Testimony provided by Alberto Hernández de la Cruz on April 13, 2011, before the Agent of the Military Public Prosecution Service attached to the Preliminary Inquiries Section of the Office of the Military Prosecutor General in Mexico City (evidence file, criminal case file, ff. 8330 and 8331). In this regard, the Court notes that the record of this testimony in the case file only notes the answers to the questions given by the witness, but not the questions that he was asked, so that there is no evidence of their content or their context.

⁴²⁶ Report of the International Team of Experts [ITE], of March 31, 2015 (evidence file, ff. 28894 to 28914).

⁴²⁷ Cf. Report of the ITE of March 3, 2015 in the context of assistance to the FGE-Chihuahua, *supra*, f. 28896.

⁴²⁸ Regarding the content of the decisions of these jurisdictional organs: (i) the Seventh District Criminal Judge of Ciudad Juárez denied the arrest warrant against Colonel Luján considering that one-third of the elements of the *corpus delicti* of forced disappearance established in article 215-A and punished by article 215-B and 215-C of the Federal Criminal Code had not been proved; that is, "that the perpetrator wilfully promotes or maintains the concealment of the person under any form of detention" because, in the opinion that judge, it had not been clearly demonstrated that the detention of the three disappeared had been carried out by members of the Mexican Army by order of the accused (Colonel Luján), or that the latter had promoted or maintained the concealment of the presumed victims or knew of their whereabouts (*supra* para. 126); (ii) meanwhile, the justice of the Fourth Unitary Court of the Seventeenth Circuit considered that it was "essential that the *corpus delicti* be justified, and in the specific case, this had not occurred owing to insufficient evidence" to attribute the facts to the Commander of the 35th Battalion, so that she decided to confirm the decision issued on March 31, 2014, by the Seventh District Criminal Judge of Ciudad Juárez, and refused to issue the arrest warrant against the said Commander. Cf. Judgment of Criminal Appeal 94/2014 issued on June 27, 2014, by the justice of the Fourth Unitary Court of the Seventeenth Circuit in the state of Chihuahua (evidence file, f. 28695), and (iii) the Third Unitary Court of the Seventeenth Circuit, when hearing the amparo proceeding filed by the representative of

196. In this regard, the Court recalls that a decision refusing an arrest warrant does not constitute *per se* a factor to affirm the absence of the State's international responsibility, given the difference in the evidentiary standards or requirements in criminal actions and those required under international human rights law in cases such as this one (*supra* para. 168). Also, it should be recalled that it does not correspond to this Court to analyze the hypotheses concerning the individual perpetrator examined during the investigation of the facts and, on this basis, determine individual responsibilities, because this corresponds to the domestic criminal courts.⁴²⁹ Accordingly, the criminal proceedings and decisions can only constitute facts for the Court to consider when assessing the State's responsibility or the scope of this in a specific case.

197. Nevertheless, the Court notes that, in a judgment of June 9, 2016, the Collegiate Court of the Seventeenth Circuit in Chihuahua revoked, in favor of the presumed victims in this case, the amparo ruling considering that when refusing to issue the said arrest warrant against a senior military commander, the respective judge had not analyzed all the evidence provided by the prosecution. Thus, on October 7, 2016, a new ruling was issued in which that evidence was analyzed but, once again, the arrest warrant was refused, a decision that became final on November 7, 2016 (*supra* para. 133).

198. Additionally, the Court takes note of Recommendation 43/11 issued by the CNDH (*supra*, para. 140), in which it concluded that:

“[...] the actions of the public servants of the Ministry of Defense who took part in the operation conducted on December 29, 2009, conformed to the circumstances established in Article II of the Inter-American Convention on Forced Disappearance of Persons [...]”.

199. Even though the State contested those conclusions before the Court, indicating that “the analysis made by the CNDH is not sufficient to prove that, effectively, members of the Army or other Mexican authorities participated in the disappearances, this “Recommendation” was accepted by the SEDENA at the domestic level, and in this context it granted a sum of money to the families, “without this signifying an acknowledgement of responsibility” for the facts (*supra* para. 141). Based on the analysis made and the conclusions reached from them, the Court finds that this “Recommendation” and its acceptance by the SEDENA constitute additional elements that are relevant to indicate the participation of state agents in the facts.

B.2.3. The refusal to acknowledge the detention or to provide information and reveal the fate or the whereabouts of the person concerned

200. According to this Court's case law, one of the characteristics of forced disappearance, contrary to extrajudicial execution, is that it includes the refusal of the State to acknowledge that the victim is under its control and to provide information in this regard, in order to create uncertainty about his or her whereabouts, life or death, so as to intimidate and to suppress rights.⁴³⁰

201. Regarding that element of forced disappearance in this specific case, the Court notes that,

the families against the confirmation of the denial of the arrest warrant under Criminal Appeal 94/2014, decided that the justice of the Fourth Unitary Circuit Court had failed to assess all the different evidence as a whole to verify whether or not the crime of forced disappearance of persons had been committed and whether the perpetration of this could be attributed to Colonel Luján. Consequently, it revoked the said decision and ordered the Fourth Unitary Circuit Court to issue a new decision after making the said assessment. Lastly, in compliance with the latter decision, the justice of the Fourth Unitary Circuit Court made the assessment of the evidence that had been ordered and, on October 7, 2016, issued a new decision, which confirmed the refusal to issue the arrest warrant for the said senior military commander. Cf. Order of October 7, 2016, issued by the justice of the 4^oTU/17^oC–Chihuahua, in compliance with the ruling of the Collegiate Circuit Court of the Seventeenth Circuit in Chihuahua of June 9, 2016 (evidence file, helpful evidence provided by the State, f. 34949).

⁴²⁹ Cf. *Case of Osorio Rivera and family v. Peru*, *supra*, paras. 143 and 144, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 180.

⁴³⁰ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009, para. 91, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 80.

following the detention of the three victims, their families filed different reports and took steps to search for them. However, despite the information they were given by several state agents, the officials denied that the detainees were in the State's custody or in official agencies, and told the families that they had no information on their whereabouts; for example:

- i. On December 30, 2009, family members went to the garrison of the 35th Battalion, where a soldier told them that their next of kin were not there. Following this, the same day, family members went to the offices of the Federal Investigation Agency, where they received the same negative response (*supra* para. 89);
- ii. On January 8, 2010, family members went to the 35th Battalion accompanied by General Lohmann, where Major Manuel Gutiérrez denied the participation of members of this military unit in the detentions and the seizure of Nitza Paola Alvarado's pick-up (*supra* para. 93), and
- iii. On January 9, 2010, family members met with the Commanders of the Fifth Military Region and the 35th Battalion, and again these men denied the participation of members of the military in the detentions and accused one of the disappeared and María de Jesús Alvarado of carrying out unlawful activities (*supra* para. 94).

202. The Court also notes that the body of evidence contains various elements that could have constituted concealment mechanisms in the investigation of the disappearances, for example: (a) the failure of the authorities to conduct prompt inspection procedures on the premises of the 35th Battalion to locate the disappeared; (b) the denial of the Federal Police Commissioner of the existence of the supposed "Commander Meza" (*supra* para. 99); (c) the lack of collaboration and "permanent reticence of the Mexican Army" indicated by the FEVIMTRA in its waiver of jurisdiction (*supra* para. 120); (d) the Army's denial, both to the family members and during the investigation of the facts, that it was holding the three disappeared in its custody, pointed out by the International Team of Experts in their report (*supra* para. 194); (e) the fact that, for an extended period, the investigations were subject to the military jurisdiction – from January 15, 2010, to December 29, 2011 – despite the reiterate case law of this Court in this regard (*supra*, paras. 110 to 116 and *infra* paras. 231 to 239), and (f) the threats and harassment received by the families due to their active role in the search for truth and justice, as well as the absence of a diligent and effective investigation to identify the perpetrators (*supra* paras. 143 to 150, and *infra* paras. 255 and 256).

203. Based on all the foregoing, the Court finds that the third element of a force disappearance has been proved, which consists in the refusal of the authorities to acknowledge the detention or reveal to fate or whereabouts of the three victims.

B.3. General conclusion

204. The Court has verified that the increase in the Army's participation in public safety tasks has been a consistent pattern in Mexico since 2006 (*supra*, paras. 175 and 176). In this context, the use of military forces to combat criminality has become a recurring practice through the implementation of so-called "Joint Operations" composed of members of both the police and the military (*supra* para. 175). This has occurred without it being proved – for the purposes of the instant case – that the safeguards for participation of the armed forces have been respected, such as: the exceptional and temporary nature of the Joint Operation and the strict need for it, as well as adequate regulations and action protocols for such tasks and their oversight, and also that the facts denounced were examined in the military jurisdiction for a considerable length of time (*supra* para. 185).

205. On the basis of the foregoing analysis, the Court concludes that the Mexican State is internationally responsible for the forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes in violation of the rights to recognition of juridical personality, life, personal integrity and personal liberty established in Articles 3, 4(1), 5(1), 5(2) and 7 of the American Convention, in relation to Article 1(1) of this instrument and Article I(a) of the Inter-American Convention on Forced Disappearance of Persons.

VII.2
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION AND OBLIGATION TO ADOPT MEASURES (ARTICLES 8⁴³¹, 25⁴³² and 2⁴³³), AS WELL AS I(b) AND IX⁴³⁴ OF THE ICFDP, AND 7(B)⁴³⁵ OF THE CONVENTION OF BELEM DO PARÁ

A. Arguments of the parties and of the Commission

206. The **Commission** argued that the State had violated judicial guarantees and judicial protection (Articles 8(1) and 25(1) of the Convention) in relation to the obligation to respect human rights and the duty to adopt domestic legal provisions (Articles 1(1) and 2 of the Convention) and Article I(b) and IX of the Inter-American Convention on Forced Disappearance of Persons. First, it noted that the application for amparo filed by José Ángel Alvarado Fabela “did not activate an immediate search,” and also this remedy was rejected because it had not been ratified by the victims. In addition, it argued that the failure to investigate facts such as a forced disappearance has an impact on it, affecting the diligence and immediacy required in such cases; a matter that, in part, it attributed to the absence of legislation on this matter.

207. The Commission also argued that the State had failed to comply with the obligation to investigate the alleged disappearances with due diligence. It indicated that there was a lack of immediate response because the State failed to open *ex officio* and without delay, a serious, impartial and effective investigation. It also pointed out that the case was submitted to the military jurisdiction for a year and ten months – based on article 57.II.a of the Code of Military Justice in force at that time – even though this Court has affirmed that the examination of crimes involving human rights violations by military authorities “is, *per se*, contrary to the right of the victims or their families to be heard by a competent, independent and impartial court.” It also noted deficiencies in the way in which the state authorities conducted the investigations, which had an impact on the lack of concrete results. In addition, it argued that “when information arose that required an immediate response, such as the phone call that Nitza Paola [...] presumably made, the authorities responsible for the investigation unjustifiably delayed the gathering of evidence and the analysis of its results.” Lastly, it indicated that, from the moment that the State became aware of the facts to date, more than eight years had passed, which included several periods of inactivity⁴³⁶ and during which “in the context of military criminal

⁴³¹ Article 8. Judicial guarantees. 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.

⁴³² Article 25. Judicial Protection. 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁴³³ Article 2. Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

⁴³⁴ Article I(b) of the ICFDP indicates: “1. The States Parties to this Convention undertake: [...] b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

Meanwhile, Article IX of this instrument establishes: “Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.”

⁴³⁵ The part of Article 7 of the Convention of Belem do Pará cited by the representatives indicates: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...] (b) apply due diligence to prevent, investigate and impose penalties for violence against women.”

⁴³⁶ Specifically, it underscores that, in 2012, only two measures were taken in January and February, without any record of additional measures taken during the remainder of the year.

justice, on several occasions, the authorities obstructed the obtaining of evidence related to the Army's possible responsibility for the facts," without the State being able to show the reasons why the complexity of the case affected the advance of the investigations; therefore the State failed to comply with the guarantee of a reasonable time in the investigation of the alleged disappearance.

208. The **representatives** agreed with the Commission that "the State had violated the right of the victims to obtain justice by an adequate and diligent investigation that resulted in the discovery of their whereabouts"; that the State had failed to ensure the access of the victims "to effective legal remedies that protected them against the violation of their human rights," and therefore asked that "the Amparo Act be harmonized with the General Law on Forced Disappearance of Persons and [...] to ensure that district judges have resources to undertake effective search operations that are not limited to processing administrative measures"; that "the Mexican State failed to comply with its obligation [...] to facilitate immediate search actions," stressing that there was a failure to safeguard the scene of the crime or collect evidence, or investigate all the facts, or opportunely take statements from all the witnesses. The representatives indicated that the investigation conducted by the State was fragmented, negligent and partial. To prove their arguments, they pointed out that: (a) with the exception of the actions taken by a couple of agents,⁴³⁷ no immediate search actions were conducted (especially by the judicial authorities); (b) it did not provide immediate protection for the witnesses; (c) the search was restricted to an exchange of interinstitutional communications; (d) a total of 15 field search actions had been conducted, most between 2013 and 2015, and (e) the phone call presumably made by Nitza Paola was not investigated seriously, because it was rejected alleging that it had been for extortion purposes, even though no financial payment had been demanded.

209. The representatives considered – in the case of Nitza Paola and Rocío Irene – that "their gender placed them in a situation of vulnerability that was increased in relation to the Armed Forces in the context of generalized violence against women in the country." They considered that, by failing to adopt adequate measures of prevention and protection, the State had violated the rights established in Articles 8(1) and 1(1) of the Convention, in relation to Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) to their detriment.

210. Meanwhile, the **State** acknowledged its responsibility for the alleged legislative deficiencies and to the fact that the case was examined by authorities of military justice, but considered that these defects had been rectified (*supra* paras. 19 to 22). It asserted – contrary to the Commission and the representatives – that the authorities acted without delay, because they began the investigation procedures and search actions immediately. It indicated that the number of simultaneous investigations were derived from the different reports filed by the families before different authorities; that the waivers of jurisdiction and joinders of the case files called for specialized study, collection of evidence and analysis of the jurisdiction, so that they required time and that, although it was true that the investigations have not provided definitive results, "the State ha[d] exhausted all the logical lines to clarify the facts," despite the complexity arising from the presence of groups of organized crime in the region and the use by some of them of uniforms and weapons that were for the exclusive use of the Army in order to evade justice. It argued, also, that "it began and continued its investigations taking into account: (1) the complexity of the facts and the context in which they occurred, and (2) an assessment of the possible patters of human rights violations that had been committed in other cases at that time." Regarding the presumed telephone call from Nitza Paola, it argued that the report had been filed ten days after this occurred and that the federal authorities were informed of it when 56 days had elapsed and, despite this, the investigation was exhaustive.

⁴³⁷ Commander Mario Castro and agents José Bejarano García and Francisco Tena, members of the Ministry of Public Security in the Ejido Benito Juárez, who conducted the initial search actions on the night of the events and until December 30, 2009, the date on which Manuel Reyes Lira informed them that the victims had been found.

211. The State concluded that, based on the complexity and gravity of the facts, it had been diligent in its investigations and, just because it had not obtained a satisfactory result, this did not mean it had failed to comply with this duty, because the obligation to conduct an investigation is one of means and not of results and that, given the particular circumstances, it should not be considered “internationally responsible for having committed violations of the procedural guarantee of the reasonable time.”

B. Considerations of the Court

212. Since its first judgment, the Court has emphasized the importance of the state obligation to investigate and punish human rights violations,⁴³⁸ and this acquires particular importance in light of the gravity of the crimes committed and the nature of the rights harmed.⁴³⁹ This obligation is also revealed by other inter-American instruments. Thus, in cases of forced disappearances, the obligation to investigate is increased by Articles I(b) and IX of the Inter-American Convention on Forced Disappearance, in force for the State since April 9, 2002.⁴⁴⁰

213. It should be recalled that this Court has indicated that “the measures taken to investigate the facts must be assessed as a whole and, in principle, it does not correspond to the Court to decide the appropriateness of the measures of investigation.”⁴⁴¹ Indeed, it is not incumbent on the Court “to substitute for the domestic jurisdiction by establishing specific methods for the investigation and prosecution of a specific case in order to obtain an improved or more effective result; rather it must verify whether or not the steps taken in the domestic sphere violated international obligations of the State derived [...] from the Convention,”⁴⁴²

214. In light of the dispute that persists in this case, the Court will now examine the arguments of the parties with regard to the violation of the right to judicial guarantees in the following sections: (1) The alleged lack of due diligence in the investigation of the disappearances and the threats, and (2) The alleged failure to adopt norms or implement the necessary measures to offer an immediate response.

B.1. Due diligence

B.1.1. The investigation of the disappearance

(i) Immediate actions (from the very start)

215. The Court reiterates that the obligation to investigate human rights violations is one of the positive measures that States must take to ensure the rights recognized in the Convention.⁴⁴³ In light of this obligation, once the state authorities become aware of the fact, they must open *ex officio* and without delay a serious, impartial and effective investigation.⁴⁴⁴

216. In the instant case, there is evidence of a generalized context of violence that affected the population in the region and that resulted from the fighting among competing criminal organizations and the elevated presence of members of the Army and the Federal Police (*supra* para. 70). There is also evidence of the increase of human rights violations by state agents (*supra* para. 61), coinciding with the increase in their presence in the federal entity following the

⁴³⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166.

