

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF GUDIEL ÁLVAREZ ET AL. (“DIARIO MILITAR”) v. GUATEMALA**  
**JUDGMENT OF NOVEMBER 20, 2012**  
**(Merits, reparations and costs)**

In the case of *Gudiel Álvarez et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:<sup>1</sup>

Diego García-Sayán, President  
Manuel E. Ventura Robles, Vice-President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge, and  
Alberto Pérez Pérez, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and with Articles 31, 32, 64, 65 and 67 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”), delivers this Judgment structured as follows:

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<sup>1</sup> Judge Eduardo Vio Grossi advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this Judgment.

<sup>2</sup> The Court's Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

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## I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On February 18, 2011, under the provisions of Articles 51 and 61 of the Convention, as well as Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court, case No. 12,590 against the Republic of Guatemala (hereinafter also "the State" or "Guatemala"). The original petition was lodged before the Inter-American Commission on December 9, 2005, by Makrina Gudiel Álvarez, Laurenta Marina Sosa Calderón, Juan Francisco Barillas Barrientos, Reyna de Jesús Escobar Rodríguez, Renato Guzmán Castañeda, Ana Dolores Monroy Peralta, Sonia Guisela Calderón Revolorio, María del Rosario Bran, Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Mirtala Elizabeth Linares Morales, Wendy Santizo Méndez, María Froilana Armira López, Efraín García, Paulo René Estrada Velásquez, Aura Elena Farfán, Miguel Ángel Alvarado Arévalo, Augusto Jordán Rodas Andrade, Nadezhda Elvira Vásquez Cucho, and also Helen Mack Chang and Leslie Karina Figueroa Arbizú, on behalf of the Myrna Mack Foundation.<sup>3</sup> On October 22, 2010, the Commission approved Admissibility and Merits Report No. 116/10,<sup>4</sup> in keeping with Article 50 of the American Convention. This report was forwarded to the State on November 18, 2010, which was granted two months to provide information on the measures adopted to comply with its recommendations. On January 21, 2011, the State presented the respective report. The Commission decided to submit this case to the Inter-American Court, "owing to the need to obtain justice for the [presumed] victims and because of the State's failure to provide detailed and substantial information on compliance with the recommendations." The Commission appointed Dinah Shelton, Commissioner, Santiago A. Cantón, then Executive Secretary, and Catalina Botero, Special Rapporteur for Freedom of Expression, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Karla Quintana Osuna and Isabel Madariaga, lawyers of the Executive Secretary, as legal advisers.

2. According to the Commission, this case concerns the alleged "forced disappearance of the 26 [presumed] victims listed in the merits report, the [alleged] forced disappearance and extrajudicial execution of Rudy Gustavo Figueroa Muñoz, and the [alleged] detention and torture of the child, Wendy Santizo Méndez." In addition, according to the Inter-

<sup>3</sup> On November 17, 2006, in response to a request by the representatives of the victims, the Commission decided to joinder petitions Nos. 9,565 (Otto René Estrada Illescas), 9,554 (Rubén Amílcar Farfán) and 9,326 (Sergio Leonel Alvarado), to petition No. 1424-05 concerning this case, considering that the petitions "involved the same people." Cf. Admissibility and Merits Report No. 116/10, Case of 12,590, José Miguel Gudiel Álvarez *et al.* ("Diario Militar") v. Guatemala, October 22, 2010 (merits file, tome I, folio 160, para. 10). On October 2, 2012, the representatives requested the joinder of the petitions of Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, Luis Rolando Peñate Lima, Benjamín Rolando Orantes Zelada, Rudy Gustavo Figueroa Muñoz, Alma Ledy Poza Gudiel, and their next of kin. Subsequently, the next of kin of Benjamin Rolando Orantes Zelada and Alma Ledy Poza Gudiel "expressed [...] their wish to withdraw their respective complaints" for "for strictly personal and family reasons." Consequently, the Commission's Merits Report incorporated the following as petitioners: Amanda Lizeth Alvarado Sánchez, Yordin Eduardo Herrera Urizar, Salomón Estrada Mejía, Fredy Anelson Gómez Moreira, Luis Moisés Peñate Munguía and Rudy Alberto Figueroa Maldonado." Cf. Brief of the representatives of September 13, 2006, received on October 2, 2006 (file of proceedings before the Commission, tome I, folios 1718 and 1719); brief of the representatives of October 6, 2006, received on October 16, 2006 (file of proceedings before the Commission, tome I, folio 1707 and 1708); communication of September 25, 2006, addressed by Paulo René Estrada Vásquez, Aura Elena Farfán and Miguel Ángel Alvarado to the Inter-American Commission (file of proceedings before the Commission, tome I, folio 1556), and Communication of November 17, 2006 of the Inter-American Commission (file of proceedings before the Commission, tome I, folio 1554)

<sup>4</sup> Based on Article 37(3) of the Rules of Procedure of the Commission (actual Article 36(3)), on December 14, 2006, this organ decided to open the case as No. 12,590 and "to defer addressing admissibility until the discussion and decision on the merits." Cf. Report on Admissibility and Merits No. 116/10 of October 22, 2010, (merits file, tome I, folios 7 to 147)

American Commission, these alleged acts “remain in impunity, because the State of Guatemala has not conducted a serious and effective investigation, and has not identified or punished the perpetrators and masterminds of these acts.”

3. It its brief submitting the case, the Commission indicated that it “submit[ted] to the jurisdiction of the Inter-American Court the facts described in Merits Report No. 116/10 as multiple and continuing offenses, with the exception of the forced disappearance and subsequent extrajudicial execution of Rudy Gustavo Figueroa Muñoz, as well as the detention and torture of Wendy Santizo Méndez.” However, it “clarifie[d] that the facts on which those violations are based, relating to the effects on the respective family units, the lack of access to information, the denial of justice, the absence of an effective investigation and the consequent impunity of both the forced disappearance followed by the extrajudicial execution of Rudy Gustavo Figueroa Muñoz, as well as the detention and torture of Wendy Santizo Méndez, fall within the temporal jurisdiction of the Court.”

4. Based on the foregoing, the Commission requested that the Court declare the international responsibility of Guatemala for the alleged violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of this instrument, to the detriment of the 26 presumed victims who remain disappeared and of Rudy Gustavo Figueroa Muñoz; Articles 5, 7, 11 (Right to Privacy) and 19 (Rights of the Child) of the American Convention, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter “Convention of Belém do Pará”), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Inter-American Convention Against Torture”) to the detriment of the presumed victim Wendy Santizo Méndez; Article 19 of the American Convention, in relation to Article 1(1) of this treaty, to the detriment of the disappeared presumed victims Juan Pablo Armira López and María Quirina Armira López; Articles 5 and 17 (Rights of the Family) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the 26 disappeared presumed victims, of Rudy Gustavo Figueroa Muñoz and of Wendy Santizo Méndez; Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) and 2 (Domestic Legal Effects) of this treaty, as well as Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “Inter-American Convention on Forced Disappearance”) and Articles 1, 6 and 8 of the Inter-American Convention Against Torture to the detriment of the 26 disappeared presumed victims, of Rudy Gustavo Figueroa Muñoz and of their next of kin; as well as in conjunction with Article 7 of the Convention of Belém do Pará, to the detriment of the presumed victim Wendy Santizo Méndez and her next of kin; Article 13 (Freedom of Thought and Expression) and 23 (Right to Participate in Government) of the American Convention, in conjunction with Articles 1(1) and 2 of this instrument, with regard to the right of access to information, to the detriment of the next of kin of the 26 disappeared presumed victims and the next of kin of Rudy Gustavo Figueroa Muñoz; Article 13 and 16 (Freedom of Association) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the 26 disappeared presumed victims, of Rudy Gustavo Figueroa Muñoz and their next of kin, and Article 22 (Freedom of Movement and Residence) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of certain next of kin of some presumed victims. Consequently, the Commission asked the Court to order the State to adopt specific measures of reparation.

## **II PROCEEDINGS BEFORE THE COURT**

5. The submission of the case was notified to the State and to the representatives of the presumed victims<sup>5</sup> on May 13, 2011. On July 11, 2011, the Myrna Mack Foundation and the International Human Rights Clinic of the University of California, Berkeley, representatives of the presumed victims in this case (hereinafter "the representatives"), presented their brief with pleadings, motions and evidence (hereinafter "the pleadings and motions brief") to the Court, pursuant to Articles 25 and 40 of the Court's Rules of Procedure. The representatives agreed substantially with the allegations of the Inter-American Commission, asked the Court to declare the State's international responsibility for the alleged violation of the same articles of the American Convention as those indicated by the Commission, and added that the State had also violated Articles I, II and XI of the Inter-American Convention on Forced Disappearance owing to the alleged forced disappearance of the 26 presumed victims; Articles 8, 13 and 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, owing to the alleged violation of the right to the truth of the next of kin of the disappeared victims; Article 19 of the Convention, to the detriment of all "the next of kin who were children at the time of the disappearance" of their loved ones, and Article 22 of the Convention, to the detriment of additional next of kin to those identified by the Commission. Consequently, they asked the Court to order different measures of reparation, and to pay the costs and expenses.