⁴³⁹ Cf. *Case of Goiburú et al. v. Paraguay. Merits, supra* para. 128, and *Case of Terrones Silva et al. v. Peru, supra* para. 181.

⁴⁴⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* para. 166, and *Case of Terrones Silva et al. v. Peru, supra* para. 181.

⁴⁴¹ Cf. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153, and *Case of Carvajal Carvajal et al. v. Colombia, supra* para. 118.

⁴⁴² Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 81.

⁴⁴³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* paras. 166 and 176, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 167.

⁴⁴⁴ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, paras. 219, 222 and 223, and *Case of Tenorio Roca et al. v. Peru, supra* para. 168.

start of the “Chihuahua Joint Operation” in March 2008 (*supra* paras. 68 to 75).

217. The Court observes that, starting with the first report of the disappearances filed by the families, it was indicated that it had been executed by a group with military characteristics (*supra* paras. 87 and 89), and this assertion was repeated in the different reports filed before diverse authorities over the following days (*supra* paras. 121, 123 and 134).

218. The first authority to become aware of the facts was the Commander of the Sectional Police of the village of Benito Juárez, Mario Castro García, who, on the same night of December 29 and during the early morning hours of December 30, 2009 – accompanied by members of his police force (*supra* paras. 87 and 88) and, subsequently, the Judicial Agent of the State Investigation Agency in Nuevo Casas Grandes, Oscar Arias Campo⁴⁴⁵ – began the search; specifically “an operation that consisted in checking vehicles.”⁴⁴⁶

219. During this operation, the agents took the following measures: (a) the Sectional Police of the village of Benito Juárez found and safeguarded a fire in which, apparently, a jacket and a pistol had been incinerated⁴⁴⁷ and, subsequently, handed these over to the judicial authority who took photographic evidence and collected the burnt articles; (b) the Sectional Police discovered and seized the pick-up vehicle from which the captors had abducted Nitzia Paola and José Ángel Alvarado, and then handed it over to the judicial authority who took a series of photographs and, at the request of Commander Castro,⁴⁴⁸ transferred the pick-up to the yard of the State Investigation Agency of Nuevo Casas Grandes, Chihuahua, for safekeeping, escorted by the Sectional Police, and (c) the Sectional Police carried out checks on paths or “suspicious places,” while the judicial authority drove through the village looking for suspicious vehicles or individuals. It is also on record that, on December 30, the police searches were suspended at the request of one of the family (Manuel Reyes), owing to the supposed discovery of the victims.⁴⁴⁹

220. The Court notes that although the measures taken by Judicial Agent Arias Ocampo were taken on the day he became aware of the facts, this did not signify an immediate and official response intended to locate the victims or determine those responsible. To the contrary, his record of the measures taken reveals that the evidence and information gathered would be made available to the Public Prosecution Service, subsequently, “if requested.”⁴⁵⁰ Indeed, the case file shows that this material was only forwarded to the AMP-Buenaventura on January 5, 2010 (*supra* para. 104); in other words, six days after the facts were known and also after the filing of the reports by Patricia Reyes Rueda and María de Jesús Alvarado Espinoza before that authority (*supra* para. 103).

221. This Court also notes that the authorities who were first made aware of the facts omitted to take various measures, such as: they failed to safeguard the scenes of the crime and to collect additional evidence in the area surrounding the fire or from inside and outside the pick-up truck (*supra* para. 219); there is no record that the house from which Rocío Irene was taken was protected or that evidence was gathered from the surrounding area, and they failed to identify possible witnesses of the events, other than the family members (for example, neighbors).⁴⁵¹

⁴⁴⁵ Communication 1656/2010, of January 5, 2010, signed by Óscar Arias Ocampo (evidence file f. 12299).

⁴⁴⁶ Judicial testimony of Mario Castro García on March 9, 2010, before the AMP-UEIPAE (evidence file, f. 27942).

⁴⁴⁷ Cf. Report provided on December 30, 2009, by Mario Castro García, Commander of Public Security and Highwayways of the Ejido Benito Juárez (evidence file, ff. 5753 and 5754).

⁴⁴⁸ It is worth pointing out that the vehicle was transferred at the request of the Commander of the Sectional Police and not based on an order or a formal requirement (evidence file, f. 12300).

⁴⁴⁹ Report provided on December 30, 2009, by Mario Castro García before the Director of Public Security and Municipal Highways of Buenaventura, Chihuahua (evidence file, ff. 5753 and 5754).

⁴⁵⁰ Record of notice given by the police to the Special Unit for Probable Criminal Incidents, Folio No. 1653 of January 5, 2010, signed by Oscar Arias Ocampo (evidence file, f. 12300).

⁴⁵¹ The first statement made by Obdulia Espinoza Beltrán, one of the eyewitnesses of the events, was only taken by the FEVIMTRA-PGR on June 10, 2010, more than five months after the disappearances.

222. This is contrary to the guiding principles that the Court has previously established must be observed in criminal investigations into human rights violations. These may include: the recovery and preservation of the evidentiary material in order to contribute to any potential criminal investigation of those responsible; the identification of possible witnesses and obtaining their statements, and the determination of the cause, manner, place and time of the incident investigated. It is also necessary to conduct a thorough investigation of the scene of the crime, and rigorous examinations must be made by qualified professionals using the most appropriate procedures.⁴⁵² The omissions noted had a direct impact on the conduct and result of the investigations, because the case file contains no record of finding fingerprints, traces or indications that could lead to the perpetrators.

223. The Court also finds that the actions of the Public Prosecution Service in the initial hours were limited to a few patrols or circuits made in order to locate suspicious individuals or vehicles and to seize certain objects; because there is no record of any effort to search military premises even though, from the very start, the family's statements indicated the probable participation of members of the Army. According to the case file, it was only on January 7, 2010, – that is nine days after the incidents – that the first step was taken to seek the victims within the 35th Infantry Battalion, and this was unsuccessful.⁴⁵³ Then, on January 10, 2010, the CNDH and the CEDH-Ch inspectors visited the said premises and placed on record that the victims were not in that place.⁴⁵⁴

224. It is worth pointing out that, under domestic law, none of the authorities who first went to the 35th Battalion were authorized to investigate crimes, because that is reserved to judicial authorities. In this case, the first search carried out in the context of a criminal investigation was made on May 14, 2010 (five and a half months after the disappearances), by the Agent of the Military Public Prosecution Service attached to the Fifth Military Zone, Military Justice Major Gustavo Horacio Leal Estevez. Following this procedure, those present also recorded that the victims were not on the premises of the Army's 35th Battalion (*supra* para. 115).

225. The Court considers that the above measures to search for the victims were not taken with the promptness that the case required because nine days passed between the date of the disappearance and the first visit (by a non-judicial authority), which is an excessive time if the risk to the life and integrity of the victims is taken into account, given the nature of the violations and the possibility that these had been committed by state agents; thus, the time lost would have been very useful in order to find them. However, owing to the belated actions of the authorities, the possibility of finding the victims or determining the perpetrators was considerably and irreparably reduced.

226. In addition, it can be understood that the actions were neither thorough nor effective, because the authorities merely certified that the victims were not present in the place at that moment, failing to collect evidence that could have indicated their possible presence on those premises at some time following their disappearance; in other words, direct interviews with the personnel of the 35th Battalion, and examination of logbooks or existing records, among other possibilities, which denotes a lack of diligence.

227. In this regard, the Court considers that the State did not act with due diligence in the initial hours and days following the reports of disappearance, losing valuable time in this type of case.

⁴⁵² Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 128, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 257, para. 344.

⁴⁵³ Measures taken by Leopoldo Alberto González Pérez, Secretary of the Second Criminal Court of the Judicial District of Galeana, in compliance with the orders of the Sixth District Judge in Ciudad Juárez, Chihuahua, in the context of the amparo procedure filed by José Ángel Alvarado Fabela (evidence file, f. 5610).

⁴⁵⁴ Cf. C.E.I. message No. 929 of January 15, 2010, signed by the Commander of the 35th Infantry Battalion of the Army addressed to the Commander of the 5ªZM (evidence file, f. 5609).

(ii) *The supposed phone call by Nitza Paola Alvarado Espinoza*

228. Regarding Nitza Paola Alvarado Espinoza's supposed call for help to the telephone of a friend on February 3, 2010 (*supra* para. 100), the Court notes that, following an investigation started by the PGJE-Chihuahua and continued by FEVIMTRA, this was rejected by the investigating authority as irrelevant for the investigation, considering that it was an extortion attempt, unrelated to the circumstances of the case (*supra* paras. 101 and 102).

229. The Court notes that the authorities took a considerable number of steps aimed at determining the origin of the said call and its connection to the investigation⁴⁵⁵ and that these were initiated as soon as they became aware of the incident. The Court also notes that the corresponding report was filed by María de Jesús Alvarado before the Agent of the Public Prosecution Service of the PGJE-Chihuahua nine days after the call had been received and that the federal judicial authority was informed of it 19 days later (*supra* paras. 101 and 102). Even though the authorities were aware that the report had not been filed immediately, their actions were limited to sending requests to the different telephone companies and to various authorities (*supra* para. 104), and the investigation – which owing to the gravity of the violations reported required prompt an effective action – was subject to the response time of the said companies, a fact that the State itself acknowledged. Therefore, since there was a failure to conduct an investigation with the promptness called for by the case, the probability of being able to locate, at least, one of the disappeared persons and their possible captors decreased considerably with the passage of time.

230. Additionally, the Court observes that the State's investigation of this incident was not sufficient thorough, because its conclusions as regards the extortive nature of the call were not based on irrefutable evidence that allowed the author of the phone call and the reason to be identified, but were based on the reports obtained that the telephone number from which the call had been made had been used for extortions, which was not sufficiently conclusive to close an investigation. Especially if it is taken into account that at no time was a payment demanded – an essential element for the existence of an extortion. Consequently, the State failed to comply with its duty of due diligence in this regard.

(iii) *The investigation by the military jurisdiction*

231. The Court notes that, from January 15, 2010, to December 29, 2011, the case was investigated by military authorities (*supra* paras. 110 to 116). In other words, for one year and eleven months the inquiries were subject to the military jurisdiction. As already pointed out, the State has acknowledged its international responsibility for the violation of Articles 8 and 25 of the Convention, as well as of Article 2 of this instrument in this regard (*supra* para. 21). In light of the acknowledgement of responsibility for the evident violation of this right, the Court will only refer to some specific aspects relating to the scope of the violation.

232. The Court reiterates that the military jurisdiction has been established by various legislations in order to maintain order and discipline within the Armed Forces. Consequently, it is not the jurisdiction that is naturally applicable to civilians who have no military function and, therefore, cannot incur in conduct contrary to the duties that correspond to military functions. When military justice assumes jurisdiction over a matter that should be subject to ordinary justice, this affects the right to the ordinary judge and, *a fortiori*, to due process, which are closely connected to the right of access to justice itself.⁴⁵⁶ With regard to Mexico, this Court has concluded that the military jurisdiction is not the competent jurisdiction to investigate and, if applicable, to prosecute and to punish the perpetrators of alleged human rights violations;

⁴⁵⁵ Judicial measures conducted owing to Nitza Paola Alvarado's call for help, by the PGJE-Chihuahua (evidence file, ff. 12321 to 12677) and by the FEVIMTRA-PGR (evidence file, ff. 29371 to 29527).

⁴⁵⁶ Cf. *Case of Castillo Petrucci et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 128, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2015. Series C No. 308, para. 137.

rather, the prosecution of those responsible always corresponds to ordinary justice; this applies to all human rights violations⁴⁵⁷ and is not limited to the trial before a court, but, above all, to the investigation itself.⁴⁵⁸

233. That said, regardless of the direct violation of Articles 8 and 25, in relation to Article 2 of the Convention, owing to the incompatibility with this of the involvement of the military jurisdiction in the development of the case, this also entailed a serious violation of the obligation of due diligence in the criminal investigations. This was because, since those investigations were conducted by authorities who lacked independence and impartiality, the inquiries and other actions implemented – which were implemented expressly to determine whether members of the military had participated in the disappearance⁴⁵⁹ – and since they were conducted in the first months after the disappearance, they supposed the loss of valuable evidence, which had a relevant impact on the progress of the investigations.

234. According to this Court's case law, it is not sufficient that the State merely acknowledge an internationally wrongful act for the Court not to declare its responsibility; rather, it is also necessary to assess whether the State has caused that act to end and whether it has repaired the consequences of the measure or situation that constituted it.⁴⁶⁰

235. Therefore, the Court considers that – contrary to the State's assertion – the subsequent referral of the case to the civilian authorities, even though it was a correct decision, did not mean that the violation had been remedied, because the adverse effects on the investigation process, as regards obtaining pertinent evidence and taking measures at the very outset, had had a serious impact on the investigation, especially considering that this referred to disappearances in which due diligence is crucial to discover the whereabouts of the victims.

236. The proven context of impunity in Mexico with regard to this type of case also reveals the lack of oversight of the said operations with the participation of the Army. This was revealed also by Complaint 886/09 filed before the Chihuahua Joint Operation's mechanism for responding to complaints and reports, which did not lead to any action or decision by the authorities (*supra* para. 142)

237. The State asserted that the case was examined by the military jurisdiction pursuant to article 57.II.a) of the Code of Military Justice in force at the time, an issue that – in its opinion – was remedied following the amendment of the Code by the Congress of the Union. Meanwhile, the Commission and the representatives considered that an element that violated the Convention subsisted in the Code; namely, the jurisdiction of military justice with regard to human rights violations committed against a member of the military, and therefore asked the Court to rule in this regard.

238. On this matter, both the Commission and the representatives cited this Court's conclusions when issuing the orders of April 17, 2015, in the procedure of monitoring compliance with judgment in the cases of *Radilla Pacheco et al.*, and *Cabrera García et al., v. Mexico*.⁴⁶¹ This was

⁴⁵⁷ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* para. 273, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* paras. 197 and 198.

⁴⁵⁸ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 177, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* para. 200.

⁴⁵⁹ Preliminary inquiries initiated by the military jurisdiction were addressed at punishing conducts contrary to military discipline such as "abuse of authority" and not the crime of forced disappearance; thus, the main purpose of those inquiries was to determine whether the conducts could be attributed to members of the Army; thus, the investigation was closed when there was no evidence that implicated military personnel, as indicated in the decision to close Preliminary Inquiry PGJM/AMPME/CDJUAREZ/196-II/2010 (evidence file, ff. 499 to 618)

⁴⁶⁰ Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 96, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*, *supra* para. 70.

⁴⁶¹ The Court considered that the amendment signified an important harmonization of domestic law with the international standards and those of the Convention in the area of the military criminal jurisdiction, but that it was necessary to adapt the constitutional and legislative interpretation to the principles of inter-American case law as soon as possible. Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Monitoring compliance with judgment*. Order of April 17, 2015, paras. 21 and 23; and *Cases of Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v.*

because the said legislation still authorizes the intervention of the military jurisdiction in crimes in which the accused and the victim are soldiers and in crimes in which the accused is a soldier and that it is not [*sic*] a civilian who is the passive subject of the crime or titleholder of the right.⁴⁶² Although this Court supports the criteria established in the orders of April 17, 2015, given that the instant case does not involve the said situation, it will not rule in this regard because it falls outside the matter in hand.

239. Therefore, the Court considers that the State violated Articles 8 and 25 of the Convention and Article 2 of this instrument, as well as Articles I(b) and IX of the Convention on Forced Disappearance, by having allowed the military jurisdiction to examine the case for a substantial part of the process.

(iv) *The subsequent investigations*

240. This Court has indicated consistently that the duty to investigate is an obligation of means and not of results that the State must assume as an inherent legal duty and not as a mere formality preordained to be illusory, or as a measure taken by private interests that depends on the procedural initiative of the victims or their next of kin or on the contribution of evidence by private individuals.⁴⁶³ In cases of forced disappearance, the Court has confirmed the existence of a "right of the victim's family to know their fate and, if possible, their whereabouts or, if applicable, where their remains are located."⁴⁶⁴ In such cases, impunity must be eliminated by determining the responsibilities, both general – of the State – and individual – criminal and other responsibilities of its agents or of private individuals.⁴⁶⁵

241. The Court has verified that, from the start of the investigations, the different authorities responsible for them have taken numerous steps and conducted a large number of measures to try and find the victims and to determine those responsible for the disappearances. These include, in particular, the measures undertaken by the FEVIMTRA-PGR (such as, taking statements from eyewitnesses and authorities related to the case, steps to seek remains, and requests to the SEDENA, the Federal Police and other authorities for information) (*supra* paras. 118 to 120); and by the UEBPD-PGR (such as, taking statements, joinder investigations, steps to seek remains, and identification of a person presumed to be responsible) (*supra* paras. 124 to 136).