6. On October 18, 2011, Guatemala submitted to the Court its brief in answer to the Commission's submission of the case, and with observations on the pleadings and motions brief (hereinafter "the answering brief"). In this brief, the State made a partial acknowledgment of international responsibility (*infra* para. 17). Nevertheless, the State contested several of the violations found by the Inter-American Commission and alleged by the representatives, *inter alia*, because the said violations that had occurred before Guatemala accepted the Court's contentious jurisdiction were not of a continuing nature. It also referred to the reparations that had been requested. The State appointed María Elena de Jesús Rodríguez López as its Agent for this case, and Enma Estela Hernández Tuy de Iboy as its Deputy Agent.

7. On November 16, 2011, the representatives and the Inter-American Commission presented their observations on the State's acknowledgment of responsibility.

8. On December 2 and 16, 2011, the representatives informed the Court that the remains of Sergio Saúl Linares Morales and Amancio Samuel Villatoro, two presumed victims in this case, had been found and identified. The representatives forwarded certain probative documentation and offered, and requested the admission of, an additional expert opinion in this regard. On January 25, 2012, the State presented its observations on this information; while, the Inter-American Commission did not present observations.

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<sup>5</sup> In the brief submitting the case (*supra* para. 1), the Inter-American Commission indicated that "according to information available to the [Commission], the organization representing the victims in the proceedings before the Inter-American Court is the Myrna Mack Foundation Chang." Before the notification of the case, on the instruction of the President of the Court, the representatives were requested, *inter alia*, to confirm their representation of the presumed victims. On May 9, 2011, the Myrna Mack Foundation confirmed its representation of the presumed victims in this case and presented most of the respective powers of attorney. The remaining powers of attorney were presented together with their pleadings and motions brief, as authorized by the President of the Court. The representatives indicated that "it ha[d] not been possible to locate four of [the next of kin represented in this case, namely: Renato Guzmán Castañeda, Gilda Angélica Castañeda, Benigno Emilio Guzmán and Fabián Calderón Díaz] in order to obtain the said power of attorney, because the proceedings before the Commission had taken several years, which had made it difficult to remain in permanent contact with them."

9. On March 13, 2012, the representatives submitted a brief in which they asked the Court, *inter alia*, to require the State to present certain official documents.<sup>6</sup> On March 23, 2011, the President decided not to admit the said brief and informed the representatives that it would not be forwarded to the other parties, because it had not been requested by either the Court or its President.

10. On March 20, 2012, the President of the Court issued an Order,<sup>7</sup> in which he summoned the Inter-American Commission, the representatives, and the State to a public hearing (*infra* para. 13) to receive the testimony of two presumed victims, one witness and one expert witness, as well as the final oral arguments of the representatives and of the State and the final oral observations of the Commission, on the State's acknowledgment of responsibility, and on the merits, reparations and costs. Furthermore, the President ordered that the statements of four presumed victims, two witnesses, and six expert witnesses be received by affidavit,<sup>8</sup> and they were presented on April 20, 2012, with the exception of one expert opinion.<sup>9</sup> The representatives and the State were granted the opportunity to make observations and pose questions to the deponents offered by the opposing party. In addition, in the above-mentioned Order, the President admitted the State's offer to present an actuarial report on the compensation to be granted to the victims in this case.

11. On March 21, 2010, the President asked the State, under Article 58(b) of the Court's Rules, to forward "a copy of the complete record of the domestic criminal proceedings in relation to this case." On April 23, 2012, the State submitted eight documents corresponding to the criminal case file, but asked that only the Court review the file. In this regard, on May 11, 2012, the Court decided, based on the adversarial principle and bearing in mind the State's acknowledgement of responsibility, not to forward this case file to the parties or to incorporate it into the body of evidence in this case. However, under Article 58(c) of its Rules of Procedure, the Court requested the Attorney General's Office of the Republic of Guatemala to present a report on the criminal investigation in this case.<sup>10</sup> On May 23, 2012, the representatives requested the reconsideration of the said decision. In accordance with Article 31(3) of the Court's Rules of Procedure, on June 22, 2012, the parties were informed that the Court's decision was not subject to review.

12. On April 18, 2012, the representatives informed the Court of the discovery and identification of the mortal remains of "three [persons] whose disappearance is described in the *Diario Militar*," but who are not presumed victims in this case, and requested their admission as evidence relating to a supervening fact. In addition, on this occasion, they presented copies of the death certificates of several next of kin of the presumed victims "who have died in recent months."

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<sup>6</sup> The representatives asked the Court to require the State to present official documents of the Guatemalan Army, as well as the Historical Archive of the National Police and a copy of the "complete file of the criminal investigation" in the instant case. The representatives had already made this request in their pleadings and motions brief and was reiterated subsequently in their final written arguments (*infra* para. 43).

<sup>7</sup> Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*. Order of the President of the Court of March 20, 2012, which can be consulted on the Court's website at: [http://www.corteidh.or.cr/docs/Asuntos/gudiel\\_20\\_03\\_12.pdf](http://www.corteidh.or.cr/docs/Asuntos/gudiel_20_03_12.pdf).

<sup>8</sup> The representatives withdrew one expert witness and the request to require the State to produce a witness.

<sup>9</sup> The Commission did not present the expert opinion of Ernesto Villanueva Villanueva.

<sup>10</sup> Specifically, a request was made to the Attorney General's Office to present a report "on the actions taken and progress made in the criminal investigation in this case, summarizing and detailing the measures taken, those that are being implemented, and those that are pending, as well as the results obtained."

13. The public hearing took place on April 25, 2012, during the forty-fifth special session of the Court, held in Guayaquil, Ecuador.<sup>11</sup>

14. The Court received two *amici curiae* briefs from: (1) Pedro E. Díaz Romero,<sup>12</sup> and (2) the Open Society Justice Initiative.<sup>13</sup>

15. On June 8, 2012, the representatives and the State forwarded their final written arguments, and the Inter-American Commission presented its final written observations. At that time, the State presented the requested report from the Attorney General's Office (*supra* para. 11), as well as two documents on mental health care in Guatemala, which had not been requested by the Court. Also, the representatives submitted a copy of another death certificate. On June 29, 2012, the representatives presented their observations on the report on the domestic criminal investigation submitted by the State. On July 3, 2012, the Commission presented its observations on the said report, as well as on the documentation on mental health care in Guatemala, and indicated that it had no observations to make on the documentation presented by the representatives. The State indicated that it did not have any observations on the documentation furnished by the representatives.

16. On June 15, 2012, the Court required the State to present certain useful information.<sup>14</sup> On June 29, 2012, the State presented the required information, and on July 12 and 13, 2012, the representatives and the Inter-American Commission presented their observations in this regard.

### III

#### PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

17. The State partially acknowledged its international responsibility in this case, as follows:

- a) Regarding the competence of the Court in this case, the State indicated that "the Court must determine whether it is able to examine the facts on which the violations of the [Convention] alleged by the representatives in this case are founded, as regards the arbitrary detention and subsequent extrajudicial execution of Rudy Gustavo Figueroa Muñoz and the illegal detention, torture and rape of the minor, Wendy Santizo Méndez."

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<sup>11</sup> At the hearing, there appeared: (a) for the Inter-American Commission: Jesús Orozco Henríquez, President; Elizabeth Abi-Mershed, Deputy Executive Secretary; Isabel Madariaga, Karla Quintana, and Silvia Serrano, specialists of the Secretariat, and Michael Camilleri, expert from the Special Rapporteurship on Freedom of Expression; (b) for the representatives: Helen Mack, Mónica Leonardo and Silvia Barreno of the Myrna Mack Foundation; Roxanna Altholz of the Human Rights Clinic of the University of California and Carmen Atkins, legal adviser, and (c) for the State: Antonio Arenales Forno, Secretary for Peace (SEPAZ); Jorge Humberto Herrera Castillo, President of the National Compensation Program; María Elena de Jesús Rodríguez López, State Agent, and Haydée Calderón, of the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH).

<sup>12</sup> The brief was presented by Pedro E. Díaz Romero on May 9, 2012.

<sup>13</sup> The brief was filed on May 10, 2012, signed by Rupert Skilbeck, on behalf of the Open Society Justice Initiative. It indicated that the *Asociación Pro Derechos Humanos* (APRODEH) and the Mexican Association for the Defense and Promotion of Human Rights A.C. co-authored the *amicus*; however the brief was not signed by the representatives of these organizations.