242. However, as the Commission has pointed out, for more than three years after the date of the alleged disappearances, most of the actions taken by the authorities in charge of the investigations⁴⁶⁶ focused on determining whether or not they were competent to conduct them. During the said period, investigations were conducted by two or more authorities simultaneously and this Court has been unable to observe any type of coordination between them.⁴⁶⁷ The Court notes that, after July 18, 2013, following the inclusion of the crime of forced disappearance of persons in the Federal Criminal Code, the Office of the Prosecutor General of the Republic,

Mexico. Monitoring compliance with judgment. Order of the Inter-American Court of April 17, 2015, *consideranda* 21 and 23.

⁴⁶² Cf. *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* para. 22; and *Cases of Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v. Mexico*, *supra* para. 22.

⁴⁶³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* para. 177, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 88.

⁴⁶⁴ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* para. 181, and *Case of Radilla Pacheco v. Mexico*, *supra* para. 180.

⁴⁶⁵ Cf. *Case of Goiburú et al. v. Paraguay*, *supra* para. 131, and *Case of Munárriz Escobar et al. v. Peru*, *supra* para. 98.

⁴⁶⁶ Specifically, the Office of the Prosecutor General of the state of Chihuahua, the Delegation of the PGR in the state of Chihuahua, and the Office of the Military Prosecutor General.

⁴⁶⁷ This was confirmed by Dr. Salomón Baltazar Samoaya, a witness in the case, who was the Head of the Unit for the Search for Disappeared Persons of the Office of the Prosecutor General of the Republic from June 2013 to July 2015. In his testimony, he stated: "[w]hen we began the work of collecting the files and inquiries that had been carried out on the case, we found an investigation that was uncoordinated, disperse and 'sleeping the sleep of the righteous'" (evidence file, affidavits, f. 30932).

through the UEBPD and, subsequently, the FEBPD, joindered all the files established by the different authorities and assumed the exclusive investigation of the facts (*supra* para. 135).

243. The Court notes that, prior to the joindering of all the investigations under a single authority, the fragmentation of the investigation was due to jurisdictional conflicts among the authorities of the State's different areas, thereby impeding – for more than three years – an effective response by the State.⁴⁶⁸ In part, the jurisdictional conflicts arose because the crime of forced disappearance was not defined by law at the time of the facts⁴⁶⁹ and there was no legislation that clearly defined the competences of the authorities responsible for its investigation. The uncertainty arising from the lack of appropriate legislation was also reflected in the limited efforts of the authorities, who failed to follow lines of investigation decisively and execute specific action plans.

244. The Court also notes that there were serious flaws in the investigations, even after they were unified under a single authority. Thus, the Court observes that the investigations conducted by the agencies were not sufficiently thorough, as the case required in light of the gravity of the violation denounced and the potential danger for the victims. The authorities who assumed the investigation (including the UEBPD-PGR, later FEBDP-PGR), did not take all the steps related to the most significant line of investigation, which related to the intervention of agents of the State. Thus, they failed to collect all the evidence from which it would have been possible to discover details of the chain of command, as well as evidence based on the communications sent and received in the months before and after the disappearances and the corresponding logbooks and records that registered the actions of the members of the 35th Battalion over the said period (whether or not related to the Joint Operations that were implemented). Also, given the specific report of the pick-up truck used in the "*levantón*," it is noteworthy that no attempt was made to request all the existing information on the vehicles used by members of the 35th Battalion (officers and rank and file), and on those recovered, seized, immobilized and/or retained by them prior to the disappearance and that could have been used by them at the time of the facts.⁴⁷⁰

245. Furthermore, the steps taken by the authorities in the investigation to identify "Commander Meza" and his relationship to the facts of the case were not thorough, because the record of the calls relating to the telephone number of Argene Blásquez Morales was not analyzed to identify the origin of the call received from the supposed Commander and to corroborate the different statements of this official and of Ramón Iván Sotomayor Siller and Damaris Baglietto Hernández; thus, to date, the said Commander has not been identified. Likewise, the probable relationship between the disappearance and the murder of the three federal agents in October 2009 was not investigated, because even though information was requested on the investigation conducted by the Federal Police, those responsible were not identified.

246. Regarding the line of investigation with regard to organized crime and its relationship to the disappearances, insufficient measures were taken or requests for information made to determine its feasibility and, if appropriate, to obtain the evidence required to prove it.⁴⁷¹

247. In short, the above-mentioned deficiencies in the investigation constitute a violation of the

⁴⁶⁸ Expert witness Gabriella Citroni, based on the Report on the visit to Mexico of the Special Rapporteur on the Independence of judges and lawyers, indicated that one of the deficiencies of the Mexican system of investigation was precisely the existence of jurisdictional conflicts between federal and state authorities, "which hinders the effective response of the State" (evidence file, affidavits, f. 31109, para. 203)

⁴⁶⁹ A matter that was acknowledged by the State, which pointed out that the General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons, has entered into force now, published in the Official Gazette of the Federation on November 17, 2017.

⁴⁷⁰ Cf. Final report issued by the International Team of Experts (ITE) in the project to provide assistance to the Prosecutor General of the state of Chihuahua, Mexico, in the investigations of cases of murder of human rights defenders and forced disappearance (evidence file, f. 28897).

⁴⁷¹ Cf. Final report of the ITE, *supra* ff. 28901 and 28902.

State's obligation to conduct a serious, impartial, effective and thorough investigation, which has contributed to the fact that, to date, the victims have not been found, and the perpetrators of the forced disappearances have not been identified. This violates Articles 8 and 25 of the American Convention, and also Article I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of Nitza Paola, Rocío Irene and José Ángel Alvarado and the direct members of their families (*infra* para. 265).

(v) *Article 7 of the Convention of Belém do Pará*

248. With regard to the alleged violation of Article 7 of the Convention of Belém do Pará, the Court – as noted by the Commission – does not find sufficient evidence to assert that the reason for the disappearance of two of the victims was gender-based⁴⁷² or that the authorities discriminated based on gender when investigating the facts. To the contrary, the Court notes that, for a year and seven months, the FEVIMTRA (a special body for the investigation of acts involving violence against women and people trafficking) was responsible for the investigation and concluded that there was no evidence to indicate that gender-based violence was involved.

(vi) *The reasonable time*

249. The Commission and the representatives argued that the State had failed to comply with the guarantee of a reasonable time in the investigation without justifying its deficient action; while the State indicated that the delay was due to the complexity of the matter and to the context in which the facts occurred (*supra* paras. 206 and 211), so that it should not be considered responsible for violating the guarantee of a reasonable time.

250. The Court reiterates that, pursuant to Article 8(1) of the Convention and as part of the right to justice, proceedings must be conducted within a reasonable time;⁴⁷³ accordingly, owing to the need to ensure the rights of victims, a prolonged delay may, in itself, constitute a violation of judicial guarantees.⁴⁷⁴ Moreover, since this case relates to forced disappearance, the right of access to justice includes the right that an effort be made to determine the fate or the whereabouts of the victim. The Court recalls that it has taken four factors into account to determine whether the time is reasonable: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the effects on the legal situation of the person involved in the proceedings.⁴⁷⁵

251. Regarding the first factor, complexity, the Court has indicated that a case may also be complex if it refers "to a forced disappearance in which the perpetrators have tried to eliminate all or any trace of evidence, due to the refusal to provide information on the whereabouts, and due to the number of those possibly responsible."⁴⁷⁶ Therefore, given the characteristics of this case, the Court notes that it is complex. Regarding the procedural activity of the interested parties, the Court does not observe that the conduct of the families has hindered the processing of the investigations; to the contrary, the Court has verified their active participation and collaboration with the authorities. Also, the Court notes that the procedural activity of the interested parties has not ceased, even though they have been subjected to threats and harassment.

⁴⁷² Cf. *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 195, para. 295, and *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 279.

⁴⁷³ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Terrones Silva et al. v. Peru, supra* para. 185.

⁴⁷⁴ 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, para. 145, and *Case of Anzualdo Castro, supra*, para. 124.

⁴⁷⁵ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Terrones Silva et al. v. Peru, supra* para. 193.

⁴⁷⁶ Cf. *Case of Anzualdo Castro v. Peru, supra* para. 157, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, para. 140.

252. With regard to the conduct of the authorities, the Court notes that the actions of the State's agencies commenced as soon as they were made aware of the disappearances and various search and investigation measures and actions were taken, particularly by the FEVIMTRA, the UEBPD-PGR and the FEBPD-PGR. Despite this, at the outset there was a lack of immediate response and coordination (*supra* para. 242); there is also evidence of the fragmentation and lack of coordination of the investigations that hindered their progress (*supra* para. 243). In addition, the Court notes that the military authorities obstructed the investigation efforts on several occasions (*supra* paras. 200 to 203). All of this has meant that, to date, the victims have not been located and the perpetrators have not been identified. This situation also occurred within and is characterized by the context of impunity in this type of case, as previously described (*supra* paras. 66 and 67).

253. The Court finds that the effects on the legal situation of the persons involved in the proceedings is evident because it has maintained that the forced disappearance of persons is a multiple and continuing violation of numerous rights recognized in the Convention and places the victim in a situation of complete helplessness, resulting in other related violations (*supra* paras. 165 and 166). The forced disappearance of persons must be considered a crime against humanity,⁴⁷⁷ that not only causes suffering to the victims, but also to their families.⁴⁷⁸ Thus, in this case, both the victims and their families have been affected in a continuing and permanent manner. In addition, the extended time taken by the investigation lessened the possibility of finding the victims alive because, in these cases, speed is crucial.

254. Based on the above, and since after almost nine years of investigations, the whereabouts of the victims remain unknown and no one has been prosecuted or convicted for the perpetration of this violation, the time that the investigation of the facts has taken exceeds the reasonable limit established by Article 8(1) of the Convention for a case of this nature, giving rise to a situation of impunity.

B.1.2. The investigation of the threats and harassment

255. With regard to the threats and harassment reported by the families, the Court observes that the body of evidence does not show that the authorities conducted a thorough investigation into the threats to the families and the possible causal nexus with the disappearances and the actions taken by the family members in this regard. This is particularly true with regard to the intimidating telephone call received by José Ángel Alvarado Fabela, the search of Jaime Alvarado's home, and the subsequent attempt to run him over (*supra* paras. 144, 147 and 149).

256. Although the State has insisted, without providing evidence to prove its assertions, that the threats and harassment did not originate from state agents and that there is no connection whatsoever between them and the alleged disappearances, the Court finds that, to date, it has not been possible to determine the perpetrators even though some of them have been denounced since 2010; in other words more than eight years have passed since some of these incidents occurred without any certainty about the perpetrators. The Court concludes that the State has been omissive in providing evidence to prove that the investigations undertaken as a result of the reports of the threats and harassment have concluded. This reveals the lack of due diligence in the investigation of the reported incidents and, consequently, the responsibility of the State in this regard, to the detriment of José Ángel Alvarado Fabela, Jaime Alvarado and their family group (*supra* para. 153).

B.2. The failure to adopt norms or implement measures to provide immediate response (Article 2 of the Convention)

257. As already established, the State acknowledged that the amparo proceeding filed by José

⁴⁷⁷ Cf. *Case of Goiburú et al. v. Paraguay*, *supra* para. 82 and 84, and *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 91.

⁴⁷⁸ Cf. UN. *Declaration on the Protection of All Persons from Enforced Disappearance*. Adopted by the General Assembly in resolution 47/133 of December 18, 1992, Article 1.2.

Ángel Alvarado Fabela did not constitute an effective remedy owing to the way in which it had been legislated; however, it assured the Court that, since 2013, the necessary amendments had been made to the corresponding legislation and that, at the present time, the amparo proceeding duly includes cases of forced disappearance. The representatives asked that the State harmonize the laws on amparo and on forced disappearance of persons to ensure that district judges have the resources to undertake effective search operations.

258. The Court reiterates that Article 2 of the Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of the Convention in order to ensure the rights recognized therein, which signifies that the measures of domestic law must be effective (principle of the *effet utile*).⁴⁷⁹ On this basis, the Court has considered that States must establish effective remedies and guarantees of due process of law before the competent authorities to protect every person subject to their jurisdiction against acts that violate their fundamental rights.⁴⁸⁰ In cases of the forced disappearance of persons, the obligation to adapt domestic law to the provisions of the Convention is essential for the effective eradication of this practice.⁴⁸¹ The Court also recalls that States must adopt the necessary measures to ensure that the remedy of *habeas corpus*⁴⁸² can be used effectively in situations of forced disappearance.⁴⁸³

259. Based on the acknowledgement of responsibility, the Court considers that the State is internationally responsible for the violation of Article 2, in relation to Articles 8 and 25 of the Convention, to the detriment of the disappeared victims because, at the time of the disappearances, the amparo proceeding did not constitute an effective remedy in cases of forced disappearance of persons and there was no legislation on forced disappearance of persons.

**VII.3
RIGHTS TO PERSONAL INTEGRITY (ARTICLE 5⁴⁸⁴), FREEDOM OF MOVEMENT AND
RESIDENCE (ARTICLE 22⁴⁸⁵), PROTECTION OF THE FAMILY, PROTECTION OF HONOR
AND DIGNITY, AND OF THE CHILD (ARTICLES 17,⁴⁸⁶ 11⁴⁸⁷ AND 19⁴⁸⁸) OF THE
FAMILIES, IN RELATION TO ARTICLES 1(1)⁴⁸⁹ AND 63(2)⁴⁹⁰ OF THE AMERICAN
CONVENTION.**

⁴⁷⁹ Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs.* Judgment of February 5, 2001. Series C No. 73, para. 87, and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 341, para. 84.

⁴⁸⁰ *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of López Soto et al. v. Venezuela, supra* para. 217.

⁴⁸¹ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 92, and *Case of Vereda La Esperanza v. Colombia, supra* para. 84.

⁴⁸² The Court has indicated that the procedures of *habeas corpus* and amparo are essential judicial guarantees for the protection of various rights whose derogation is prohibited by Article 27(2) of the Convention and that serve, moreover, to preserve legality in a democratic society. *Habeas Corpus in Emergency Situations. Advisory Opinion OC-8/87* of January 30, 1987, para. 42, and *Advisory Opinion OC-9/87* of October 6, 1987. Series A No. 9, para. 33.

⁴⁸³ Cf. *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, para. 104, and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 24, 2017. Series C No. 339, para. 187.

⁴⁸⁴ Article 5(1). Right to personal integrity. "1. Every person has the right to have his physical, mental, and moral integrity respected."

⁴⁸⁵ Article 22(1). Right to freedom of movement and residence. "1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law".

⁴⁸⁶ Article 17(1). Protection of the Family "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

⁴⁸⁷ Article 11. Protection of honor and dignity. "1. Everyone has the right to have his honor respected and his dignity recognized. 2. No 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. 3. Everyone has the right to the protection of the law against such interference or attacks."

⁴⁸⁸ Article 19. Rights of the child. "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

⁴⁸⁹ Article 1(1). Obligation to Respect Rights. "1. The States [...] undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms [...]."

A. Arguments of the parties and of the Commission

260. The **Commission**, regarding the alleged violation of personal integrity as a result of the forced disappearances, emphasized the families' profound feelings of pain, anguish and uncertainty due to the three disappearances, and noted that this had been intensified by the lack of an effective and diligent investigation within a reasonable time. It also pointed to the situation of anxiety and fear of the families owing to the threats and harassment they endured during their quest for justice and that those circumstances had kept them exposed to a situation of fear and anxiety incompatible with their personal integrity. In this regard, the Commission underlined the intimidating telephone call that José Ángel Alvarado's father received in which, in addition to threatening to kill him and his family, he was told to leave his home and his town within 12 hours. It also pointed to the violent break-in at the home of another member of the family, Jaime Alvarado, adding that, on that occasion, he was threatened by a menacing note found in his home indicating that he and his family would be killed. In the Commission's opinion, both these incidents had a reasonable causal relationship to the facts of the instant case. It also indicated that the members of the family groups were obliged to tolerate arbitrary interference in their personal life, while – at the time of the facts – several of them were just children regarding whom the State had a special obligation of protection which it failed to comply with in this case, not only at the time of the disappearances, bearing in mind that, in the case of Rocío Irene Alvarado Reyes, her daughter and younger brothers were present at the time, but also subsequently as a result of the failure to respond to the threats received. Moreover, those threats had an impact on their social and work relations resulting in irreparable consequences for the family dynamic, obliging them to displace internally and, in some cases, to flee to the United States. In this regard, it stressed that, specifically, José Ángel Alvarado Herrera's father decided to flee together with 21 family members, with 12 of them settling in Benito Juárez and 10 in Ciudad Juárez. Meanwhile, 11 members of Nitza Paola Alvarado Espinoza's family fled to the United States where they now live and, lastly, six members of the family of Rocío Irene Alvarado Reyes moved to Benito Juárez, which also resulted in the separation of their families, and social and cultural uprooting. Consequently, the Commission declared the violation of Articles 5, 11, 17, 19 and 22 of the American Convention.