<sup>14</sup> Specifically, the State was asked to respond to certain questions on how the Law on Access to Public Information functioned and on the Public Information Unit of the Ministry of Defense.

b) Regarding the allegations of the representatives and the Inter-American Commission in this case, the State indicated its "total acceptance" in relation to the alleged violations of:

1. Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) of this instrument, and Articles I and XI of the Inter-American Convention on Forced Disappearance, to the detriment of the 26 persons who remained disappeared at the time of the submission of the case (hereinafter "the 26 victims of forced disappearance" or "the 26 disappeared victims");
2. Article 19 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Juan Pablo Armira López and María Quirina Armira López, who were minors at the time of their detention and subsequent disappearance;
3. Articles 5 and 17 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the 26 disappeared victims;
4. Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, as well as Article I of the Inter-American Convention on Forced Disappearances and Articles 1, 6 and 8 of the Inter-American Convention Against Torture, to the detriment of the 26 disappeared victims and their next of kin, because their access to justice was not ensured, and they were not accorded a rapid and simple remedy, and
5. Articles 16 and 23 of the [Convention], considering that the victims were not guaranteed freedom of expression, because there were both legal and political restrictions to this right as a result of their political participation in student groups or trade unions, or because they were leaders of social movements," as well as "to the detriment of the next of kin of the 26 disappeared victims."

c) It also indicated its "partial acknowledgement" regarding the alleged violations of:

1. Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rudy Gustavo Figueroa Muñoz, as well as for the alleged violation of Articles 5, 7, 11 and 19 of the Convention and Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Inter-American Convention Against Torture, to the detriment of Wendy Santizo Méndez, because the facts that originated these violations may be examined by the Court as of the date on which the State recognized its competence;
2. Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, as well as Article I of the Inter-American Convention on Forced Disappearance and Articles 1, 6 and 8 of the Inter-American Convention Against Torture, to the detriment of Rudy Gustavo Figueroa Muñoz and his next of kin, and also in relation to Article 7 of the Convention of Belém do Pará, to the detriment of Wendy Santizo Méndez and her next of kin, based on the Court's temporal competence;
3. Articles 13, 16 and 23, to the detriment of Rudy Gustavo Figueroa Muñoz and his next of kin, based on the Court's temporal competence;
4. Articles 5 and 17 of the Convention, to the detriment of Rudy Gustavo Figueroa Muñoz and of Wendy Santizo Méndez;
5. Article 13 of the Convention, in relation to Articles 1(1) and 2 of this instrument, owing to the supposed violation of the right of access to information, to the detriment of the next of kin of the 26 disappeared victims and the next of kin of Rudy Gustavo Figueroa Muñoz.

- d) In addition, it expressed its total opposition regarding the alleged violations of:
1. Article 22 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of some of the disappeared victims;
  2. The right to the truth, alleged by the representatives;
  3. Article II of the Inter-American Convention on Forced Disappearance;
  4. Article 19 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the disappeared victims who were children when their loved ones were disappeared.
- e) Regarding the facts, the State indicated that it “accept[ed] the facts that resulted in the violation of the rights already acknowledged by the State in this case.”
- f) The State also “acknowledged” as victims all those persons identified as such by the representatives and the Commission.
- g) Lastly, regarding the measures of reparation requested, it expressed its “commitment to continue expediting” the investigation into the facts of the case and the search for the mortal remains of the victims whose whereabouts is still unknown, as well as its “willingness” to carry out, or take steps to ensure compliance with, the other measures of reparation requested. It asked the Court to take into account the results of the actuarial report presented by the State and the collective nature of the case when establishing the compensation in this case. The State also considered that it should not be ordered to pay the costs and expenses, because of its willingness to reach a friendly settlement

### ***B) Observations of the Commission and of the representatives***

18. The Inter-American Commission assessed the acknowledgment of responsibility made by the State. It indicated its understanding that “there is no dispute about the factual framework that substantiates [the] violations [regarding which Guatemala has acknowledged full responsibility], nor [...] the legal consequences described”; nevertheless, the dispute persists with regard to the other violations. However, the Commission emphasized that the State had acknowledged all the victims that it had presented. Regarding the State’s partial acknowledgment in relation to the violations against Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez, the Commission recalled that, when it submitted the case to the Court, it had not included the facts relating to the forced disappearance followed by the extrajudicial execution of Rudy Gustavo Figueroa Muñoz, or the detention and torture of Wendy Santizo Méndez. The Commission asked the Court to give full legal effect to the State’s acknowledgement of responsibility, and to make a detailed description of the facts and the violations that had occurred, and a thorough analysis of the merits concerning the partially accepted or contested violations.

19. For their part, the representatives expressed their “satisfaction” with the State’s acknowledgment of responsibility. However, they regretted that Guatemala had not helped clarify the facts, because it had failed to “indicate its position with regard to [the] factual framework established by [...] the Commission and supplemented by [...] the representatives,” or to “indicate the specific conduct” for which it acknowledged responsibility,” or to provide the “official documents in its custody” that could contribute to the clarification of the truth. Furthermore, they indicated that: (i) the dispute remains regarding the violations that the State contested totally; (ii) the partial acquiescence with

regard to Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez “is unclear,” as well as being “erroneous,” because it disregards the obligation of guarantee imposed by the respective articles of the Convention; (iii) the acquiescence to the violations of Articles 5 and 17 “does not reflect all the reasons” based on which the violations are alleged; (iv) the measures indicated by the State to support its partial acquiescence to the violation of access to information, “are patently insufficient,” and, in general, the State’s acquiescence “does not address all [their] allegations,” because it does not refer to the alleged violations of Articles 5, 13, 16 and 17 of the Convention, to the detriment of the next of kin of Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez, or to the alleged violation of the obligation to guarantee the rights established in Articles 3, 4, 5 and 7 of the Convention in relation to the 26 disappeared victims. In addition, they indicated that the State’s acquiescence “includes the obligation to make reparation as an aspect to be negotiated, instead of an obligation arising from the violations acknowledged,” and expressed their opposition to the State’s request to decrease the compensation. Based on the foregoing, the representatives asked, *inter alia*, that the Court deliver a judgment in which it refers in detail to all the facts and elements of the merits, as well as the reparations.

### ***Considerations of the Court***

20. In accordance with Articles 62 and 64 of the Rules of Procedure,<sup>15</sup> and in exercise of its powers for the international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent on the Court to ensure that acts of acquiescence are acceptable for the purposes of the inter-American system. This task is not limited to merely verifying, recording or taking note of the acknowledgment made by the State, or to confirming the formal conditions of the said acts; but rather, it must examine them in relation to the nature and gravity of the alleged violations, the requirements and interest of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>16</sup> so that it can clarify, insofar as possible and in the exercise of its competence, the truth about what took place.<sup>17</sup>

21. Article 41(1)(a) of the Court’s Rules of Procedure establishes that the State must indicate in its answering brief whether it accepts the facts and arguments, or whether it contests them. Moreover, paragraph 3 of the same Article 41 of the Rules of Procedure, indicates that “the Court may consider those facts that have not been expressly denied and those claims that have not been expressly contested as accepted.”

22. In this case, the State did not clarify plainly and specifically in its answering brief or in its final written arguments the facts submitted by the Commission in this case, that substantiate its partial acknowledgment of responsibility. However, the Court observes that, during the public hearing, Guatemala indicated that “it accept[ed] the facts” corresponding

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<sup>15</sup> Articles 62 and 64 of the Court’s Rules of Procedure establish: “Article 62: Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or in the brief submitted by the presumed victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.” “Article 64. Continuation of a case: Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles.”

<sup>16</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 23.

<sup>17</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 23.

to the violations of “the rights already acknowledged by the State” (*supra* para. 17(e)). Therefore, as it has in other cases,<sup>18</sup> the Court understands that Guatemala admitted all those facts that resulted in the violations for which it “accept[ed] totally” its international responsibility.

23. In addition, taking into account the violations acknowledged by the State (*supra* para 17(b)), the Court considers that the dispute has ceased with regard to: (a) the forced disappearance of the 26 victims whose whereabouts remained unknown when the case was submitted, and of the consequent violation of Articles 3, 4, 5, 7 and 1(1) of the American Convention and Articles I and XI of the Inter-American Convention on Forced Disappearance; (b) the violation of Article 19 of the Convention, to the detriment of Juan Pablo and María Quirina Armira López; (c) the violation of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, Article I of the Inter-American Convention on Forced Disappearance, and Articles 1, 6, and 8 of the Inter-American Convention Against Torture, and (d) the violation of Articles 5 and 17 of the Convention, to the detriment of the next of kin of the victims of forced disappearance.

24. Furthermore, the Court observes that the State also expressed its “full acceptance” of the violation of Articles 16 and 23 of the American Convention. This Court notes that, even though the violation of Article 23 of the Convention was alleged in relation to the right of access to information of the next of kin of the disappeared victims, the violation of Article 16 of the Convention was alleged based on different facts and legal grounds, and to the detriment of both the next of kin and the disappeared victims.<sup>19</sup> Nevertheless, based on the State’s considerations when acknowledging its responsibility with regard to Articles 16 and 23 of the Convention<sup>20</sup>, the Court understands that Guatemala acquiesced to the alleged violation of Article 23, based on the right to access information, and Article 16 “to the detriment of the next of kin of the disappeared victims,” and that it also acquiesced to the violation of Article 16 of the Convention, to the detriment of the 26 disappeared victims “as a result of their political participation in student groups and trade unions, or because they were leaders of social movements.” Consequently, the Court considers that the dispute has also ceased with regard to violation of Articles 16 and 23 of the Convention, without prejudice to the specific considerations that the Court may make in this regard in the corresponding chapters of this Judgment.

25. The Court also observes that the State acknowledged, in part, its responsibility for the violations alleged to the detriment of Rudy Gustavo Figueroa Muñoz and Wendy Santizo

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<sup>18</sup> Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009 Series C No. 196, para. 25; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 62; *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 64, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 27.

<sup>19</sup> The violation of Article 16 was alleged to the detriment of the disappeared victims, because their forced disappearance was motivated by their supposed membership in opposition and/or insurgent groups, while the alleged violation of Article 16 to the detriment of the next of kin was based in the presumed threats, harassment and intimidation they had suffered by reporting or conducting searches for their disappeared relatives.

<sup>20</sup> The State expressed its “full acknowledgment” of the violation of Articles 16 and 23 of the American Convention, “with regard to access to information, to the detriment of the next of kin of the 26 disappeared victims who had been detained,” and also indicated that it acknowledged the said violations “considering that the victims had not been guaranteed freedom of expression, because there were legal and political restrictions to this right, as a result of their political participation in student groups and trade unions, or because they were leaders of social movements.” In its oral arguments and in its brief with final arguments, Guatemala did clarify this acknowledgement, did not provide additional information and did not refer to what the Commission had indicated in its observations; rather, it expressed “its full acknowledgement” of the said violations as it had in its answering brief.

Méndez, and of their next of kin, because some of the violations were committed before it recognized the Court's jurisdiction; thus, it acknowledged the violation of certain rights to the detriment of Wendy Santizo Méndez and Rudy Gustavo Figueroa Muñoz, as well as of their next of kin, as of March 9, 1987 (*supra* para. 17(a) and 17(c)). In this regard, the Court recalls that, under Article 35(3) of the Court's Rules of Procedure, when submitting this case, the Commission expressly indicated that it excluded from the submission the facts related to the death of Rudy Gustavo Figueroa Muñoz, and the alleged detention and torture of Wendy Santizo Méndez (*supra* para. 3). However, it clarified that it was submitting other facts related to both victims, including the failure to investigate the alleged violations and the impact of this on their next of kin.<sup>21</sup> The representatives endorsed these considerations of the Commission. Moreover, the Court takes note that Guatemala expressly indicated that the Court could take into account events that occurred prior to March 9, 1987, with regard to Rudy Gustavo Figueroa and Wendy Santizo Méndez, "solely to determine the State's responsibility for the presumed omissions arising from the lack of an investigation."

26. The Court considers that the violations to the detriment of Rudy Gustavo Figueroa and Wendy Santizo Méndez alleged by the Commission and the representatives refer to the lack of an investigation into the facts supposedly suffered by both presumed victims; thus, the alleged violations of the obligation of guarantee deriving from the above-mentioned provisions of the Convention are not based on facts prior to the temporal competence of the Court, but rather to those relating to the absence or omission of investigations into the said facts that presumably occurred after March 9, 1987. Consequently, the Court considers, as it has in other cases,<sup>22</sup> that it is competent to examine the facts and possible omissions related to the investigation into the alleged disappearance and death of Rudy Gustavo Figueroa Muñoz, as well as the facts relating to the alleged lack of an investigation into the presumed detention and torture of Wendy Santizo Méndez, which occurred after the date on which Guatemala recognized the Court's jurisdiction, in light of the procedural obligation derived from the obligation of guarantee arising from Articles 3, 4, 5, 7, 11 and 19 of the Convention, and of the corresponding alleged violations of Articles 8 and 25, with regard to their next of kin, for facts that took place after March 9, 1987, as well as after the dates of the deposit of each of the treaties whose provisions are alleged to have been violated by the absence of an investigation (*supra* para. 4 and *infra* para. 30). Furthermore, under the terms of the State's acknowledgment of responsibility (*supra* para. 17(c)), the Court understands that Guatemala accepted its responsibility for the violations committed against the said persons, to the extent that they are based on facts following the date of recognition of the Court's competence. Therefore, the Court finds that the dispute has ceased with regard to the violations of Articles 3, 4, 5, 7, 8, 11, 16, 19, 23, 25 and 1(1) of the Convention that occurred, respectively, to the detriment of Rudy Gustavo Figueroa Muñoz, Wendy Santizo Méndez, and their next of kin, after March 9, 1987.

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<sup>21</sup> In its brief with observations on the State's acquiescence, the Commission indicated that the facts relating to the violations against Mr. Figueroa Muñoz and Ms. Santizo Méndez "fall within the Court's temporal competence," because "the failure to investigate and punish," "is not only a denial of justice with regard to the victims' next of kin, but reveals non-compliance with the obligation of guarantee." In addition, the representatives recognized that the Court "lack[ed] competence to rule" on "the detention and torture of Wendy Santizo Méndez and the disappearance and subsequent execution of Rudy Gustavo Figueroa Muñoz," but that "the lack of investigation of [the said violations]," as well as "the violations related to the rights of association, to information and to truth persist," after the recognition of the Court's jurisdiction. They stressed that their allegations are based on "acts after the date of acceptance of the Court's jurisdiction and/or continuing acts" and that the State's assertion "disregards its obligation of guarantee."

<sup>22</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 97, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, paras. 45 to 48.

27. The Court also observes that there is still a dispute regarding the facts and claims relating to the alleged violations of Article 13 of the Convention, the right to know the truth, Article II of the Inter-American Convention on Forced Disappearance, and regarding the alleged violations of Articles 19 and 22, to the detriment of certain next of kin of the disappeared victims. Likewise, there is still dispute regarding the alleged violation of the obligation to guarantee the rights of the 26 disappeared victims by investigating the facts and the alleged violations of Articles 5 and 17 to the detriment of the next of kin of Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez, and of Article 16 to the detriment of Rudy Gustavo Figueroa Muñoz. The dispute also remains in relation to the determination of the eventual reparations, costs and expenses. Accordingly, the Court will determine, in the corresponding chapter, the measures of reparation that are appropriate in this case, bearing in mind the requests of the representatives and the Commission, the relevant standards of the inter-American system for the protection of human rights, and the respective observations of the State.

28. In the instant case, the Court finds that the partial acknowledgement of responsibility made by the State, as well as the latter's commitment to expedite or negotiate compliance with some of the measures of reparation requested, make a positive contribution to the development of these proceedings and to the implementation of the principles that inspire the American Convention,<sup>23</sup> as well as to satisfying the needs for reparation of the victims of human rights violations.<sup>24</sup> Furthermore, the Court considers, as it has in other cases,<sup>25</sup> that the State's acknowledgement produces full legal effects pursuant to the above-mentioned Articles 62 and 64 of the Court's Rules of Procedure, and has considerable symbolic value to ensure the non-repetition of similar facts.

29. Lastly, based on the seriousness of the alleged facts and violations, and taking into account the powers vested in this Court as an international organ for the protection of human rights, the Court will proceed to make an extensive and detailed determination of the facts that occurred, because this contributes to making reparation to the victims, to preventing the repetition of similar facts and, in brief, to satisfying the purposes of the inter-American human rights jurisdiction.<sup>26</sup> The Court will include the corresponding chapters to analyze and clarify, as appropriate, the scope of the violations alleged by the Commission and the representatives, as well as the corresponding consequences with regard to reparations.

#### **IV COMPETENCE**

30. The Inter-American Court is competent to hear this case in the terms of Article 62(3) of the American Convention, because Guatemala has been a State Party to the American Convention since May 25, 1978, and recognized the contentious jurisdiction of the Court on March 9, 1987. In addition, Guatemala ratified the Inter-American Convention against

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<sup>23</sup> Cf. *Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 28.

<sup>24</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 18, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 28.

<sup>25</sup> Cf. *inter alia*, *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 37, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 21.

<sup>26</sup> Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 27.

Torture on January 29, 1987; the Convention of Belém do Pará on April 4, 1995, and the Inter-American Convention on Forced Disappearance on February 25, 2000.

31. The Court recalls that, as a general rule, it has temporal competence as of the date of ratification of the respective instruments and of the recognition of its contentious jurisdiction, in the terms in which the said ratifications and recognition were made.<sup>27</sup> However, it observes that, in the instant case, the State has acknowledged its international responsibility for the alleged violation of freedom of association as the reason for the forced disappearance of the 26 disappeared persons, and for the alleged violation of the rights of the child of Juan Pablo and María Quirina Armira López, because they were minors at the time of their detention and subsequent disappearance (*supra* paras. 17(b)(2), 17(b)(5) and 24). These allege violations occurred and ceased before the date of recognition of the Court's competence.

32. The Court has established that, when a State acknowledges its international responsibility for violations of the American Convention that occurred before its recognition of the Court's competence, that State waives the temporal limitation to the exercise of its competence with regard to the facts or violations acknowledged, thereby giving its consent for the Court to examine the facts that occurred and to rule on the violations that were constituted in that regard.<sup>28</sup> Therefore, based on the State's acknowledgment of responsibility, the Court finds that, in this case, it has competence to examine the alleged violation of Articles 16 and 19 of the Convention to the detriment of the alleged 26 victims of forced disappearance and of Juan Pablo and María Quirina Armira López, respectively.