261. The **representatives** agreed with the Commission and emphasized the profound suffering endured by the families owing to the forced disappearances, added to the impact of having witnessed violent situations at the time of the detentions, as well as the direct consequences on their health on hearing what had happened, and the social impact suffered, because their vulnerability to the arbitrary acts that were perpetrated was exposed to the community of the Ejido Benito Juárez. The representatives also stressed the break-in at the home of Jaime Alvarado on August 28, 2011, added to the physical impact in his particular case owing to the assault he suffered, and finding the menacing note. They also made special mention of the fact that, at the time, this family group was the beneficiary of the provisional measures issued by this Court, noting the negative impact of the three forced disappearances, the lack of state protection in view of the threats suffered and the failure to investigate these, and the families' need to displace forcibly. The representatives indicated that, although the three family groups had children at the time of the facts, and most of them had to displace, the most evident case of lack of protection and family separation was that of Nitza's daughters, who were unable to count on the assistance of either of their parents at the time of the forced displacement, the search for their mother, and the request for asylum in the United States, and had to forcibly displace just with their grandmother, and years later were detained by the immigration authorities as unaccompanied minors; moreover, this violation and the lack of care was especially serious owing to their condition as girl children. In conclusion, they requested the Court to declare the violation of the articles indicated by the Commission.

⁴⁹⁰ Article 63(2). "2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."

262. The **State** argued that personal integrity had not been violated because its response to the facts cited was in keeping with the international treaty-based obligations it had assumed. It also indicated that several of the incidents characterized as threats could not be classified as such because they constituted state actions that were justified and in accordance with Mexican laws; these included judicial summons, the presence of state agents, and requests for information. In particular, it stressed that, in the case of the threats and harassment, organized crime was always the source of the danger. Also, after acknowledging other legitimate situations of danger reported by the families of the disappeared persons, the State emphasized that it had implemented measures of protection to ensure the safety of the persons identified. It also indicated that it continued to conduct the necessary investigations, clarifying that, with regard to the murder of Fabián Alvarado Herrera on February 6, 2018, the investigations had been conducted diligently, and also, with regard to the procedure of provisional measures, it had established a Search Plan to try and locate the disappeared persons, alive or dead. In addition, it argued that the related violations that had been alleged could not be attributed to state agents, that there had been no real and imminent threat that triggered the decision of the families to displace internally and abroad, and that this was their decision. Regarding the right of children to protection, it indicated that several measures had been implemented in keeping with the needs of the underage members of the families, offering and granting housing in some cases, and incorporating some family members into the public health system. Lastly, it argued that it had investigated the reported facts diligently, indicating that the families' decision to change their place of residence was personal, consensual and agreed, and that the measures of protection required by the interested parties had been adopted as appropriate.

B. Considerations of the Court

B.1. Article 5, in relation to the forced disappearance

263. The Court has established that the families of the victims of human rights violations may, in turn, be victims.⁴⁹¹ In addition, it has considered that, in cases involving the forced disappearance of persons, it is possible to understand that the violation of the right to integrity of the families of the victims is a direct result of this phenomenon, that causes them severe anguish owing to the fact itself, which is increased, among other factors, by the constant refusal of the authorities to provide information on the whereabouts of the victims or to conduct an effective investigation to clarify what happened.⁴⁹²

264. The Court is also able to declare the violation of the right to integrity of the family members of victims of certain human rights violations applying a presumption *iuris tantum* with regard to mothers and fathers, daughters and sons, husbands and wives, permanent companions, sisters and brothers⁴⁹³ (hereinafter "the direct family"), provided this responds to the particular circumstances of the case. In the case of the direct family, it corresponds to the State to disprove this presumption.⁴⁹⁴

265. Based on the foregoing, the direct families,⁴⁹⁵ to whom this presumption applies, correspond to the following family groups:

- i. *Nitza Paola Alvarado Espinoza*: M.P.A.E., N.S.A.E., and D.A.E. (daughters); María Jesús Alvarado Espinoza (sister); María de Jesús Espinoza Peinado (mother) and Ascensión Alvarado Fabela (father);

⁴⁹¹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120. para. 113 to 115; *Case of Furlán and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, paras. 249 to 251, and *Case of Terrones Silva et al. v. Peru, supra*, para. 226.

⁴⁹² Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Terrones Silva et al. v. Peru, supra* para. 226.

⁴⁹³ Cf. *Case of Goiburú et al. v. Paraguay, supra* para. 103, and *Terrones Silva et al. v. Peru, supra*, para. 226.

⁴⁹⁴ Cf. *Case of Blake v. Guatemala, supra* para. 114, and *Case of Terrones Silva et al. v. Peru, supra*, para. 226.

⁴⁹⁵ Cf. Expert opinion of Carlos Martín Beristain, family tree (evidence file, affidavits, f. 31050)

- ii. *Rocío Irene Alvarado Reyes*: A.M.U.A (daughter), A.A.R. and A.R.A.R. (brothers), Patricia Reyes Rueda (mother), and
- iii. *José Ángel Alvarado Herrera*: J.A.E., J.A.A.E. and A.E.B. (children); Obdulia Espinoza Beltrán (wife); Jaime Alvarado Herrera, Rosa Olivia Alvarado Herrera (siblings), José Ángel Alvarado Fabela (father) and Concepción Herrera Hernández (mother).⁴⁹⁶

266. Regarding the indirect family members to whom this presumption is not applied, the Court does not have sufficient evidence to assess the violation of this right as a result of the disappearances.⁴⁹⁷

267. Therefore, the Court finds that the State is responsible for the violation of the Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, by application of the presumption *iuris tantum* to the direct families mentioned (*supra* paras. 265).

B.2. Articles 5, 22, 11, 17 and 19 in relation to the threats and harassment.

268. The Court will now examine the alleged threats in relation to the context of the disappearances and, if appropriate, the reasons leading the families to displace, as well as the alleged related violations.

B.2.1. The alleged threats

269. The Court has asserted that the mere threat that a conduct prohibited by Article 5 of the Convention could occur, when it is sufficiently real and imminent, may, in itself, be in conflict with the right to personal integrity.⁴⁹⁸

270. In this regard, the Court has verified that at least three incidents of intimidating and threatening acts were relevant in the context of the facts of the case: (i) on January 29, 2011, José Ángel Alvarado Fabela received a phone call threatening him and his family, which resulted in the displacement of his family group (*supra* para. 144); (ii) on July 14, 2011, Jaime Alvarado was run into by a grey vehicle, while he was cycling towards the home of his brother, José Ángel Alvarado, after receiving a phone call in which he was informed that unknown individuals were robbing that house (*supra* para. 147), and (iii) on August 28, 2011, the home of Jaime Alvarado was broken into, and a note was found inside with direct threats (*supra* para. 149). These facts took place after the families had assumed a leading role in the search to obtain justice for the disappearance of their next of kin.

271. The Court concludes that these incidents violated the right to personal integrity of José Ángel Alvarado Fabela and Jaime Alvarado Herrera, and also of their respective families (*supra*, para. 78), particularly as this Court had already ordered provisional measures in their favor, originally issued on November 26, 2010⁴⁹⁹ (*supra* para. 143). Also, even though these incidents were reported, to date the State has failed to clarify them.

272. Regarding the other allegations of supposed threats made by the representatives, the Court does not have sufficient evidence or information on the causal nexus to conclude that they

⁴⁹⁶ On March 2, 2017, the representatives advised that Concepción Herrera Hernández had died and presented her death certificate and that of F.A.H. (merits file, ff. 129 to 131).

⁴⁹⁷ These family members are: of Nitza Paola Alvarado Espinoza: Rigoberto Ambriz Marrufo (brother-in-law), R.A.A., I.A.A.A., J.E.A.A. and A.Y.A.A (nephews and nieces); of Rocío Irene Alvarado: Manuel Reyes Lira and María de Jesús Rueda Villanueva (grandparents), and of José Ángel Alvarado Herrera, his sister-in-law, Sandra Luz Rueda Quezada, his four nephews and nieces, J.O.A.R., R.G.A.R. C.N.A.R. and J.E.A.R., his brother-in-law, Félix García García, his four nephews and nieces, Karina Paola Alvarado Espinoza, F.A.H., J.G.A. and A.G.A. See also: *Cf.* Statement made by Carlos Martín Beristain (evidence file, ff. 31013, 31016, 31025 and 31027).

⁴⁹⁸ *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 165, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 191.

⁴⁹⁹ According to the quarterly report on the implementation of the provisional measures, fences, door security plates, and video surveillance were installed. Additionally, the State had undertaken to deliver seven mobile phones with a credit of 1,000 pesos a month to the beneficiaries, but did not do so (provisional measures, file, ff. 1559 and 1560)

constituted an autonomous violation of the right to personal integrity.⁵⁰⁰

B.2.2. The forced displacement and protection of the family

273. In light of the dispute that exists in relation to the alleged forced displacement (Article 22), the Court must determine to what extent the displacement from the site of the facts by the different members of the families, although with different destinations, was determined by the different incidents in this case; mainly pursuant to the obligation to ensure rights (Article 1(1)) and the obligation of prevention in relation to that right.

274. The Court has indicated that the right to freedom of movement and residence includes, *inter alia*, the right of those who are legally within a State to move freely in it, and to choose their place of residence.⁵⁰¹ This right may be violated formally or by *de facto* restrictions when the State has not established the conditions or provided the means that allow it to be exercised.⁵⁰² Such *de facto* violations may occur when a person is the victim of threats and harassment and the State does not provide the necessary guarantees to be able to move freely and reside in the territory in question, even when the authors of the threats and harassment are non-state agents.⁵⁰³ The Court has also indicated that the failure to conduct an effective investigation into violent incidents may promote or perpetuate forced displacement or exile.⁵⁰⁴

275. The Court has already described a context of risk in the region,⁵⁰⁵ and has concluded that there was an implicit risk for the families as a result of the search to clarify the forced disappearances, which was increased, in particular, owing to the reports they filed that specifically indicated the participation of Army authorities, as well as their active participation in the judicial investigations. Moreover, this risk subsequently resulted in specific threats (*supra* para. 270).

276. The Court reiterates that it had specific knowledge of the situation of risk of the families, particularly after the adoption of provisional measures by this Court in an order of November 26, 2010, and the following expansions,⁵⁰⁶ in which the State was required to adopt all necessary measures to protect the life and personal integrity of the different family members who were the beneficiaries.⁵⁰⁷ In this regard, the Court has asserted that it is for the state authorities who are

⁵⁰⁰ These were: (a) surveillance undertaken by patrols of Army personnel in vehicles on February 4 and March 9, 2010; (b) the arrival of PGR-Ciudad Juárez personnel and federal police at the home of José Ángel Alvarado Fabela to ask him to accompany them to the offices to report on the amparo he had filed to search for his next of kin; (c) the fact that José Ángel Alvarado Fabela was photographed by PGR-Ciudad Juárez personnel when he went to its offices on January 28, 2011; (d) a communication – notified by agents of the Public Prosecution Service – to Obdulia Espinoza Beltrán that law enforcement personnel would intervene if she did not appear when summoned; (e) the search for information by two members of the Federal Police who went to Nitza Paola Alvarado's home following the statement made before the Court by María de Jesús Alvarado; (f) the assertion made to the families by FEVIMTRA officials that supposed "basements" existed under the FEVIMTRA offices; this incident was reported by one of the representatives of the victims as a threat made when visiting that agency, and (g) the report of threats made by armed men to the people who were renting José Ángel Alvarado Herrera's residence (Merits Report, ff. 47 and 48, paras. 183 to 185, 189 to 191 and 195)

⁵⁰¹ Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 115, and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, paras. 117 and 214.

⁵⁰² Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Yarce et al. v. Colombia, supra*, para. 215.

⁵⁰³ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 139, and *Yarce et al. v. Colombia, supra* para. 215.

⁵⁰⁴ Cf. *Case of the Moiwana Community v. Suriname, supra*, para. 120, and *Case of Yarce et al. v. Colombia, supra*, para. 215.

⁵⁰⁵ See expert opinions of Gabriella Citroni (evidence file, affidavits, ff. 31052 to 31125) and Alejandro Madrazo Lajous (evidence file, affidavits, ff. 30963 to 30984) which describe the context of violence in the region.

⁵⁰⁶ Reiterated on April 1, 2011, May 15, 2011, November 23, 2012, June 23, 2015, November 14, 2017 (when the collaboration of the CNDH was requested for the preparation of the risk assessment), and March 13, 2018.

⁵⁰⁷ Namely: 1) María de Jesús Espinoza Peinado; 2) Ascensión Alvarado Fabela; 3) N.S.A.E.; M.P.A.E.; 4) D.A.E.; 5) María de Jesús Alvarado Espinoza; 6) Rigoberto Ambriz Marrufo; 7) José Ángel Alvarado Fabela; 8) Concepción Herrera Beltrán; 9) Obdulia Espinoza Beltrán; 10) J.A.E.; 11) J.A.A.E.; 12) A.A.E. ("A.E.B."); 13) Jaime Alvarado Herrera; 14) Sandra Luz Rueda Quezada; 15) J.O.A.R.; 16) R.G.A.R.; 17) C.N.A.R.; 18) J.E.A.R.; 19) Rosa Olivia

informed of the situation of special risk, to identify and assess whether the person who is the subject of the threats and harassment requires measures of protection and to refer the matter to the authority with competence to provide them, and also to offer the person at risk timely information on the measures available.⁵⁰⁸

277. In particular, the Court has verified that some family groups have had to displace several times in national territory and others abroad (*supra* paras. 151 to 156). Consequently, the Court considers that, at the time of the displacement of the family groups, it was evident that the authorities were aware that threats had been made and that the context and other elements of the case allowed it to be established that there was a real possibility that the said threats would be executed. Some of the safety measures adopted by the State consisted in generic equipment and constructions that were not adapted to the needs of the families, as established by the beneficiaries themselves; therefore the Court notes that, to a great extent, the displacements corresponded to the lack of effective protection provided by the State.⁵⁰⁹

278. In this regard, in its order on provisional measures of March 14, 2018, the Court reiterated that it had already drawn the State's attention⁵¹⁰ to the fact that it had not made the specific risk assessment first requested in its order of June 23, 2015 (considering paragraph 18 and fifth operative paragraph), and therefore repeated that this should be made immediately. In this regard, the Court took note that, despite its repeated requests, at the date of several incidents, the State had not complied with the preparation of the said assessment of the risk of the beneficiaries, which was unacceptable in light of its international obligations, so that the failure to implement the provisional measures integrally could result in serious and irreparable harm to the beneficiaries, making the said measures ineffective. Finally, on March 27, 2018, the State forwarded the risk assessment,⁵¹¹ in which it confirmed the families' situation of risk.

279. The Court has reaffirmed that the State's obligation of guarantee to protect the rights of displaced persons entails not only the obligation to adopt measures of prevention, but also to provide the necessary conditions to facilitate a voluntary, dignified and safe return to their usual place of resident or their voluntary resettlement in another part of the country.⁵¹² The Court has verified that, to date, the comprehensive and effective measures required to guarantee the return of the different family groups that request this have not been taken.

280. Nevertheless, the Court has verified that the family group of Patricia Reyes Rueda, A.M.U.A, A.A.R, A.R.A.R, Manuel Reyes Lira and María de Jesús Rueda Villanueva, were moved to Benito Juárez after having reached an agreement with the State on the measures to relocate them to a safe shelter,⁵¹³ which consisted in renting a house and food service for the family;

Alvarado Herrera; 20) Félix García; 21) K.P.A.E.; 22) F.A.H.; 23) J.G.A.; 24) A.G.A.; 25) Manuel Melquíades Alvarado Herrera; 26) Mayra Daniela Salas Rodríguez; 27) D.J.A.; 28) X.A.S.; 29) Patricia Reyes Rueda; 30) A.A.R.; 31) A.R.A.R.; 32) A.M.U.A., and 33) Manuel Reyes Lira.

⁵⁰⁸ Cf. *Case of Vélez Restrepo and family v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012 Series C No. 248, para. 201, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 256.

⁵⁰⁹ Cf. CNDH, *Risk assessment* (provisional measures file, f. 3245).

⁵¹⁰ Order of November 14, 2017. *Matter of Alvarado Reyes et al. Provisional measures with regard to Mexico.* Order of March 14, 2018, *considerandum* 16.

⁵¹¹ The assessment reveals that, currently, the country is experiencing a situation of violence in which the State has been obliged to take preventive measures in order to avoid or reduce the possibility of the perpetration of an act against the safety of the persons assessed. The report confirms two incidents of threats against the families: the phone call to José Ángel Alvarado Fabela and the note with threats that was found in the residence of Jaime Alvarado after the break-in. Regarding the analysis of assaults, two were identified: Jaime was run into by a vehicle of the type used by judicial agents, and Jaime Alvarado's residence was broken into. Lastly, the analysis revealed that it was necessary to adopt measures of protection for the families of the presumed victims. These included measures such as FGEC emergency contact numbers, continuing the infrastructure measures, comprehensive care for the families, and continuing with the safe shelter for Jaime Alvarado and his family group (provisional measures file, f. 3552).

⁵¹² Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010, para. 149, *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 196.

⁵¹³ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures.* Order of November 14, 2017, *considerandum* 19.

therefore, the State asserted that it had not violated their right recognized in Article 22 on the Convention (*supra* 262). On this point, the Court notes that although the State has provided some safety measures against the risk, which were adopted by mutual agreement with the beneficiaries, the said family group has now left that shelter and moved again; therefore, the Court understands that this measure of assistance was of a provisional nature and ineffective, and not a solution as a guarantee of return or relocation owing to the risk and context of the case.

281. In relation to the rights of the family, in cases of forced displacement, the Court has considered that this phenomenon, when it entails the separation or fragmentation of the family, may give rise to the State's responsibility by the violation of Article 17 of the Convention.⁵¹⁴

282. During these proceedings, numerous statements were presented that described the effects on the integrity of the Alvarado family, and on the life of each of its members, on the fact that they have had to displace away from their places of origin and to break up as a family,⁵¹⁵ without the State having provided safe conditions for their return or relocation.

283. Consequently, the Court concludes that the Mexican State has not ensured the right to personal integrity as a result of the threats received by Ángel Alvarado Fabela and Jaime Alvarado Herrera, as well as that of their respective family groups (*supra*, paras. 78 and 271). In addition, the State has not ensured the right to freedom of movement and residence and the right to protection of the family of the family groups previously identified (*supra*, paras. 151 to 156), who were obliged to displace owing to the forced disappearance of their next of kin, the threats, harassment, death of a family member, and because the State did not provide guarantees for a safe return; all this, despite the existence of provisional measures ordered by this Court. And, all this in violation of Articles 22 and 17 of the American Convention and non-compliance with Article 63(2) of this instrument⁵¹⁶ (*infra* para. 289).

284. Regarding the allegations concerning the violations of Article 11 and 19 of the Convention, the Court considers that the facts on which those violations are based have already been evaluated by the Court and are subsumed in the same facts that have given rise to State responsibility (*supra* 283); therefore, it does not find that there is an autonomy or specificity that requires the Court to declare an additional violation to those already established. This is without prejudice to assessing them in terms of specific harm caused in the chapter on reparations.

⁵¹⁴ Cf. *Case of Chitay Nech et al. v. Guatemala*, *supra* para. 163, and *Case of Yarce et al. v. Colombia*, *supra* para. 247.

⁵¹⁵ Cf. Statements made by D.A.E., *supra* (evidence file, f. 30892); M.P.A.E., *supra* (evidence file, ff. 30897 to 30899); A.R.A.R., *supra* (evidence file, f. 30873); Sandra Luz Rueda Quezada, *supra* (evidence file, ff. 30955 and 30956), and Rosa Olivia Alvarado Herrera, *supra* (evidence file, ff. 30924 and 30925). Also, cf. Expert opinion of Carlos Martín Beristain provided on April 16, 2018 (evidence file, affidavits, ff. 31011 to 310115 and 31047).

⁵¹⁶ In this regard, the Court has determined that the object and purpose of the American Convention is the effective protection of human rights and, therefore, it must be interpreted in a way that accords it its full meaning and allows the system for the protection of human rights to acquire its full practical effects. Thus, it should be considered that provisional measures have an autonomous judicial regime based on the provisions of Article 63(2) of the Convention, and when they are adopted, they constitute a jurisdictional guarantee of a preventive nature. Therefore, they have their own regime of responsibility that States must abide by and non-compliance with this may result in the State's international responsibility. In this regard, for example, the European Court of Human Rights has declared autonomous violations of Article 34 of the European Convention on Human Rights in relation to the adoption of provisional measures and has established that non-compliance with provisional measures undermines the effectiveness of the right of petition and, above all, the formal commitment made by the States on signing a convention to protect the rights and freedoms recognized therein. Cf. ECHR. *Mamatkulov and Askarov v. Turkey*, Nos. 46827/99 and 46951/99. Judgment of February 4, 2005, para. 128; *Paladi v. Moldavia* [GS], No. 39806/05. Judgment of March 10, 2009, paras. 104 to 106, and *Matter of Olaechea Cahuas v. Spain*, No. 24668/03. Judgment of August 10, 2006, paras. 65 to 83.

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention⁵¹⁷)

285. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to repair this adequately and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁵¹⁸

286. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the violated rights and to redress the consequences of the violations.⁵¹⁹ Therefore, the Court has considered the need to grant different measures of reparation in order to redress the harm fully; thus, in addition to monetary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.⁵²⁰

287. The Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, and the harm proved, as well as with the measures requested to repair the respective harm. Therefore, the Court must observe the concurrence of these factors to rule appropriately and in keeping with law.⁵²¹

288. As a result of the violations declared in this judgment, the Court will proceed to examine the arguments of the parties and the Commission, in light of the criteria established in its case law concerning the nature and scope of the obligation to make full reparation, in order to establish measures to redress the harm caused to the victims.⁵²²

289. The Court notes that, based on Article 63(2) of the Convention,⁵²³ the provisional measures in the *Matter of Alvarado Reyes with regard to Mexico* are related to this case and the Court has already rule in this judgment on the particular incidents that occurred in both procedures that involved specific violations of the Convention, as well as on the failure of the State to comply fully with the adoption of those measures (*supra* para. 283).⁵²⁴ The Court recalls that, under international human rights law, provisional measures are not only precautionary in nature, in that they preserve a legal situation, but basically protective, due to the fact that they

⁵¹⁷ Article 63. "1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

⁵¹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs, supra*, para. 268.

⁵¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 26, and *Case of López Soto et al. v. Venezuela, supra*, para. 269.

⁵²⁰ Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 371.

⁵²¹ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Soto et al. v. Venezuela, supra*, para. 270.

⁵²² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 27, and *Case of Terrones Silva et al. v. Peru, supra*, para. 238.

⁵²³ Article 63(2). In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

⁵²⁴ Mainly those relating to the search for the disappeared, the corresponding investigations, the protection of the personal integrity of the families, and the guarantees to prevent displacement. Cf. *Matter of Eloisa Barrios et al. with regard to Venezuela. Provisional measures*. Order of the Inter-America Court of June 29, 2005. See also: Cf. ECHR. *Mamatkulov and Askarov v. Turkey*, Nos. 46827/99 and 46951/99. Judgment of February 4, 2005, para. 128; *Paladi v. Moldova* [GS], No. 39806/05. Judgment of March 10, paras. 104 to 106, and *Matter of Olaechea Cahuas v. Spain*, No. 24668/03. Judgment of August 10, 2006, paras. 65 to 83.

protect human rights because they seek to avoid irreparable harm to persons. These measures are issued provided that the basic requirements of extreme gravity and urgency and the need to prevent irreparable harm to persons are met.⁵²⁵

290. With the issue of this judgment, the precautionary nature of the provisional measures ends,⁵²⁶ because their purpose was precisely to preserve the legal situation that made its delivery possible. However, under this judgment, the object and purpose of the provisional measures remain in effect owing to the specific obligation of the State “to ensure to the injured party the enjoyment of his violated right or freedom” pursuant to Article 63(1) of the Convention.

291. Accordingly, for the purposes of the instant case, the Court finds it pertinent to annul the said provisional measures and the pertinent measures will become part of the State’s obligations in relation to full reparation (*infra* paras. 329 to 332).⁵²⁷

A. Injured party

292. Pursuant to Article 63(1) of the Convention, the Court considers that the “injured party” is anyone who has been declared a victim of the violation of any right recognized therein. Therefore, for the purposes of this case, the Court considers that Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera and their families, identified below are the injured party:

Family members of Nitza Paola Alvarado Espinoza	<ol style="list-style-type: none"> 1. María de Jesús Espinoza Peinado (mother) 2. Ascensión Alvarado Fabela (father) 3. N.S.A.E. (daughter) 4. M.P.A.E. (daughter) 5. D.A.E. (daughter) 6. María de Jesús Alvarado Espinoza (sister) 7. Rigoberto Ambriz Marrufo (brother-in-law) 8. R.A.A. (nephew) 9. I.A.A.A. (nephew) 10. J.E.A.A. (nephew) 11. A.Y.A.A. (nephew)
Family members of Rocío Irene Alvarado Reyes	<ol style="list-style-type: none"> 1. Patricia Reyes Rueda (mother) 2. A.M.U.A. (daughter) 3. A.A.R. (brother) 4. A.R.A.R. (brother) 5. Manuel Reyes Lira (grandfather)
	<ol style="list-style-type: none"> 1. Concepción Herrera Hernández (mother, deceased 2016) 2. José Ángel Alvarado Fabela (father)

⁵²⁵ Cf. *Matter of the Inhabitants of the Miskito Indigenous People’s Communities of the North Caribbean Coast Region with regard to Nicaragua. Expansion of provisional measures.* Order of the Inter-American Court of August 23, 2018, *considerandum* 3.

⁵²⁶ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures.* Order of the Inter-American Court of March 14, 2018, *considerandum* 3: “Under international human rights law, provisional measures are not only precautionary in nature, in that they preserve a legal situation, but basically protective, due to the fact that they protect human rights because they seek to avoid irreparable harm to persons. These measures are applied provided that the basic requirements of extreme gravity and urgency and the need to prevent irreparable harm to persons are met. In this way, provisional measures become a real jurisdictional guarantee of a preventive nature.”

⁵²⁷ Cf. *Mutatis mutandi, Case of the Mayagna (Sumo) Awá Tingni Community with regard to Nicaragua. Provisional measures.* Order of the Inter-American Court of November 26, 2007, *considerandum* 11. Also, Cf. *Case of Gutiérrez Soler v. Colombia. Provisional measures.* Order of the Inter-American Court of June 30, 2011; *Matter of Rosendo Cantú et al. with regard to Mexico. Provisional measures.* Order of the Inter-American Court of July 1, 2011; *Case of Kawas Fernández v. Honduras. Provisional measures.* Order of the Inter-American Court of July 5, 2011; *Matter of Millacura Llaipén et al. with regard to Argentina. Provisional measures.* Order of the Inter-American Court of November 25, 2011, and *Case of Fernández Ortega et al. v. Mexico. Provisional measures.* Order of the Inter-American Court of February 20, 2012.

Family members of José Ángel Alvarado Herrera	<ol style="list-style-type: none"> 3. Obdulia Espinoza Beltrán (wife) 4. J.A.E. (daughter) 5. J.A.A.E. (son) 6. A.E.B. (A.A.E.) (daughter) 7. Jaime Alvarado Herrera (brother) 8. Sandra Luz Rueda Quezada (sister-in-law) 9. J.O.A.R. (nephew) 10. R.G.A.R. (niece) 11. C.N.A.R. (niece) 12. J.E.A.R. (nephew) 13. Rosa Olivia Alvarado Herrera (sister) 14. Félix García García (brother-in-law) 15. Karina Paola Alvarado Espinoza (niece) 16. F.A.H. (nephew, murdered on February 6, 2018) 17. J.G.A. (niece) 18. A.G.A. (nephew)
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293. For the purposes of the reparations ordered in this chapter, the Court takes note that Concepción Herrera Hernández died on January 14, 2016,⁵²⁸ Manuel Reyes Lira died in 2015,⁵²⁹ and the youth, F.A.H., was murdered on February 6, 2018.⁵³⁰

B. Obligation to investigate the facts and identify and, as appropriate, prosecute and punish all those responsible

294. The **Commission** asked that the State conduct a thorough, impartial, and effective investigation into the whereabouts of the disappeared and, if appropriate, adopt the necessary measures to identify their mortal remains and return them to their families. It also asked the Court to order the State to carry out, within a reasonable time, impartial and effective domestic procedures with regard to the human rights violations declared in its report and to conduct the corresponding proceedings for the crime of the forced disappearance of the presumed victims in order to clarify the facts completely, identify all those responsible, and impose the corresponding punishments.

295. The **representatives** emphasized the need to locate the whereabouts of the victims of the disappearance, and to identify, prosecute and punish those responsible for their disappearance and for the obstruction of the investigations.

296. The **State** did not refer directly to the measures of investigation. However, it indicated that the measures it had already implemented in the context of compliance with the provisional measures should be taken into account. Accordingly, it stressed that the Court should intervene only in cases in which such obligations had not been complied with, or had not been complied with adequately.

297. In this judgment, the Court has determined the international responsibility of the State for the forced disappearance of the three victims, as well as for the failure to investigate and clarify the facts in violation of Articles 3, 4, 5, 7, 8, 25 and 2 of the American Convention and the corresponding articles of the Inter-American Convention on Forced Disappearance of Persons.

⁵²⁸ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures*. Order of the Inter-American Court of November 14, 2017, *considerandum* 4.

⁵²⁹ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of June 23, 2015, *considerandum* 42. Available at: http://www.corteidh.or.cr/docs/medidas/alvarado_se_06.pdf. This paragraph reads: “[...] The Court notes that, according to the information provided by the representatives, the beneficiary Manuel Reyes Lira died during the proceedings from natural causes, therefore the Court proceeds to lift the measures for this beneficiary [...]” Also, in the file on the processing of these provisional measures, the Court notes that, on March 5, 2015, the representatives merely advised that this person was deceased without indicating the precise date on which this occurred; therefore, the Court does not know the exact date of death. Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures* (processing file, f. 2609).

⁵³⁰ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures*. Order of the Inter-American Court of March 14, 2018, *considerandum* 5.

This constituted “gross violations of human rights,” which have their own connotation and consequences. Therefore, the Court will establish the following components of the measure concerning the investigation of such cases.

B.1. Determination of the victims’ whereabouts

298. As part of the obligation to investigate, the State must carry out an effective search for the victims’ whereabouts (*supra* para. 240), because the right of the families to know their whereabouts is a measure of reparation and, therefore, an expectation that the State must satisfy.⁵³¹ Moreover, this contributes to alleviating the families’ anguish and suffering owing to the uncertainty.⁵³²

299. Consequently, the State must make every effort to ensure a thorough search using the appropriate judicial and/or administrative means to determine the whereabouts of the disappeared as soon as possible, and this must be conducted systematically and rigorously, and be provided with the appropriate human, technical and scientific resources. The families must be kept informed of these procedures and, to this end, the State must prepare a search timetable and, in its next annual report, inform the Court of the results of the actions undertaken.

300. In the eventuality that the victims are deceased, their mortal remains must be returned to their families, after genetic testing to verify the relationship, as soon as possible and without any cost to them. In addition, the State must cover the funeral costs, as agreed with the families.⁵³³

B.2. Investigations and determination of responsibilities

301. Bearing in mind the foregoing, and also this Court’s case law,⁵³⁴ the Court establishes that the State must continue, effectively and with the greatest diligence, the investigation that is underway in the domestic jurisdiction into the forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes and the other violations of the families’ rights in order to determine those responsible for the facts of this case and apply, effectively, the penalties and consequences established by law. The State must lead and conclude the pertinent investigations and proceedings within a reasonable time, in order to establish the truth of the facts, based on the criteria established for investigations in cases of forced disappearance, removing all the obstacles, *de facto* and *de jure*, that maintain impunity in this case (*supra* Chapter VII.2). Due diligence in the investigation means that all the relevant state authorities are obliged to collaborate in the collection of evidence and, therefore, must provide to the judges, the public prosecution service or any other competent authority all the information required and refrain from acts that hinder the advance of the investigation process. In particular, the State must ensure that the investigation respects the following criteria:

- a) The pertinent investigations must be conducted taking into account the context of the case, avoiding omissions in the collection of evidence and in following up on logical lines of investigation, as well as integrating them into a single investigation that allows specific results to be achieved;
- b) The investigation must be conducted with due diligence, encompassing all the elements that constitute forced disappearance;

⁵³¹ Cf. *Case of the 19 Traders v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 265, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 332, para. 149.

⁵³² Cf. *Case of Chitay Nech et al. v. Guatemala, supra*, para. 240, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 273.

⁵³³ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 185, and *Case of Terrones Silva et al. v. Peru, supra*, para. 248.

⁵³⁴ Cf. *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 188, and *Case of Vásquez Durand et al. v. Ecuador, supra*, para. 203.

- c) The perpetrators and masterminds of the forced disappearance of the victims must be identified and individualized;
- d) The competent authorities must conduct the corresponding investigations *ex officio* and, to this end, they must have available and use all the necessary logistical and scientific resources to collect and process the evidence and, in particular, have the authority to access the documentation and information that is pertinent for investigating the reported facts, and all those who take part in the investigations, including the victims or their representatives, witnesses, and agents of justice, must have due guarantees for their safety;
- e) As the case relates to a gross violation of human rights, and considering the permanent nature of forced disappearance, the effects of which do not cease while the whereabouts of the victims are not established or their remains are not identified, the State must refrain from using mechanisms such as amnesty to benefit the perpetrators of this type of violation, as well as any other similar provision, such as the non-retroactivity of criminal law, *res judicata*, *ne bis in idem*, or any other extenuating circumstance to exempt itself from this obligation;⁵³⁵
- f) The State must guarantee that, at all times, the investigations into the facts that constitute forced disappearance in this case remain in the ordinary jurisdiction, and
- g) The State must institute disciplinary, administrative or criminal actions, pursuant to domestic law, against the possible state authorities who have hindered or impeded the proper investigation of the facts, as well as against those responsible for the threats and harassment.