## V PRIOR CONSIDERATION ON ADDITIONAL FACTS ALLEGED BY THE REPRESENTATIVES

33. The Court observes that the representatives added certain facts in their pleadings and motions brief that were not included by the Commission in its merits report. In particular, in their arguments regarding the alleged violation of Article 5, they indicated that Aura Elena Farfán had been raped in 1991, and in their allegations relating to Article 22 of the Convention, they indicated that Blanca Rosa Ortega, Yordin Herrera Urizar and Ana Dolores Monroy Peralta had left Guatemala or had been internally displaced. Furthermore, in the section on the requests for compensation in favor of the presumed victims, the representatives referred to the presumed forced disappearances of two persons not included as presumed victims in this case<sup>29</sup>, and also to the presumed murder of Florentín Gudiel Ramos<sup>30</sup> the presumed attacks suffered by Raúl Augusto Sosa Calderón in 1983, by Yordin Eduardo Herrera Urizar in 1994, by Wendy Santizo Méndez starting in 1999, by Efraín García in 2007 and by Aura Elena Farfán in 2001 and 2004, among which they describe a presumed rape. In addition, in their final written arguments, the representatives included

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<sup>27</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010 Series C No. 217, para. 20.

<sup>28</sup> In this regard, see, *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 30; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 22. See also, *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 192.

<sup>29</sup> This refers to the presumed disappearance of Florentino Gómez, brother of Crescencio Gómez López, and of the husband of the sister of Victor Manuel Calderón Díaz.

<sup>30</sup> The presumed murder of Florentín Gudiel Ramos forms part of the facts and purpose of the *Case of Gudiel Ramos et al. v. Guatemala*.

the violation of Article 22 owing to the presumed internal or international displacement of Mercedes Muñoz Rodas, Rudy Alberto Figueroa Maldonado, Ana Dolores Munguía, Renato Guzmán Castañeda, Esteban Salanic Chiguil, and Beatriz María Velásquez. Furthermore, they referred to the presumed 2004 murder of Humberto Alvarado Palencia, who was the son of Alfonso Alvarado Palencia, but was not named as a presumed victim in this case. Regarding these facts, the representatives alleged, *inter alia*, that no investigation had been opened and, thus, they formed part of the flaws in the investigation into the facts of this case.

34. This Court has established that the factual framework of the proceedings before the Court is constituted by the facts described in the merits report submitted to the Court's consideration. Consequently, it is not admissible for the parties to allege new facts distinct from those included in the said report, without prejudice to describing those that may explain, clarify or reject the facts that have been mentioned in the report and that have been submitted to the consideration of the Court.<sup>31</sup> The exception to this principle, are the facts that are considered to be supervening, provided they are related to the facts of the proceedings. The Court notes that the above-mentioned facts described by the representatives in their pleadings and motions brief do not constitute facts that explain, clarify or reject those contained in the merits report. Consequently, the Court will not take them into account in its decision in this case.

## VI EVIDENCE

35. Based on the provisions of Articles 50, 57, and 58 of the Rules of Procedure, as well as its case law regarding evidence and its assessment,<sup>32</sup> the Court will examine and assess the documentary evidence forwarded by the parties at different procedural opportunities, the statements, testimony and expert opinions provided by affidavit and at the public hearing before the Court, as well as helpful evidence requested by the Court (*supra* para. 11 and *infra* para. 47). To this end, the Court will abide by the rules of sound judicial discretion, within the corresponding legal framework.<sup>33</sup>

### **A) Documentary, testimonial and expert evidence**

36. The Court has received different documents submitted as evidence by the Inter-American Commission, the representatives, and the State, attached to their main briefs (*supra* paras. 1, 5 and 6). In addition, the Court has received affidavits prepared by: presumed victims Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Carla Fabiola Alvarado Sánchez and María Froilana Armira López; witnesses Fredy Peccerelli<sup>34</sup> and Marco

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<sup>31</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 47.

<sup>32</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 al 76, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 31.

<sup>33</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 31.

<sup>34</sup> In his Order of March 20, 2012, the President of the Court admitted the testimony of Fredy Peccerelli, who was offered by representatives after their pleadings and motions brief (*supra* para. 8), considering that "it is testimony on a fact that occurred after the submission of the pleadings and motions brief, and also that the State indicated that it ha[d] no objection in this regard, and based on Article 57(2), he admit[ted] the said testimony." *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*. Order of the President of March 20, 2012, seventeenth considering paragraph.

Tulio Álvarez Bobadilla; and expert witnesses Carlos Castresana Fernández, Bernardo R. Morales Figueroa, Silvio René Gramajo Valdés, Alejandro Valencia Villa and Carlos Martín Beristain. Regarding the evidence provided at the public hearing, the Court heard the testimony of the presumed victims Wendy Santizo Méndez and Efraín García; the witness Manuel Giovanni Vásquez Vicent; and the expert witness Katharine Temple Doyle.<sup>35</sup>

## **B) Admission of the evidence**

### **B.1) Admission of the documentary evidence**

37. In this case, as in others, the Court grants probative value to those documents forwarded by the parties and the Commission at the appropriate procedural opportunity, that were not contested or opposed, and the authenticity of which was not questioned.<sup>36</sup> In addition, the helpful documents and information requested by the Court (*supra* paras. 10, 11 and 16), whose admissibility was not contested or opposed, are incorporated into the body of evidence, in application of the provisions of Article 58 of the Rules of Procedure.

38. Regarding the newspaper articles submitted by the parties and the Commission together with their respective briefs, this Court has considered that they can be assessed provided that they refer to well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case.<sup>37</sup> The Court decides to admit those documents that are complete or that, at least, allow their source and date of publication to be verified, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

39. Similarly, with regard to some documents indicated by the parties and the Commission by means of electronic links, the Court has established that, if a party provides, at least, the direct electronic link to the document cited as evidence and it is possible to access it, legal certainty and procedural equality are not affected because both the Court and the other parties can locate it immediately.<sup>38</sup> In this case, neither the other parties nor the Commission contested or made observations on the content and authenticity of such documents.

40. With regard to the procedural moment to present documentary evidence, under Article 57(2) of the Rules of Procedure, it must be offered, generally, together with the briefs submitting the case, the pleadings and motions brief, or the answering brief, as applicable. The Court recalls that evidence furnished outside the appropriate procedural moments is inadmissible, unless it falls within the exceptions established in Article 57(2) of the Rules of Procedure, namely, *force majeure*, serious impediment, or if it refers to an event which occurred after the said procedural moments.

41. In this regard, the Court observes that the State forwarded, together with its final written arguments, two documents relating to mental health care in Guatemala, without offering any justification for its submission after its answering brief. The Court finds that the

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<sup>35</sup> The purpose of all these statements is established in the Order of the President of the Court of March 20 2012, *supra*.

<sup>36</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, *supra* note 18, para. 140, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 33.

<sup>37</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 146, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 35.

<sup>38</sup> Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 36.

presentation of the said documents is time-barred and, consequently, the Court will not consider them in its decision.

42. In addition, the Court observes that, in December 2011, the representatives informed the Court of the discovery and identification in November that year of the mortal remains of Sergio Saúl Linares Morales and Amancio Samuel Villatoro, two victims in this case, and submitted certain documentation in this regard (*supra* para. 8). Also, on April 18, 2012, the representatives advised the Court that, in March 2012, the mortal remains had been found and identified of “three [persons] whose disappearance are described in the *Diario Militar*,” but they were not presumed victims in this case, even though their “discovery [...] has important implications as to the nature and scope of the State responsibility” in this case. On that occasion, and together with their final written arguments, the representatives also presented copies of the death certificates of several family members of the disappeared victims, some of whom “had died in recent months,” and others “in previous years”; however, “ha[d] taken some time to obtain copies of all of the death certificates.” The State did not object to the admission of this information or of the corresponding evidence. In accordance with Article 57(2) of the Rules of Procedure, the Court considers appropriate to admit the information and documentation relating to the discovery and identification of the mortal remains of the two presumed victims in this case, and of the other three persons referred to in the *Diario Militar*, because the events occurred after the presentation of the brief with the motions and pleadings relevant for deciding this case. Furthermore, under Article 58(a) of the Rules of Procedure, the Court admits the copies of the death certificates presented by the representatives, to the extent that they are useful to determine and identify the victims in the case at hand. This information and documentation will be assessed in the context of the body of evidence and in accordance with the rules of sound judicial discretion.

43. In addition, the Court observes that, on various opportunities,<sup>39</sup> the representatives asked the Court to require the State to present official documents of the Guatemalan Army “related to the victims of the *Diario Militar* in general, as background and not merely limited to the victims of the case *sub judice* and their next of kin,” as well as of the Historical Archive of the National Police. In this regard, the Court considers that it is not necessary to require Guatemala to present this documentation,<sup>40</sup> because it is not essential for deciding this case, owing to the acknowledgment of responsibility made by the State, and taking into account that the available body of evidence provides sufficient probative elements to decide the merits of this case.