302. The Court considers it necessary to reiterate that, pursuant to the obligation of guarantee established in Article 1(1) of the American Convention, the State has the obligation to avoid and combat impunity (*supra* para. 259). To comply with this obligation, the State must combat this by all available legal means, because impunity "encourages the chronic repetition of human rights violations and the total defenselessness of the victims and their families."⁵³⁶

303. In accordance with its consistent case law, the Court reiterates that the State must ensure the full access and capacity to act of the victims or their families at all stages of the investigation and prosecution of those responsible. This purpose of this participation is access to justice and to know the truth of what happened. Additionally, the results of the corresponding proceedings must be published so that Mexican society knows the facts that are the purpose of this case and those who are responsible.⁵³⁷

C. Rehabilitation

304. The **Commission** requested the implementation of an adequate support program for the victims' family members.

305. The **representatives** requested emotional and medical care to help them overcome the effects of the disappearances.

306. Meanwhile, the **State** reiterated its complete willingness to provide health-related assistance with differentiated care for the victims' family members under the *Assistance Fund for Children of Victims of the Fight against Crime*; "[t]his was in general, and as it has been doing to date." At the same time, the State indicated that access to health care services was already

⁵³⁵ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 119, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 372.

⁵³⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173, and *Case of Herzog et al. v. Brazil, supra*, para. 291.

⁵³⁷ Cf. *Case of El Caracazo v. Venezuela, supra*, para. 118, and *Case of Terrones Silva et al. v. Peru, supra*, para. 246.

available to the families of the disappeared persons.

307. The Court takes note of the actions undertaken by the State and urges it to continue them. However, having verified the physical and emotional exhaustion caused by the facts and the search for justice, and also the negative impact on the personal integrity of the victims' families, it deems it pertinent that, if they so request, they are provided with professional psychological and/or psychiatric treatment as a measure of rehabilitation owing to the psychological and emotional effects they suffered as a result of the facts of this case. Therefore, the Court establishes the obligation of the State to provide, through its health care institutions, psychological and/or psychiatric treatment, free of charge and immediately, for five years, to the victims who have been declared the injured party, based on their specific needs. The treatment must include the provisions of medicines and, if appropriate, transportation and any other expenses that are directly related and strictly necessary. In particular, this treatment must be provided, insofar as possible, in the centers nearest to their place of residence. The victims who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to advise the State of their intention to receive this psychological and/or psychiatric treatment.

308. In the case of the family members who reside outside Mexico, the Court establishes, in equity, the sum of US\$7,000 (seven thousand United States dollars) for each of them so that they may cover the costs of psychological or psychiatric treatment. The victims who qualify and who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to advise the State of their intention to receive this psychological and/or psychiatric treatment in the country and/or to receive this sum in compensation.

D. Measures of satisfaction

309. The **Commission** requested: (i) the establishment and dissemination of the historical truth of the facts, and (ii) a public act of acknowledgement of responsibility. In addition, it indicated that, in the context of the provisional measures, the State had progressively provided information on a series of proposals and measures implemented to help some members of the Alvarado family, which included "humanitarian support and various types of assistance in the areas of health, education, productive projects [...] and consider[ed] that this c[ould] be assessed when evaluating the eventual components of the reparations [...]."

310. The **representatives** requested, as measures of satisfaction, *inter alia*: (i) a public act to acknowledge international responsibility and to make reparation to the victims which should include a public apology by the head of the Federal Executive, as well as representatives of the Federal Legislature and the Federal Judiciary; (ii) publication of the judgment in the Official Gazette of the Federation, in a publication of the Armed Forces (especially of the Ministry of Defense), in a national newspaper, and in a newspaper that circulates in the municipality of Buenaventura; (iii) that the State assume the consequences of the violation of the life project of the victims, and award scholarships so that several of the victims may continue their studies in accredited universities.

311. Meanwhile, the **State** underlined that the Court had established that the reparations should have a causal nexus and indicated that: (i) the Court has considered that it was not pertinent to order the act of public acknowledgement of responsibility, stressing that the judgment, *per se*, was a sufficient and adequate form of reparation; it also emphasized that, in the cases in which a public apology is made, it is the State that should designate the officials responsible for providing this; (ii) regarding the publication of the judgment, it indicated that, if its responsibility was declared, this should be published on the webpage of the Ministry of Foreign Affairs, and proposed that it be published, once, in the Judicial Weekly of the Federation and in the Official Gazette of the Federation; (iii) with regard to the harm to the life projects, scholarships and medical care, it pointed out that the State already has a system to provide the

family members of the disappeared persons with educational grants and access to health care and had already implemented two economic projects to respond to the harm to their life project; thus, the State was already implementing this measure.⁵³⁸

D.1. Public act to acknowledge international responsibility

312. The Court establishes, as it has in previous cases,⁵³⁹ and particularly in cases of gross human rights violations, that the State must organize a public act to acknowledge international responsibility in Mexico, during which it must refer to the human rights violations declared in this judgment. This act must be carried out in a public ceremony in the presence of senior State officials, including from the Ministry of Defense, the Ministry of Public Security and Citizen Safety, and the government of Chihuahua, and also with the participation of the victims in this case. The State must reach agreement with the victims or their representatives on the way in which this public act of acknowledgement is organized, as well as the details, such as the date and place. To this end, the State has one year from notification of this judgment.

D.2. Publication and dissemination of the judgment

313. The Court finds, as it has in other cases,⁵⁴⁰ that the State must publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette of the Federation, in the Judicial Weekly of the Federation and in a national newspaper with widespread circulation, all in an appropriate and legible font, and (b) this judgment, in its entirety, available for one year on the webpages of the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of Public Security and Citizen Safety, and the government of Chihuahua. The State must advise this Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report established in the twenty-second operative paragraph of the judgment.

D.3. Harm to the life projects

314. In the case of the claim for harm to the "life project," the Court recalls its consistent case law in which it has indicated that harm to the life project is distinct from loss of earnings and consequential damage.⁵⁴¹ Harm to the life project relates to the full realization of the persons concerned, considering their vocation, aptitudes, circumstances, potential, and aspirations, that allow them to establish certain reasonable expectations and achieve them.⁵⁴² Therefore, the life project is expressed by the expectations of personal, professional and family development that are possible under normal conditions.⁵⁴³ The Court has also indicated that harm to the life project entails the loss or the serious impairment of opportunities for personal development, in a way

⁵³⁸ In this regard, the State indicated that "[...] the government of the state of Chihuahua has a trust entitled the Assistance Fund for Children of Victims of the Fight against Crime. The trust is used to provide assistance to vulnerable children and adolescents, and also adults with disabilities, who were directly financially dependent on the victims of the fight against crime, in order to provide comprehensive social support; [...] the government of Chihuahua has awarded two productive projects to María Jesús Alvarado Espinoza and Ascención Alvarado Fabela and María de Jesús Espinoza Peinado, a stationery shop, and a confectionery shop, respectively. An initial investment in materials of \$25,000.00 was granted to the former, and \$24,998.00 to the latter. It is important to mention that both projects were awarded under the Self-employment Program of the government of the state of Chihuahua 'PAGECH' [...]" (merits file, ff. 689 and 690, paras. 1154 and 1157).

⁵³⁹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of Terrones Silva et al. v. Peru, supra*, para. 255.

⁵⁴⁰ Cf. *Case of Cantoral Benavides v. Peru, supra*, para. 79, and *Case of Terrones Silva et al. v. Peru, supra*, para. 254.

⁵⁴¹ Cf. *Case of Loayza Tamayo v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 42, para. 147, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 331, para. 223.

⁵⁴² Cf. *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 285, and *Case of Zegarra Marín v. Peru, supra*, para. 223.

⁵⁴³ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 245, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, para. 314.

that is irreparable or that would be very difficult to repair,⁵⁴⁴ and in such cases, it has considered that harm has occurred that affects the victims' objective liberty, or that prevents them from developing this project, or that, owing to the failure to comply with an obligation, the victims have no possibility whatsoever of envisaging a life project. Such harm has been considered real, significant, autonomous and reparable, so that, in specific cases, the Court has ordered, *inter alia*, measures of an educational nature,⁵⁴⁵ as well as compensation relating to this type of harm.⁵⁴⁶

315. In this judgment, different violations have been declared to the detriment of the different family groups, particularly of the rights recognized in Articles 5, 22 and 17 of the Convention, causing, in particular, the loss of opportunities derived mainly from the forced displacement; this represents a real harm, with a significant impact, additional to other economic or psychological effects, and has aspects that can be repaired. In this regard, the Court takes note of the projects reported by the State, in particular the trust entitled the "Assistance Fund for Children of Victims of the Fight against Crime" and the support granted under the "Self-employment Program of the government of the state of Chihuahua 'PAGECH.'" Taking this into consideration, the Court asks the State to require the corresponding agencies, through those programs or other of a similar nature, and also the General Law on Victims, to admit the family members who so request into the said programs or benefits with the aim of contributing to reparation of their life project. The requirement to the agencies must be made within six months of notification of this judgment. The State must inform the Court of the results of this measure in a year's time.

E. Guarantees of non-repetition

316. The **Commission** urged the State to adopt the necessary measures to prevent the recurrence of similar acts in the future, and requested that these should include legislative, administrative and any other type of measure to: (i) respond to the problem of forced disappearance in Mexico and its particular frequency in the state of Chihuahua; (ii) reinforce the capacity to investigate cases of forced disappearance of persons and to address the structural factors that lead to impunity in these cases, and (iii) ensure that the authorities of military criminal justice refrain from obstructing investigations in cases of forced disappearance.

317. The **representatives** requested, as measures of non-repetition: (i) appropriate laws that respected human rights with regard to the disappearance of persons and the search for them;⁵⁴⁷ (ii) harmonization of the provisions of the Amparo Act with the General Law on Forced Disappearance of Persons (hereinafter "GLFDP") and, in general, ensuring that district judges have resources to undertake effective search operations that are not limited to processing administrative communications; (iii) adaptation of the National Register of Missing and Disappeared Persons (hereinafter "NRMDP")⁵⁴⁸ to meet the standards and recommendations

⁵⁴⁴ Cf. *Case of Loayza Tamayo v. Peru*, *supra*, para. 150, and *Case of Mendoza et al. v. Argentina*, *supra*, para. 314.

⁵⁴⁵ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 60 and 80; *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 170, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, paras. 193 and 220.

⁵⁴⁶ Cf., *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 293, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 134.

⁵⁴⁷ The representatives acknowledged the existence of "the General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National Search Commission" [*sic*], which is currently being implemented. However, they underlined that the "ambitious content" and the agents established by this law, "made compliance with it a challenge." They therefore argued that this law was not appropriate and asked that the State provide the tools, as well as the human, financial and technical resources required for its implementation, and ordinary and special training for all the authorities (merits file, ff. 2057 and 2058).

⁵⁴⁸ The representatives indicated that the NRMDP did not distinguish whether the disappearances were forced, or how many had presumably been committed by members of the Mexican Army. They argued that the Register depended exclusively on information provided by the public prosecutors of the 32 federative entities and by the Office of the

indicated by various international agencies in order to identify which cases involve forced disappearances, and (iv) that the State refrain from continuing discussions on the enactment of an Internal Security Act.⁵⁴⁹

318. The **State** reiterated that the Mexican State already has legislative instruments to adapt its legal framework with regard to forced disappearance. It also referred to the measures of non-repetition requested, as follows: (i) regarding amparo legislation, it affirmed that the new Amparo Law⁵⁵⁰ established a new mechanism for cases of disappearance, and concluded that it had made the necessary changes with regard to amparo and the disappearance of persons; (ii) regarding progress in relation to the disappearance of persons, it stressed that the request of the representatives that it amend the NRMDP, "to comply with international recommendations," had not specified the recommendations to which it referred. In the case of the request related to the Internal Security Act, it considered that the legislative function relates to the Mexican State's sovereignty in this area, so that it would not be viable for the Court to order it to refrain from legislating in this regard.

319. The Court reiterates that the State has acknowledged its international responsibility for the violation of Article 2 of the Convention, because: (i) at the time of the facts there was no legislation on forced disappearance that was compatible with the inter-American standards; (ii) the investigations in this case were, at one time, in the hands of the military jurisdiction, and (iii) the law on amparo in force at the time required ratification of the application for amparo (*supra* paras. 19, 21 and 23). Based on the foregoing, in Chapter VII.2 of the judgment, the Court ruled in this regard, so that in this section it will refer briefly to the reparations ordered in this area.

E.1. The General Law on Forced Disappearance of Persons

320. The Court takes note that the "General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons"⁵⁵¹ was published on November 17, 2017. The law allowed a new public policy to be established focused on the search for and location of disappeared persons and proposed the creation of four basic instruments: (i) the National Search System; (ii) the National Register of Missing and Disappeared Persons; (iii) the National Forensic Register, and (iv) the National Citizens Council.

321. Accordingly, the Court considers that, by enacting the said law and its mechanisms, the State has addressed, as pertinent, the violation previously accredited in this regard.

E.2. Amparo Law

322. On the one hand, the Court agrees with the Commission and the representatives that the judicial authorities require sufficient resources to ensure that the search for victims is prompt

Prosecutor General of the Republic and, in addition to this being unlikely to be objective (based on how the crime was typified by the investigating agency), it did not reflect the under-registration that could occur, both because investigation files were not opened and because people did not want to report the facts because they did not trust the authorities. The representatives also indicated that, in addition, the NRMDP did not include investigations that could have been initiated against the Army owing to forced disappearances by other agencies, such as the CNDH, the Prosecutor General of Military Justice, or any administrative authority (merits file, f. 196).

⁵⁴⁹ The representatives asked the Court to rule on the incompatibility of the Internal Security Act with several rights contained in the American Convention and to order its derogation. They argued this as a measure of non-repetition related to the adoption of effective security measures that comply with the principles of proportionality, necessity, legitimacy and a human rights approach (merits file, ff. 207 to 209, and 2058).

⁵⁵⁰ Amparo Law, regulating articles 103 and 107 of the Constitution of the United Mexican States. Available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LAmp_150618.pdf

⁵⁵¹ General Law on Forced Disappearance of Persons, Disappearance committed by Private Individuals and on the National System to Search for Persons, published in the Official Gazette of the Federation on November 17, 2017. Available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMDFP_171117.pdf. The first transitory article of this law establishes that it entered into force sixty days after its publication in the Official Gazette of the Federation; that is, February 15, 2018.

and effective, and that it is not restricted to an exchange of communications between public officials, which only facilitates the concealment of the victims.

323. Nevertheless, the Court concludes that insufficient arguments and evidence were provided to allow it to understand the reasons for considering that the actual wording of the Amparo Act would necessarily result in this remedy being ineffective in relation to forced disappearance. In particular, taking into account that the last paragraph of article 15 of the said law indicates that “in cases of forced disappearance of persons, the judge has [24] hours to process the amparo, order the suspension of the contested actions, and require the corresponding authorities to provide all the information that might be useful to locate and release the probable victim,” also adding that “no authority may [...] refuse to conduct the measures they are required to conduct or that are ordered.”⁵⁵² In other words, the law requires immediate actions and establishes mechanisms for judges to achieve the presentation of the probable victims of disappearance. Therefore, this Court finds no reason to consider that the actual structure of the amparo proceeding does not constitute an effective remedy for those purposes or that there are contradictions between this law and the GLFDP.

324. Consequently, the Court considers that, with the amendments to the Amparo Act and its mechanisms for cases of forced disappearance, in coordination with the GLFDP, the State has addressed, as pertinent, the violation previously accredited in this regard.

E.3. National Register of Missing and Disappeared Persons

325. Although the representatives were not clear in their arguments regarding this measure of non-repetition, the Court recommends⁵⁵³ that the State, within its actual legal framework, analyze adequate measures to create a single updated register of disappeared persons that generates statistics, disaggregated by sex, age, place, and authorities presumably involved, and that allows for the clear determination of the cases that are related to “forced disappearances,” in order to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this practice. To this end, in its annual report, the State must inform the Court on the adoption of such measures.

E.4. Training programs

326. The Court takes note of the information provided by the State that, with regard to the disappearance of persons, it has already implemented a series of structural measures designed to avoid the repetition of the facts; namely: (i) the Mexican Ministry of Defense (SEDENA) “has implemented academies, conferences, workshops, diploma programs and courses under two major systems: military education and training,” and (ii) it has also sought to collaborate with various institutions, signing agreements to strengthen the efforts made by SEDENA itself.

327. This Court has established that the training of public officials is an important measure to

⁵⁵² Amparo Law, regulating articles 103 and 107 of the constitution of the United Mexican States, *supra*, article 15, last paragraph.