44. In their observations on the investigation report requested by the Court (*supra* para. 11), the representatives and the Commission indicated, *inter alia*, that the report submitted was “insufficient and inadequate” and that it “d[id]not comply with the criteria established by the Court” when requesting it (*supra* para. 11). The Court considers that the observations of the Commission and the representatives refer to aspects of the content of this report that do not contest its admissibility, but rather relate to its probative value.<sup>41</sup> Consequently, under Article 58(c) of the Rules of Procedure, the Court finds it appropriate to

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<sup>39</sup> The representatives made this request in their pleadings and motions brief, their brief with observations on the acknowledgment of responsibility, and their written final arguments.

<sup>40</sup> The Court has ruled similarly in the following cases: *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 38, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 34.

<sup>41</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 43; and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 28.

admit the report prepared by the Public Prosecution Service, which will be assessed in the context of the body of evidence, taking into account, as pertinent, the observations of the representatives and the Commission, as well as the rules of sound judicial discretion.

45. Additionally, on August 7, 2012, the representatives submitted certain information concerning “declarations made by the Secretary for Peace [of Guatemala] [...] that reveal a position of the State [...] tending to perpetuate the impunity in cases of gross violations of human rights.” The representatives requested that this information be admitted under Article 57 of the Court’s Rules of Procedure, as a fact subsequent to the opportune procedural moments. The State objected to the admission of this information, arguing, *inter alia*, that it was time-barred and unrelated to this case. The Commission also presented observations on this information, but did not contest its admissibility. The Court observes that the information presented by the representatives refers to the arguments of the State during the public hearing held in the case of the *Río Negro Massacres*, as well as to declarations to the press by the State’s Agent regarding Guatemala’s compliance with the measures of reparation ordered by this Court. The Court considers that the information provided by the representatives on August 7, 2012, is not directly related to this case; hence, it considers that its admission is not appropriate and, consequently, it will not be considered by the Court in its decision.

46. As annexes to their pleadings and motions brief, the representatives provided documents corresponding to the statements of presumed victims and reports on the psychosocial impact on the next of kin of presumed victims in the case, prepared by Carlos Beristain. The Court ratifies the decision of the President in his Order that these statements will only be considered documentary evidence and, therefore, will be assessed in the context of the body of evidence and in keeping with the rules of sound judicial discretion. The Court also observes that, when submitting this case, the Commission provided, as annexes, statements made during the proceedings before it. In this regard, the Court reiterates that the pertinence of a statement offered by the parties or the Commission in a case and the definition of its purpose must be established by the Court or its President. Consequently, it notes that the statements presented by the Commission constitute documentary evidence, because they were not requested and their purpose was not determined by the Court or its President.<sup>42</sup> Nevertheless, the Court will take into account that these statements were made during adversarial proceedings before the said organ and, in that sense, will be assessed at the appropriate opportunity, within the context of the existing body of evidence and according to the rules of sound judicial discretion.

47. In addition, the Court adds the following documents to the body of evidence, in accordance with Article 58(a) of the and because it consider that they are useful for deciding this case: (a) a copy of the Agreement on the bases for incorporating the Guatemalan National Revolutionary Union to Legal Status,<sup>43</sup> and (b) a copy of the Agreement on a Firm and Lasting Peace.<sup>44</sup>

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<sup>42</sup> Likewise, see *Case of Abrill Alosilla et al. v. Peru*. Order of the acting President of the Inter-American Court of Human Rights of September 8, 2010, twenty-fourth considering paragraph, and *Case of Furlan and family members v. Argentina*. Order of the President of the Inter-American Court of Human Rights of January 24, 2012, eighth considering paragraph.

<sup>43</sup> Cf. *Acuerdo sobre bases para la incorporación de la Unidad Revolucionaria Nacional Guatemalteco a la Legalidad*. [Agreement on the basis for the legal integration of the Guatemalan National Revolutionary Unity]. Madrid, Spain, December 12, 1996. Available at: <http://www.sepaz.gob.gt/index.php/acuerdos/separador2/acuerdo-bases-incorporacion-unidad-revolucionaria-nacional-guatemalteca>.

<sup>44</sup> Cf. *Acuerdo de Paz Firme and Duradera* [Agreement on Firm and Lasting Peace]. Guatemala, December 29, 1996. Available at: <http://www.sepaz.gob.gt/index.php/acuerdos/separador2/acuerdo-paz-firme-duradera>.

## **B.2) Admission of the statements of the presumed victims, and the testimonial and expert evidence**

48. Regarding the testimony of the presumed victims and the witnesses, and the expert opinions provided during the public hearing and by affidavit, the Court finds them pertinent only insofar as they are in keeping with the purpose defined by the President of the Court in the Order in which he required them (*supra* para. 10). They will be assessed in the corresponding chapter, together with the other elements of the body of evidence and taking into account the observations made by the parties.<sup>45</sup>

49. Pursuant to the Court's case law, the testimony of the presumed victims cannot be assessed in isolation, but rather together with all the evidence in the proceedings, because they are useful to the extent that they can provide additional information on the alleged violations and their consequences.<sup>46</sup> Consequently, the Court admits the said testimony (*supra* para. 36), and it will be assessed based on the criteria indicated.

50. Lastly, the Court takes note that the State "contest[ed]" the admissibility of certain answers and annexes presented by expert witness Fredy Peccerelli in his opinion, concerning the financing of the Guatemalan Forensic Anthropology Foundation, of which he is the Director, and the relationship between the Foundation and the State. Guatemala considered that those parts of Mr. Peccerelli's opinion "do not deal with the purpose for which he was called to testify" and, therefore, asked the Court "to assess [this opinion] solely" in relation to its purpose. In this regard, the Court notes that, indeed, the questions indicated by the State (posed by the representatives to the expert), and the answers to them, are outside the purpose defined by the President in his Order. Consequently, the Court admits this expert opinion insofar as it is in keeping with the purpose defined by the President.

## **VII FACTS**

51. Given the importance of establishing the facts that gave rise to State responsibility in this case, in order to preserve the historical memory and to avoid the repetition of similar events, and as a form of reparation to the victims, in this chapter the Court will establish the facts of this case, based on the facts submitted to the consideration of the Court by the Commission and the acknowledgment of responsibility made by the State, taking into consideration the pleadings and motions brief of the representatives and the body of evidence.

52. The Court recalls that, according to its case law, the principle of non-retroactivity and the optional clause on recognition of the Court's jurisdiction do not signify that an act that occurred before the said recognition must be excluded from any consideration when it may be relevant in order to determine the facts and the human rights violations that are within its temporal competence. The Court also recalls that, in accordance with Article 41(3) of the Rules of Procedure, it may consider acknowledged those facts that have not been expressly denied and the allegations that have not been expressly contested. Furthermore, the Court recalls that, in order to decide the different cases submitted to its considered, it has been

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<sup>45</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 40.

<sup>46</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*, *supra*, para. 43, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 40.

required to take into account the context and other events that are outside its competence, because the political and historical circumstances are crucial for establishing the legal consequences of the case, as well as the nature of the violations of the Convention and the corresponding reparations.<sup>47</sup> Thus, the analysis of the facts and the human rights violations for which the Court has competence in the terms of Chapter IV cannot be isolated from consideration of the background and the context in which the events allegedly took place, and the respective legal consequences cannot be determined in the vacuum that decontextualization signifies, since it is alleged that the facts of this case are not isolated events in Guatemala.

53. The Court will now refer to the facts related to the violations alleged in this case, namely: (A) the context in which the facts of this case took place; (B) the appearance of the *Diario Militar* and the Historical Archive of the National Police; (C) individual facts concerning the forced disappearance of the victims in this case and the circumstances surrounding the disappearances, and (D) the facts relating to the investigation opened by the Public Prosecution Service in 1999.

### **A) Context of the facts**

54. From 1962 to 1996 an internal armed conflict took place in Guatemala that had significant human, material, institutional and moral costs. The Historical Clarification Commission (*infra* para. 58, hereinafter also “the CEH”) estimated that “more than 200,000 people were either killed or disappeared in the internal armed conflict.” During this conflict, the State applied what was known as the “National Security Doctrine,” based on which it used the concept of “internal enemy,” which initially referred to the guerrilla organizations, but was expanded to include “all those persons who identif[ied] with communist ideology or who belonged to an organization – whether it be a trade, social, religious or student organization – or those who, for whatever reason, were not in favor of the established regime.”<sup>48</sup>

55. During the internal conflict, the intelligence services played a particularly important role. The two main military intelligence agencies were “the Intelligence Section of the Army or the Intelligence Directorate of the General Staff of National Defense [known as] the ‘G-2’ and a unit of the Presidential Staff, [... known] popularly as ‘La Regional’ or ‘El Archivo.’” Military intelligence was responsible for collecting and examining information on those who were considered internal enemies, based on which the counterinsurgency operations were planned.<sup>49</sup>

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<sup>47</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, paras. 53 and 63, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 55.

<sup>48</sup> Cf. Report of the CEH, *Guatemala: Memoria del Silencio*, Guatemala, United Nations Office for Project Services, 1999, volume II, paras. 769, 772 and 1729, and volume V, conclusions, paras. 1 and 147, Annex 8 of the merits report, available at: [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf](http://shr.aaas.org/guatemala/ceh/gmds_pdf); Peace Secretariat. Presidency of the Republic, *La autenticidad del Diario Militar, a la luz de los documentos históricos of the National Police* [The authenticity of the *Diario Militar* in light of documents from the Historical Archive of the National Police], 2011, Second edition, p. 19 (merits file, tome II, Annex A of the answer to the submission, folio 1170 Bis), and Human Rights Office of the Archbishopric of Guatemala (ODHAG), *Guatemala Nunca Más. Informe del Proyecto Interdiocesano “Recuperación de la Memoria Histórica*, 1998, volume II, chapter 5, p. 229 (file of the proceedings before the Commission, Annexes, tome I, annex IV, folio 3503).

<sup>49</sup> Cf. CEH, *supra*, volume II, pp. 75 and 76, paras. 947 and 952; affidavit made by expert witness Alejandro Valencia Villa on April 12, 2012 (file of documents received at the public hearing, folios 13296 and 13297), and Peace Secretariat, *supra*, p. 51. The official name of “*El Archivo*” was changed several times due to the change of Government; during the Government of Oscar Humberto Mejía Victores it was called “Intelligence Secretariat of the Presidency of the Republic.” Oscar Humberto Mejía Victores was in power from August 1983 to January 1986. Cf. CEH, *supra*, volume I, p. 234 and tome II, p. 85, para. 983.

56. The military intelligence system included the National Police, which supported the Army and its intelligence agencies in the counterinsurgency operations, which included enforced disappearances such as those that occurred in this case.<sup>50</sup> According to official sources, the Heads of the Police were often members of the Army, which affected the chain of command. According to the Guatemalan Peace Secretariat, this situation “shows that the different police corps, some more than others, became operational arms of the Armed Forces, who always retained responsibility for the decision-making.”<sup>51</sup>

57. As established in other cases concerning Guatemala heard by this Court, in that country the forced disappearance of persons constituted a State practice during the internal armed conflict. It was carried out mainly by agents of its security forces and, based on this practice, members of insurgent movements or persons identified as supporters of the insurgency were captured.<sup>52</sup> According to the CEH, State forces and paramilitary groups linked to them were responsible for 92% of the forced disappearances that it recorded.<sup>53</sup>

58. In Guatemala, the peace negotiation process began in 1990 and culminated in 1996. Over this period 12 agreements were signed, including one that established the Historical Clarification Commission, which began work on July 31, 1997, and submitted its report on February 25, 1999. The National Reconciliation Act established that the State authorities “had a legal obligation to support the [CEH].” However, the CEH complained that State agencies did not permit access to relevant information. Thus, the CEH emphasized that “it did not receive a single document with information on the activities of the Intelligence Services,” even though it had requested them.<sup>54</sup> Moreover, there were also cases in which the authorities denied the existence of information and in which the CEH indicated that it knew of the existence of documents that subsequently appeared, such as the *Diario Militar*

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<sup>50</sup> Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folios 13297 and 13298; Testimony given by witness Marco Tulio Álvarez Bobadilla on March 16, 2012 (file of documents received at the public hearing, folio 13651); expert opinion provided by Katharine Doyle before the Inter-American Court at the public hearing in this case, and CEH, *supra*, volume II, pp. 43 and 44, para. 847, and PDH, *Informe Final de Investigación: Centro de Operaciones Conjuntas of the National Police* [Final report of investigation. Joint Operations Center of the National Police]. Fondo Documental GT PN 51, 2009, p. 31 (file of annexes to the pleadings and motions brief, tome VI, annex D1, folio 11367).

<sup>51</sup> Peace Secretariat, *supra*, pp. 49 and 53. Also, Cf. PDH, *El Derecho a Saber. Informe Especial del Archivo Histórico de la Policía Nacional de Guatemala*. [The right to know: Special report on the Historical Archive of the National Police of Guatemala]. 2009, p. 95, annex 1 to the merits report, available at [http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=category&id=5&Itemid=55&limitstart=20](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=5&Itemid=55&limitstart=20); CEH, *supra*, volume II, p. 149, paras. 1164 and 1165; Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13298, and Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13650.

<sup>52</sup> Cf., *inter alia*, *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 132; *Case of Tiu Tojin v. Guatemala, supra*, para. 49, and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 67.

<sup>53</sup> Cf. CEH, *supra*, volume II, p. 411, para. 2053.

<sup>54</sup> Cf. CEH, *supra*, volume I, pp. 23, 26-27, 30, 35, 49 to 51, 215, paras. 1, 2, 19, 45, 89 to 96 and 694, and tome II, pp. 13, 14 and 15, paras. 741 and 745; *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 134.9; *Case of the Rio Negro Massacres v. Guatemala, supra*, para. 64; Decree No. 145-1996 – Law of National Reconciliation, December 27, 1996, art. 10 (file of annexes to the pleadings and motions brief, tome IV, annex A55, folio 10486), and Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13290.

and the Historical Archive of the National Police<sup>55</sup> (*infra* paras. 59, 63 and 296). This lack of access to information had an adverse impact on the work of the CEH.<sup>56</sup>

## **B) The *Diario Militar* and the Historical Archive of the National Police**

### **B.1) The *Diario Militar***

59. In May 1999, the National Security Archive, a United States non-governmental organization, released a confidential Guatemalan State intelligence document known as the "*Diario Militar*" (hereinafter "*the Diario Militar*") [Note: also called the Death Squad Dossier in English]. This organization obtained access to this document unofficially through an employee of the Guatemalan Army, who had removed it from the archives of this institution.<sup>57</sup> According to studies made by State agencies and non-government organizations, and the expert evidence provided to the Court, the *Diario Militar* was prepared by a military intelligence structure, which presumably was also involved in the actions described in the document.<sup>58</sup> The State has not contested this.

60. The *Diario Militar* is composed of 73 letter-size pages and is divided into six sections. The first five sections contain, *inter alia*, information on the structure of intelligence archives, together with different lists of human rights organizations and media. The sixth section contains a list of 183 people with their personal data, organization membership, activities and, in most cases, a passport-size photograph of the person. Each entry also indicates the acts perpetrated against the said person, including: clandestine detention, kidnapping and murder. The acts recorded in the *Diario Militar* occurred between August 1983 and March 1985.<sup>59</sup>

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<sup>55</sup> Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folios 13291 and 13292; extracts from the correspondence between the CEH and institutions of the Republic of Guatemala, letter of April 29, 1998, ABT/C/092-98/lg, addressed to the President's Private Secretary, CEH, *supra*, volume VIII, annex III, p. 177.

<sup>56</sup> The CEH indicated, with regard to the forced disappearances, that it "was unable to clarify [...] whether there was a single chain of command or a centralized system from which the instructions to carry out the forced disappearance of persons originated." Cf. CEH, *supra*, volume II, p. 459, para. 2180. See also, Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13291.

<sup>57</sup> Cf. Peace Secretariat, *supra*, p. 35 and 36; Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, p. 3 (file of annexes to the merits report, tome I, annex 10, folio 208), and expert opinion provided by Katharine Doyle before the Inter-American Court at the public hearing in this case.

<sup>58</sup> Cf. Peace Secretariat, *supra*, p. 311; Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)* [The Death Squad Dossier: The confirmation of forced disappearance as a systematic practice of the intelligence agencies during the internal armed conflict in Guatemala (1983-1985)], 2005, pp. 3 and 7 (file of annexes to the merits report, tome I, annex 10, folios 208 and 212); Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13298; Francisco Roberto Rímola Molina and Rubén López Herrar, National Compensation Program, *No más secretos: La verdad detrás del Diario Militar: desapariciones forzadas en Guatemala 1982-1985* [No more secrets: The truth behind the Death Squad Dossier: Forced disappearances in Guatemala 1982-1985], 2009, p. 104 (file of annexes to the pleadings and motions brief, tome IV, annex A58, folio 10502), and Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folios 13622, 13650 and 13651. However, the latter also stressed that the Army has not acknowledged its authorship of the *Diario Militar*.

<sup>59</sup> Cf. *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 333 to 409); Peace Secretariat, *supra*, pp. 37-41, 42 and 43, and Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, pp. 4 and 5 (file of annexes to the merits report, tome I, annex 10, folios 209 and 210).

61. When analyzing the *Diario Militar*, the Guatemalan Peace Secretariat and the National Security Archive determined that the document uses codes to describe the acts and also the fate of some of the individuals it mentions. For example, it has been interpreted that the code “300,” “s/he went with Pancho,” “Pancho took him/her” and “s/he went (+)” placed at the end of the entry for a person meant that the person was executed or died. According to these codes, it can be seen that most people were executed and that, at times, groups of people were executed on the same day. Furthermore, it has also been interpreted that codes such as “free for contacts” or “regained his/her freedom” indicated that the individuals had been released in order to obtain information on “other members of guerrilla organizations.” In addition, certain annotations in the *Diario Militar* have been interpreted to mean that the individuals were transferred to military units other than those where they were initially detained. The final whereabouts of most of the people recorded in the document and/or their remains are unknown.<sup>60</sup>

62. According to the studies that have been made of the *Diario Militar*, several experts have indicated that, within the Army, the presidential intelligence service was the entity possibly responsible for the *Diario Militar*.<sup>61</sup> Nevertheless, the State has not contested the authenticity of the *Diario Militar* before this Court, and the document has been verified by corroborating the facts recorded in it with other documents of State agencies and non-governmental organizations from that era.<sup>62</sup>

## **B.2) The Historical Archive of the National Police**

63. In July 2005, employees of the Ombudsman’s Office (hereinafter “the PDH”) discovered by accident in former offices of the National Police in Guatemala City, videos, photos and about 80 million folios, among other objects, recording the actions of the National Police for over 100 years, from 1882 to 1997.<sup>63</sup> This wealth of information has been called the Historical Archive of the National Police (hereinafter also “the Police Historical Archive”).