⁵⁵³ The Court notes the recommendations made to Mexico by the UN Committee on Enforced Disappearances and the WGEID, as well as by the CNDH, in addition to the contents of the expert opinions of Federico Andreu and Gabriella Citroni. Cf. UN. WGEID, *Addendum. Mission to Mexico*, A/HRC/19/58/Add.2, December 20, 2011, para. 81; Committee on Enforced Disappearances, *Concluding observations on the report submitted by Mexico*, CED/C/MEX/CO/1, March 5, 2015, para. 18; Statement made before the Court by expert witness Federico Andreu Guzmán during the public hearing in the *Case of Alvarado Espinoza et al. v. Mexico* on April 26, 2018 (transcript of the public hearing, p. 88); Expert opinion of Gabriella Citroni provided by affidavit on April 18, 2018 (evidence file, affidavits, ff. 31082 and 31083, and CNDH, *Special report on disappearance of persons and clandestine graves*, April 6, 2017, para. 30. Available at: http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/InformeEspecial_20170406.pdf. In particular, this report indicates that: “[t]he diversity of statistics indicated reveals the need for the authorities to systematize, upload and purge the data of disappeared persons; therefore, this National [Human Rights] Commission reiterates its concern because the whereabouts of thousands of persons disappeared in national territory is unknown and owing to the suffering and uncertainty caused to their families because they do not know their fate or their final location. This report reveals the inconsistencies and deficiencies of the official information available in this regard, so that it reiterates the need to have pertinent, comprehensive records that allow the magnitude of this problem to be adequately appreciated.”

guarantee non-repetition of the facts that gave rise to the violations.⁵⁵⁴ Thus, training, as a form of continuing education, should continue over a considerable time in order to achieve its purposes.⁵⁵⁵

328. Consequently, the Court urges the State to continue the efforts underway to provide human rights training to the Armed Forces and the Police. The training programs must incorporate the standards developed in this judgment, with special emphasis on the safeguards required in view of the participation of these two bodies in public safety tasks (*supra* paras. 177 to 183). The Court also stresses the importance of implementing a continuing education system and, therefore, requires the State to advise this Court in its annual reports, for three years, on the implementation of these training programs

E.5. Adoption of measures of prevention and guarantees for return

329. The Court has declared violations of the rights recognized in Articles 5 and 22 of the Convention, owing to the risk derived from the disappearances and threats, as well as to the displacements and lack of guarantee for return (Chapter VII.3).

330. On the one hand, the State must adopt, immediately, the sufficient and necessary measures to protect the life and personal integrity of the victims in this case, in light of updated risk assessments and the particular needs and differentiated impacts, by mutual agreement with the victims or their representatives.⁵⁵⁶ The State must inform the Court of the measures adopted in relation to the risk situation within six months of notification of this judgment.

331. In addition, the Court takes note and appreciates that the State has informed the Court of measures taken consensually to relocate some family members (*supra* paras. 152.ii, 155 and 262). The State must provide guarantees for the return or relocation of the displaced victims who require this, by putting in place effective safety measures for a dignified return to their usual place of residence, or their voluntary resettlement in another part of the country. This, following the agreement of the victims or their representatives.⁵⁵⁷

332. These persons have one year from notification of this judgment to inform the State of their intention to return or to relocate, if required. If, within this time frame, the victims express their wish to return to their places of residence, from that moment a two-year time frame will start for the victims and the State to reach the pertinent agreements, so that the State may comply with this measure of reparation by, *inter alia*, paying the expenses of moving the members of the family and their possessions. To the contrary if, within the said one-year time frame, the victims do not express their wish to return, the Court will understand that they have renounced this measure of reparation.⁵⁵⁸

F. Other measures requested

333. The **representatives** also requested the following as measures of satisfaction: (i) construction of a symbolic structure to recover the memory of the names [*sic*] of persons disappeared in Mexico; (ii) construction of a primary school with the name of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes; (iii) adoption of a public policy for families of disappeared persons, in order to establish clinics for families of disappeared persons; (iv) establishment of a clinic in Benito Juárez with permanent doctors and

⁵⁵⁴ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*, *supra*, para. 127, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala*, *supra*, para. 312.

⁵⁵⁵ Cf. *Case of Claude Reyes et al. v. Chile. Monitoring compliance with judgment*. Order of the Inter-American Court of November 24, 2008, *considerandum* 19.

⁵⁵⁶ Cf. *Matter of Alvarado Reyes et al. with regard to Mexico. Provisional measures*. Order of the Inter-American Court of November 26, 2010, second operative paragraph.

⁵⁵⁷ Cf. *Case of Chitay Nech et al. vs. Guatemala*, *supra*, para. 149, and *Case of Yarce et al. v. Colombia*, *supra*, para. 224.

⁵⁵⁸ Cf. *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014, para. 256, and *Case of the Human Rights Defender et al. v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of August 29, 2017, *considerandum* 5.

a community support center to respond to the medical and psychological consequences suffered by victims of human rights violations. In their final arguments, the representatives asked that the State, as a measure of prevention, propose anti-addiction programs and other pertinent measures such as those contained in the expert opinion of the Grupo de Investigaciones en Antropología Social y Forense (GIASF).

334. Meanwhile, the **State** underscored that the Court had established that reparations must have a causal nexus. Therefore: (i) it considered that the establishment of a memorial for persons disappeared in Mexico bore no relationship to the facts of the case and was not congruent with the causal nexus that should exist with those facts, and that, when appropriate, the construction of a memorial should be specific in indicating the persons that are determined to be victims of the facts analyzed; (ii) regarding the adoption of a public policy and the existence of a clinic in Benito Juárez, the State indicated that an institution should be established when its functions are not covered by existing state institutions, and indicated that it was unable to note the relationship between the facts of the case and the construction of a clinic, and (iii) regarding the adoption of a public policy, the State advised that it already had various health care programs under which persons who had suffered any violation of their human rights were treated in a differentiated manner.

335. Regarding the other measures of reparation requested, the Court considers that the delivery of this judgment and the reparations ordered in this Chapter are sufficient and appropriate to remedy the violations suffered by the victims and does not find it necessary to order additional measures, added to the lack of a causal nexus of some of them.⁵⁵⁹

G. Compensation

336. The **Commission** asked for adequate reparation for the human rights violations that were declared including just compensation.

337. The **representatives**, with regard to the loss of earnings of the presumed victims, asked that the Court establish a sum of money based on the calculations it had made and the documentation submitted. It asked the Court to take into account that, at the time of the facts, Nitza Paola Alvarado Espinoza had a motor disability in her right hand and leg resulting from a stroke, so that she received a monthly pension from the Mexican Social Security Institute of MX\$2,500 (two thousand five hundred Mexican pesos). In addition, they indicated that the life expectancy for a woman in Mexico in 1978 was 69 years.⁵⁶⁰ The minimum daily wage for 2017 for the whole geographical area of Mexico was MX\$80.04 (eighty Mexican pesos and four cents).

338. Regarding consequential damage, the representatives requested the reimbursement of expenses relating to: (i) transportation to conduct the search or for judicial procedures; (ii) health care expenses; (iii) payments made owing to the forced displacement of the families due to the threats against them;⁵⁶¹ (iv) everything related to the asylum requests;⁵⁶² (v) the "recovery of the pick-up truck seized at the time of the disappearance," and (vi) the damages to the residences and other possessions, including the expenses of the Spector family who took in Nitza Paola Alvarado's daughters while their legal proceedings in the United States were underway.

339. In the case of the non-pecuniary damage, the representatives offered some evidence: (i)

⁵⁵⁹ Cf. *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 306, and *Case of Terrones Silva et al. v. Peru, supra*, para. 262.

⁵⁶⁰ Cf. World Bank data on life expectancy at birth in Mexico in 1978 https://datos.bancomundial.org/indicador/SP.DYN.LE00.FE.IN?end=2016&locations=MX&name_desc=false&start=1978&view=chart

⁵⁶¹ This includes the process to obtain permanent legal residence in the United States of America for M.P.A.E., N.S.A.E. and D.A.E., for US\$1,500 and the expenses incurred by the whole Alvarado Espinoza family crossing the International Bridge amounting to US\$2,500, for a total of US\$4,000 (merits file, ff. 217 and 2059).

⁵⁶² This includes the political asylum case of María de Jesús Alvarado Espinoza, Rigoberto Ambriz Marrufo and their four children, amounting to US\$10,000, and the political asylum case of Ascensión Alvarado Fabela and María de Jesús Espinoza Peinado amounting to US\$7,500, for a total of US\$17,500 (merits file, ff. 217 and 2059).

an expert opinion on psychosocial impact describing the harm and negative consequences that the facts of the case, their impunity, the risks owing to the demand for the truth, justice and reparation, and also the uncertainty about the whereabouts of Nitza Paola, José Ángel and Rocío Irene Alvarado have had on their respective family groups.⁵⁶³ They also submitted testimonies “to reinforce the foregoing,” and (ii) the monetary assessment of the non-pecuniary damage for both the direct violations of the human rights of the three disappeared victims and the compensation of their families.

340. Regarding the pecuniary damage, the **State** asked that if the Court determined the responsibility of the Mexican State, it should not take into account items regarding which the representatives had not clarified, absolutely and in detail, the causal nexus between the reparation requested and the violations alleged and, instead, establish a sum based on the equity principle.

341. With regard to the consequential damage, the State stressed that it was not internationally responsible for the displacement of the families. In the case of the expenses incurred by the Spector family, the State emphasized that the said family had not been identified by the Commission as a presumed victim of the facts of this case, so that there was no causal nexus; if the Court decided to the contrary, this would violate the Mexican State’s right of defense.

342. The State recalled that the Court had assessed the existence of comprehensive reparation plans that recognized collective and symbolic reparations on issues of health, education, access to housing, restitution of rights, as well as financial reparations for victims. In this regard, it recalled that it had a “Trust for Compliance with Human Rights Obligations,” whose main purpose was to cover the reparations arising from the Court’s judgments and the provisional measures that it orders. Therefore, it argued that, if the Court determined that the State was responsible for any violation, it should rule on the existing domestic mechanism to comply with the compensation, through the said “Trust.”

G.1. Pecuniary damage

343. In its case law, the Court has developed the concept of pecuniary damage and has established that it supposes “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 causal nexus with the facts of the case.”⁵⁶⁴

344. In view of the fact that the State was found responsible for violations of Articles 1(1), 2, 3, 4, 5 and 7 of the Convention, the Court considers, as it has in other cases of forced disappearances,⁵⁶⁵ that in the instant case, in which the whereabouts of the victims are unknown, it is possible to apply the criteria for compensation of their loss of earnings, which is the income they would probably have received during their lifetime. This takes into account the age of the victims when their disappearance commenced, the activities they carried out, and also their respective life expectancy in Mexico at the time of the facts.

345. On this basis, the Court finds it reasonable to establish, for loss of earnings, the sum of: US\$70,000 (seventy thousand United States dollars) in favor of Nitza Paola Alvarado Espinoza,⁵⁶⁶ the sum of US\$31,000 (thirty-one thousand United States dollars) in favor of José

⁵⁶³ Cf. Expert opinion of Carlos Martín Beristain provided by affidavit on April 16, 2018 (evidence file, affidavits, ff. 30989 to 31051).

⁵⁶⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017. Series No. 342, para. 217.

⁵⁶⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 46 and 47, and *Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of August 20, 2018. Series C No. 355, para. 145.

⁵⁶⁶ When calculating the compensation for loss of earnings for Nitza Paola Alvarado Espinoza, the Court took into consideration: (i) the monthly pension for permanent disability of MX\$2,500 (two thousand five hundred pesos) that the victim received at the time of the facts. Cf. Certification of disability issued by the Mexican Social Security Institute

Ángel Alvarado Herrera,⁵⁶⁷ and the sum of US\$43,000 (forty-three thousand United States dollars) in favor of Rocío Irene Alvarado Reyes.⁵⁶⁸

346. In the case of the families of the disappeared victims, since the State was found responsible for violations of Articles 8, 17, 22 and 25, the Court recognizes, as it has in other cases,⁵⁶⁹ that the actions and measures taken by the family members of the disappeared victims gave rise to expenses that must be considered as consequential damage, and therefore establishes a reasonable amount of US\$15,000 (fifteen thousand United States dollars) for Nitza Paola Alvarado Espinoza's family group, because they duly authenticated some expenses.⁵⁷⁰ It also awards the sum of US\$5,000 (five thousand United States dollars) each to the family groups of Rocío Irene Alvarado Reyes and José Angel Alvarado Herrera, because they failed to duly authenticate expenses.⁵⁷¹ These sums must be delivered as established in paragraph 345.

347. Lastly, the Court notes that the representatives included the list of expenses incurred by the Spector family, in the pleadings and motions brief in the section corresponding to consequential damage and also in the section on costs and expenses. Consequently, the Court will refer to this in the section on costs and expenses.

G.2. *Non-pecuniary damage*

348. In the case of non-pecuniary damage, the Court has determined that this "may include both the suffering and afflictions caused to the direct victims and to their families, the impairment of values of great significance for the individual, and the alterations of a non-pecuniary nature in the living conditions of the victims or their families."⁵⁷²

349. Bearing in mind the circumstances of this case, the violations committed, the suffering caused and experienced to different degrees, the time that has passed, the denial of justice (*supra* paras. 253 and 254), and also the change in the living conditions of some family members, owing to displacement (*supra* para. 282), the proven violations of the personal integrity of the victims' family members (*supra* para. 283) and the other consequences of a non-pecuniary nature that they have endured, the Court proceeds to establish compensation for non-pecuniary damage in favor of the victims.

350. In accordance with the criteria developed by the Court on the concept of non-pecuniary damage and based on the circumstances of this case and the nature and gravity of the violations committed, the Court establishes, in equity, the sum of US\$100,000 (one hundred thousand United States dollars) in favor of each of the disappeared victims: Nitza Paola Alvarado

(evidence file, ff. 89 and 90); (ii) this sum, multiplied by 12 months, for the annual amount of the said pension; (iii) life expectancy at the time of the facts for a woman born in 1978, and (iv) the difference between this life expectancy and the age of the victim at the time of the facts (para. 72).

⁵⁶⁷ Regarding the loss of earnings corresponding to José Ángel Alvarado Herrera, the Court considered: (i) the minimum daily wage at the time of the facts; (ii) the number of working days each year for the victim; (iii) life expectancy at the time of the facts for a man born in 1978, and (iv) the difference between the said life expectancy and the age of the victim at the time of the facts (para. 74).

⁵⁶⁸ The calculation of the loss of earning corresponding to Rocío Irene Alvarado Reyes took into consideration: (i) the minimum daily wage at the time of the facts; (ii) the number of working days each year for the victim; (iii) life expectancy at the time of the facts for a woman born in 1991, and (iv) the difference between the said life expectancy and the age of the victim at the time of the facts (para. 73).

⁵⁶⁹ Cf. *Case of Radilla Pacheco v. Mexico, supra*, para. 368, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 141.

⁵⁷⁰ The proven expenses of Nitza Paola Alvarado Espinoza's family group for the concept of consequential damage included: (i) rental of apartment in El Paso, USA (evidence file, ff. 26637 to 26643); (ii) food (evidence file, ff. 26644 to 26723); (iii) payment of electricity service (evidence file, ff. 26631 to 26636 and 26730 to 26739), and (iv) gasoline (evidence file, ff. 26626 and 26627).

⁵⁷¹ Regarding the family groups of Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, the representatives indicated a series of expenses for a total of MX\$131,890 and MX\$248,500 Mexican pesos, respectively, for which they did not provide any authentication that would justify these expenses and/or their possible causal nexus with the facts of the case (evidence file, annexes 4.B and 4.C of the pleadings and motions brief, ff. 26740 to 26745).

⁵⁷² Cf. *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, and *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 284.

Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes. The sum established by the Court must be delivered within one year of notification of this judgment.⁵⁷³

351. The sums established in favor of the persons forcibly disappeared (*supra* paras. 345 and 350) must be paid based on the following criteria:⁵⁷⁴

- a) Fifty per cent (50%) of the compensation shall be shared, in equal parts, between the victim's children. If one or several of the victim's children are already deceased, the part that would have corresponded to them shall be delivered to their children or spouse if they exist, or if they do not exist, their part shall increase that of the other children of the same victim;
- b) Fifty per cent (50%) of the compensation shall be delivered to the person who was the victim's spouse or permanent companion when their forced disappearance commenced;
- c) If there are no family members in any of the categories defined in the previous paragraphs, the sum that would have corresponded to the family members in that category shall increase the part that corresponds to the other category;
- d) If the victim had neither children, nor spouse or permanent companion, the compensation for pecuniary damage shall be delivered to his or her parents, and
- e) If there are no family members in any of the categories defined in the preceding paragraphs, the compensation shall be paid to the heirs in accordance with domestic inheritance laws.

352. In addition, based on the violations that have been proved to the detriment of the family members which have resulted in violations of their physical, moral and mental integrity, in keeping with the criteria developed for the concept of non-pecuniary damage, the Court establishes the following sums, in equity:⁵⁷⁵

- i. Regarding the family group of Nitza Paola Alvarado Espinoza, the sum of US\$60,000 (sixty thousand United States dollars) for María de Jesús Alvarado Espinoza (sister); US\$60,000 (sixty thousand United States dollars) for each of her daughters: M.P.A.E., N.S.A.E., and D.A.E.; US\$50,000 (fifty thousand United States dollars) for each of her parents: María de Jesús Espinoza Peinado (mother) and Ascensión Alvarado Fabela (father), pursuant to paragraphs 265, 267 and 283 of this judgment;
 - i.a The sum of US\$20,000 (twenty thousand United States dollars), for the family group of Rigoberto Ambriz Marrufo (brother-in-law) and R.A.A., I.A.A.A., J.E.A.A. and A.Y.A.A. (nephews and nieces), pursuant to paragraph 283 of this judgment.
- ii. Regarding the family group of Rocío Irene Alvarado Reyes, the sum of US\$50,000 (fifty thousand United States dollars) for Patricia Reyes Rueda (mother); US\$60,000 (sixty thousand United States dollars) for A.M.U.A (daughter), and US\$25,000 (twenty-five

⁵⁷³ Cf. *Case of Gelman v. Uruguay. Merits and reparations* Judgment of February 24, 2011. Series C No. 221, para. 296.a, and *Case of Terrones Silva et al. v. Peru, supra*, paras. 270, 272 and 274.

⁵⁷⁴ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 310, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, para. 186.

⁵⁷⁵ Cf. *Case of Chitay Nech et al. v. Guatemala, supra*, para. 278; *Case of Gelman v. Uruguay, supra*, para. 296; *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 192; *Case of Vélez Restrepo and family v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 302; *Case of Tenorio Roca et al. v. Peru, supra*, paras. 338 and 339; *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, paras. 367 to 370; *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 328, para. 327; *Case of Munárriz Escobar et al. v. Peru, supra*, para. 147, and *Case of Terrones Silva et al. v. Peru, supra*, para. 275.

thousand United States dollars) for each of her brothers, A.A.R. and A.R.A.R., pursuant to paragraphs 265, 267 and 283 of this judgment;

ii.a The sum of US\$15,000 (fifteen thousand United States dollars) for each of her grandparents: Manuel Alvarado Reyes (grandfather) and María de Jesús Rueda Villanueva (grandmother), pursuant to paragraph 283 of this judgment.

iii. Regarding the family group of José Ángel Alvarado Herrera, the sum of US\$60,000 (sixty thousand United States dollars) for José Ángel Alvarado Fabela (father); US\$60,000 (sixty thousand United States dollars) for Jaime Alvarado Herrera (brother); US\$60,000 (sixty thousand United States dollars) for each of his daughters and son: J.A.E., J.A.A.E. and A.E.B., and wife: Obdulia Espinoza Beltrán; US\$25,000 (twenty-five thousand United States dollars) for his sister, Rosa Olivia Alvarado Herrera, and US\$50,000 (fifty thousand United States dollars) for his mother Concepción Herrera Hernández, pursuant to paragraphs 265, 267 and 283 of this judgment;

iii.a The sum of US\$20,000 (twenty thousand United States dollars) for the family group composed of J.O.A.R, R.G.A.R., C.N.A.R and J.E.A.R (nieces and nephews), and US\$20,000 (twenty thousand United States dollars) for the family group composed of Karina Paola Alvarado Espinoza, (F.A.H), J.G.A and A.G.A (niece and nephews), pursuant to paragraph 283 of this judgment.

H. Costs and expenses

353. The **Commission** made no observations in this regard.

354. The **representatives** requested the sum of MXN\$1,957,740.87 (one million nine hundred and fifty-seven thousand seven hundred and forty Mexican pesos and eighty-seven cents), which is equal to US\$108,070.52 (one hundred and eight thousand and seventy United States dollars and fifty-two cents).⁵⁷⁶ This amount referred to travel expenses, cash support to the families, miscellaneous expenses and the expenses incurred by the lawyer, Carlos Spector, for the process of obtaining permanent legal residence in the United States, expenses arising from crossing the International Bridge, and for the cases relating to political asylum. Lastly, in their final arguments, the representatives increased the amount initially estimated to include additional expenses incurred after the presentation of the pleadings and motions brief, for the sum of MX\$516,000.47 (five hundred and sixteen thousand Mexican pesos and forty-seven cents), which is approximately US\$26,379.62 (twenty-six thousand three hundred and seventy-nine United States dollars and sixty-two cents),⁵⁷⁷ for human resources, travel and other expenses, for a total of US\$134,395.775 [*sic*] (one hundred and thirty-four thousand three hundred and ninety-five United States dollars and 775/1000).⁵⁷⁸

355. The **State** recalled that the inter-American standards establish that, in the case of costs and expenses, these should relate to reasonable amounts, duly authenticated, that are directly

⁵⁷⁶ The total of US\$108,070.52 requested by the representatives is composed of the following items: (i) salaries: \$1,228,846.30 Mexican pesos; (ii) travel: \$632,872.55 Mexican pesos; (iii) cash support to the families: \$70,435 Mexican pesos, and (iv) other expenses: MX\$22,065.45 (merits file, f. 209), a sum increased to \$25,587.02 Mexican pesos when submitted the annexes to the pleadings and motions brief (merits file, f. 217). Despite this, in their final written arguments, the representatives only referred to the sum initially established for this item of \$22,065.45 Mexican pesos (merits file, f. 2058). Meanwhile, regarding the lawyer, Carlos Spector, the representatives requested the sum of US\$21,500 US dollars, for: (i) procedure to obtain permanent legal residence for M.P.A.E., N.S.A.E. and D.A.E.: US\$1,500 US dollars; (ii) expenses derived from crossing the International Bridge for the whole Alvarado Espinoza family: US\$2,500 US dollars; (iii) political asylum case of María de Jesús Alvarado Espinoza, Rigoberto Ambriz Marufo and their four children: US\$10,000 US dollars, and (iv) political asylum case of Ascención Alvarado Fabela and María de Jesús Espinoza Peinado: US\$7,500 US dollars (merits file, ff. 209 and 210).

⁵⁷⁷ The total increase in the sum requested by the representatives resulted from adding the following items: (i) salaries: \$148,389.20 Mexican pesos; (ii) travel, \$354,773.73 Mexican pesos, and (iii) other expenses, \$12,843.54 Mexican pesos (merits file, ff. 2058 and 2059).

⁵⁷⁸ As indicated by the representatives in their final written arguments, using the official exchange rate for May 28, 2018, of the Tax Administration Service of the Mexican Ministry of Finance (merits file, f. 2058 and 2059).

related to the specific case and that it corresponds to the Court to assess their scope prudently. In addition, the principle of equity should prevail. It added that although the victims' representatives had listed amounts for which they requested payment of costs and expenses, they had not included any explanation on the disbursements and their relationship to this matter. Regarding the amount requested by the representatives for the Spector family for the asylum procedures for the victims' family members in the United States, the State considered that those procedures were not connected to the instant case and the State could not be obliged to cover expenditure outside Mexican territory in extraterritorial application of the Convention.

356. The Court reiterates that, pursuant to its case law,⁵⁷⁹ costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice at both the national and the international level entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it corresponds to the Court to assess their scope prudently, and they include the expenses incurred before the authorities of the domestic jurisdiction and also those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made taking into account the expenses reported by the parties, provided that their *quantum* is reasonable.⁵⁸⁰

357. The Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the supporting evidence must be submitted to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to those claims being updated subsequently in keeping with the new costs and expenses incurred owing to the proceedings before this Court."⁵⁸¹ In addition, the Court reiterates that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and that, in the case of alleged financial disbursements, the items and their justification is clearly established.⁵⁸²

358. In this case, the Court notes that the representatives incurred expenses relating to the processing of the case before the Commission and before this Court with regard to transportation, and courier, communication and notarial services, among others, and they forwarded the vouchers for these expenses. In addition, the representatives requested the payment of fees.⁵⁸³ It should be pointed out that some of those expenses were not duly justified or were unrelated to the case. Regarding the expenses relating to the asylum process, these

⁵⁷⁹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 242.

⁵⁸⁰ Cf. *Case of Garrido and Baigorria v. Argentina, supra*, para. 82, and *Case of López Soto et al. v. Venezuela, supra*, para. 381.

⁵⁸¹ Cf. *Case of Garrido and Baigorria v. Argentina, supra*, para. 79, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 151.

⁵⁸² Cf. *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. 277, and *Case of Terrones Silva et al. v. Peru, supra*, para. 282.

⁵⁸³ The amounts requested by the representatives for costs and expenses (*supra* para. 354), were as follows (i) human resources (salaries), MX\$1,228,846.30 Mexican pesos (merits file, f. 217), subsequently increased by MX\$148,389.20 Mexican pesos (merits file, f. 2058); (ii) travel, MX\$635,409.11 Mexican pesos, subsequently increased by MX\$354,773.73 Mexican pesos (merits file, f. 2058); (iii) cash support to the families, including support for transportation and for DNA samples, MX\$70,435 Mexican pesos (merits file, f. 217), and iv) other expenses, including disbursements for sending documents, certified copies, legal deeds, powers of attorney, and notarial services, MX\$22,065.45 Mexican pesos (merits file, f. 209), subsequently increased by MX\$25,587.02 Mexican pesos (merits file, f. 217); however, in their final written arguments, they mentioned the amount initially indicated of MX\$22,065.45 Mexican pesos (merits file, f. 2058). Sub-total requested (to June 2017): MX\$1,956,755.86 Mexican pesos, equal to US\$108,016.155, added to MX\$16,000.47 Mexican pesos, equal to US\$26,379.62 after June 2017. Total requested: US\$134,395.775 US dollars (merits file, f. 2058).

were not duly justified.⁵⁸⁴

359. Based on the foregoing, the Court establishes a reasonable sum of US\$30,000 (thirty thousand United States dollars) for costs and expenses in the litigation of the case in favor of CEDEHM (which participated at both the national and the international level), as well as a reasonable sum of US\$5,000 (five thousand United States dollars) derived from the asylum process. That sum must be paid by the State to the victims, for its delivery to whomsoever it corresponds.⁵⁸⁵

360. As it has in other cases,⁵⁸⁶ at the stage of monitoring compliance with this judgment, the Court may establish that the State reimburse the victims or their representatives any reasonable and duly authenticated expenses.

I. Reimbursement of expenses to the Victim's Legal Assistance Fund

361. In the instant case, the financial assistance of the Fund was granted to cover the travel and accommodation costs necessary for witnesses María de Jesús Alvarado Espinoza and Jaime Alvarado Herrera and expert witness Salvador Salazar Gutiérrez to take part in the public hearing, and also the reasonable expenses of notarizing and mailing the affidavits of two deponents proposed by the representatives.⁵⁸⁷

362. The State was given the opportunity to present its observations on the disbursements made in this case. It indicated that it had no observations to make on the report on the Victim's Legal Assistance Fund ("the Fund") in this case.

363. In light of Article 5 of the Rules for the Operation of the Fund, owing to the violations declared in this judgment and that the requirements for access to the Fund were met, the Court orders the State to reimburse the said Fund the sum of US\$5,574.73 (five thousand five hundred and seventy-four United States dollars and seventy-three cents) for the necessary expenditures arising from the appearance of the deponents at the public hearing in this case. This amount must be reimbursed within ninety days of notification of this judgment.

J. Method of complying with the payments ordered

364. the State shall make the payments of compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year from notification of this judgment, in accordance with the following paragraphs.

365. If any of the beneficiaries is deceased or dies before they receive the respective compensation, this shall be delivered directly to their heirs, in keeping with the applicable domestic law.

366. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in Mexican pesos using the exchange rate in force on the New York Stock

⁵⁸⁴ Under this heading, the representatives requested the following sums for Carlos Spector: (i) procedure to obtain permanent legal residence for M.P.A.E., N.S.A.E. and D.A.E. (Nitza Paola Alvarado Espinoza's daughters): US\$1,500 US dollars; (ii) expenses derived from crossing the International Bridge for the whole Alvarado Espinoza family: US\$2,500 US dollars; (iii) political asylum case of María de Jesús Alvarado Espinoza, Rigoberto Ambriz Marufo and their four children (Nitza Paola Alvarado Espinoza's sister, brother-in-law, nephews and nieces): US\$10,000 US dollars, and (iv) political asylum case of Ascención Alvarado Fabela and María de Jesús Espinoza Peinado (Nitza Paola Alvarado's father and mother): US\$7,500 US dollars. Total requested: US\$21,500 US dollars. However, the representatives did not provide any voucher to justify these disbursements for the said items.

⁵⁸⁵ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 291, and *Case of Poblete Vilches et al. v. Chile, supra*, para. 259.

⁵⁸⁶ Cf. *Case of Apitz Barbera et al. v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 260, and *Case of López Soto et al. v. Venezuela, supra*, para. 385.

⁵⁸⁷ Cf. *Case of Alvarado Espinoza et al. v. Mexico. Call to a hearing*. Order of the acting President of the Inter-American Court of Human Rights of March 23, 2018, twelfth operative paragraph Available at: http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_convocatorias.cfm?lang=es.

Exchange (United States of America) the day before the payment to make the respective calculation.

367. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the amounts in their favor in a deposit account or certificate in a solvent Mexican financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking laws and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the interest accrued.

368. The amounts allocated in this judgment as compensation and to reimburse costs and expenses must be delivered to the persons and organisations indicated in full, as established herein, without any deductions derived from possible taxes or charges.

369. If the State should fall in arrears, including with reimbursement of expenses to the Victim's Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the United Mexican States.

IX OPERATIVE PARAGRAPHS

370. Therefore,

THE COURT

DECIDES,

unanimously:

1. To accept the acknowledgement of international responsibility made by the State, pursuant to paragraphs 31 to 44 of this judgment.

DECLARES,

unanimously that:

2. The State is responsible for the forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes and, consequently, for the violation of the rights to recognition of juridical personality, life, personal integrity and personal liberty, recognized in Articles 3, 4(1), 5(1), 5(2) and 7 of the American Convention, in relation to Article 1(1) of this instrument and to the provisions of Article I(a) of the Inter-American Convention on Forced Disappearance, to the detriment of the disappeared, pursuant to paragraphs 164 to 205 of this judgment.

3. The State is responsible for the violation of access to justice, in accordance with the rights to judicial guarantees and judicial protection, recognized in Articles 8 and 25 of the American Convention, as well as of the obligation to adopt domestic measures recognized in Article 2 of the American Convention, and Articles I(b) and IX of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the disappeared, pursuant to paragraphs 212 to 259 of this judgment.

4. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the direct members of the disappeared victims' families who have been identified, pursuant to paragraphs 265 to 267 of this judgment, as well as, on a personal basis, of José Ángel Alvarado Fabela and Jaime Alvarado, and of their family groups, pursuant to paragraphs 268 to 271 of this judgment.

5. The State is responsible for the violation of the right to freedom of movement and residence, recognized in Articles 22 and 17 of the American Convention, to the detriment of the family groups identified, pursuant to paragraphs 273 to 283 of this judgment.

6. The State is responsible for failure to comply with Article 63(2) of the American Convention, pursuant to paragraph 283 of this judgment.

7. The State is not responsible for the violation of the rights to protection of honor and dignity and the rights of the child recognized in Articles 11 and 19 of the American Convention, pursuant to paragraph 284 of this judgment. Nor in relation to Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, pursuant to paragraph 248 of this instrument.

AND ESTABLISHES,

unanimously that:

8. This judgment constitutes *per se* a form of reparation.

9. To revoke the provisional measures in the *Matter of Alvarado Reyes with regard to Mexico*, pursuant to paragraphs 289 to 291.

10. The State shall conduct, as soon as possible, a rigorous and systematic search using the appropriate human, technical and financial resources, during which it makes every effort to determine the whereabouts of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, pursuant to paragraphs 247 and 300 of this judgment.

11. The State shall implement and continue, within a reasonable time and with the greatest diligence, the investigations required to identify, prosecute and punish, as appropriate, those responsible for the forced disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, pursuant to paragraphs 301 to 303 of this judgment.

12. The State shall provide psychological and/or psychiatric treatment to the victims who request this, pursuant to paragraphs 307 and 308 of this judgment.

13. The State shall organize a public act to acknowledge international responsibility, in relation to facts of this case, pursuant to paragraph 312 of this judgment.

14. The State, within six months, shall make the publications indicated in paragraph 313 of this judgment, as established in that paragraph.

15. The State, within six months, shall provide the families or their representatives, who request this, with inclusion in programs or benefits with the intention of contributing to repair their life project, pursuant to paragraphs 314 and 315 of this judgment.

16. The State shall analyze the appropriate measures to create a single and updated list of disappeared persons which generates statistical data that allows cases of "forced disappearances" to be determined clearly, pursuant to paragraph 325 of this judgment.

17. The State shall continue the human rights training for the Armed Forces and the Police, incorporating the standards on safeguards for public security and inform the Court, pursuant to paragraphs 327 and 328 of this judgment.

18. The State shall adopt, immediately, the sufficient and necessary measures to protect the life and personal integrity of the victims in this case, in light of the updated risk assessments and the particular needs and differentiated impacts, by mutual agreement with the victims or their representatives, pursuant to paragraph 330 of this judgment.

19. The State shall provide guarantees for the return or relocation of the displaced victims who require this, pursuant to paragraphs 331 and 332.

20. The State shall pay the amounts established in paragraphs 345, 346, 350, 352 and 359 of this judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to the said paragraphs and paragraphs 351 and 364 to 369 of this judgment.

21. The State shall reimburse the Victim's Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing this case, pursuant to paragraph 363 of this judgment.

22. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it, notwithstanding the provisions of paragraph 313 of this judgment.

23. The Court will monitor compliance with this judgment in execution of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 28, 2018, in the Spanish language.

I/A Court HR. Case of *Alvarado Espinoza et al. v. Mexico*. Merits, reparations and costs.
Judgment of November 28, 2018.

Eduardo Vio Grossi
Acting President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Vio Grossi
Acting President

Pablo Saavedra Alessandri
Secretary