64. The Historical Archive of the National Police contains “military and police plans for counterinsurgency operations, orders from the General Directorate, records of the political

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<sup>60</sup> Cf. Peace Secretariat, *supra*, pp. 43-45 and 64-65, and Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, pp. 6 a 8 (file of annexes to the merits report, tome I, annex 10, folios 211 a 213). The National Security Archive decoded the meaning of “300” by comparing it with declassified North American intelligence documents and reports of non-governmental human rights organizations relating to the same events. Cf. Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, pp. 8 and 10 (file of annexes to the merits report, tome I, annex 10, folios 213 and 215).

<sup>61</sup> Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13299, and Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, p. 3 (file of annexes to the merits report, tome I, annex 10, folio 208).

<sup>62</sup> The Executive Branch of Guatemala published a report entitled “*La autenticidad del Diario Militar a la luz de los documentos históricos of the National Police*” in which the authenticity of the *Diario Militar* is acknowledged. Cf. Peace Secretariat, *supra*, pp. 35-36. See also, Katharine Doyle, The National Security Archive, *Diario Militar: La confirmación de la desaparición forzada como práctica sistemática de los órganos de inteligencia durante el conflicto armado interno en Guatemala (1983-1985)*, 2005, p. 3 (file of annexes to the merits report, tome I, annex 10, folio 208), and Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13619. Also, during the proceedings before the inter-American system in this case, the State has acknowledged the authenticity of the *Diario Militar*.

<sup>63</sup> Cf. PDH, *El Derecho a Saber*, *supra*, p. IX, and expert opinion provided by Katharine Doyle before the Inter-American Court at the public hearing in this case.

affiliation of individuals, surveillance reports on the population, interrogation transcripts, *habeas corpus* applications, telegrams, bulletins and flyers.”<sup>64</sup> Prior to its appearance, the authorities had denied the existence of the Historical Archive of the National Police.<sup>65</sup>

65. The information contained in the Historical Archive of the National Police confirms and complements the information recorded in the *Diario Militar*.<sup>66</sup> As the expert witness Katherine Doyle indicated during the public hearing, “to date, 253 documents directly related to the crimes recorded in the *Diario Militar* have been found in the Historical Archive of the National Police.”<sup>67</sup>

### **B.3) Access to other official documents**

66. In September 2008, the Law on Access to Public Information was enacted, and came into force in April 2009. Article 24 of the law establishes that “[i]n no case may information concerning investigations of violations of fundamental human rights or crimes against humanity be classified as confidential or secret.”<sup>68</sup>

67. In addition, on March 5, 2009, by Government Decision 64-2009, the Presidency of the Republic created the Commission for Declassification of the Military Archives (hereinafter “the Declassification Commission”) “in order to systematize the documentation on military matters relating to national security over the period from 1954 to 1996.”<sup>69</sup> In this regard, Marco Tulio Álvarez Bobadilla, a member of the Declassification Commission, testified that they had been informed that the file of the Army Medical Center did not exist and that the file of the Presidential Staff was closed, even though “it had already been photographed by human rights organizations.”<sup>70</sup>

68. On June 20, 2011, the Military Archives Declassification Center was inaugurated and 12,287 files found by the Declassification Commission can be consulted there. It was

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<sup>64</sup> Cf. Expert opinion provided by Katherine Doyle before the Inter-American Court of Human Rights at the public hearing in this case.

<sup>65</sup> Cf. Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13638, and Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folios 13291 and 13292. See also Extracts from correspondence between the CEH and the institutions of the Republic of Guatemala, Letter of March 24, 1998, CT/C/079-98/Ig, addressed to the President of the Republic, CEH, *supra*, volume VIII, annex III, p. 165.

<sup>66</sup> Cf. Peace Secretariat, *supra*, pp. 11-12 and 311.

<sup>67</sup> Cf. Expert opinion provided by Katherine Doyle before the Inter-American Court at the public hearing in this case.

<sup>68</sup> Cf. Decree No. 57-2008 of September 23, 2008. Published in the Official Gazette of October 23, 2008, No. 45, volume CCLXXXV, art. 24 (file of annexes to the pleadings and motions brief, tome IV, annex A28, folio 10319).

<sup>69</sup> Government decision No. 2-2010 of January 5, 2010. Published in the Official Gazette of January 8, 2010, No. 51, volume CCLXXXVIII (file of annexes to the pleadings and motions brief, tome IV, annex A25, folio 10308). The deadline for the delivery of the results of the activities was extended twice for six months. Cf. Government decision No. 2-2010 of January 5, 2010. Published in the Official Gazette of January 8, 2010, No. 51, volume CCLXXXVIII (file of annexes to the pleadings and motions brief, tome IV, annex A25, folio 10308), and Government decision No. 203-2010 of July 8, 2010. Published in the Official Gazette of July 9, 2010 No. 78, volume CCLXXXIX (file of annexes to the pleadings and motions brief, tome IV, annex A26, folio 10311).

<sup>70</sup> Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13623. This witness also indicated that, during 2003 and 2004, when he worked for the PDH and took any measures, he personally “observed documents from the Archive of the disbanded Presidential Staff” corresponding to the period of the internal armed conflict, and also, during his work on the Declassification Commission, he “saw documents of that period that are kept by the Army’s General Administration Service, which is the entity responsible for administering the archives of that institution.” Cf. Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13621.

considered that a further 55 archives must remain confidential.<sup>71</sup> According to expert witness Alejandro Valencia Villa, only six of the declassified documents were from the period from 1980 to 1986.<sup>72</sup> Regarding the documentation that was made public, expert witness Doyle indicated that “it is a random collection, without a clear or evident declassification logic, containing thousands of pages of information that is trivial and useless for human rights investigators.”<sup>73</sup> The Declassification Commission did not publish its final report.<sup>74</sup>

### C) The *Diario Militar* and the victims in this case

69. This case was presented with regard to the forced disappearances of 26 people that were recorded in the *Diario Militar* and that occurred starting in September 1983, as well as to the alleged failure to investigate the death of Rudy Gustavo Figueroa and the alleged detention and torture of Wendy Santizo Méndez. The specific facts relating to the alleged violations to the detriment of each of these individuals is described below.

#### 1. José Miguel Gudiel Álvarez<sup>75</sup>

70. José Miguel Gudiel Álvarez was 23 years old when he disappeared. He lived in Guatemala City, where he moved to protect his life, because his family was considered to be “subversive” by the State authorities at the time. José Miguel worked as a carpenter. The *Diario Militar* records José Miguel Gudiel Álvarez as follows:

##### 9. JOSÉ MIGUEL GUDIEL ÁLVAREZ

(alias) ERNESTO or MANUEL. A.k.a.: RIGOBERTO ÁLVAREZ TOBAR. Student and reporter. He was in Guerrilla Front No. 6, from which he deserted. 22-09-83: Captured in the Isabel La Católica Park. Sent to Coatepeque.

71. José Miguel lived near the Isabel La Católica Park, where the *Diario Militar* indicates that he was captured. As reported to the family by the owner of the house where José Miguel lived, in the early morning hours of September 22, 1983, a group of people had come to the home of Mr. Gudiel Álvarez in four large jeeps and broken into the house. Upon entering, they allegedly beat José Miguel’s companion, and also the owner of the house, and took valuables with them. José Miguel climbed onto the roof, was wounded in the leg, and captured.

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<sup>71</sup> Cf. Testimony given by Marco Tulio Álvarez Bobadilla, *supra*, folio 13630; Rosario Calderón, *Ciudadanos tendrán acceso a 12,287 archivos militares desclasificados* [Population will have access to 12,287 declassified military files], *Diario de Centro América*, June 21, 2011, and *Gobierno abre más de 12 mil archivos militares* [Government opens more than 12,000 military files], *Prensa Libre*, June 20, 2011 (file of annexes to the pleadings and motions brief, tome II, Annexes A8 and A9, folios 9467 and 9469).

<sup>72</sup> Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13292.

<sup>73</sup> Expert opinion provided by Katharine Doyle before the Inter-American Court at the public hearing in this case. Similarly, see the Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13292.

<sup>74</sup> Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13292 and Testimony given by witness Marco Tulio Álvarez Bobadilla, *supra*, folio 13644.

<sup>75</sup> The evidence regarding this victim is in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 357); Copy of the birth certificate of José Miguel Gudiel Álvarez certified on August 8, 2006 (file of annexes presented by the State on October 17, 2008, tome II, folios 6475 and 6476); affidavits provided by Yolanda Gudiel Álvarez and Makrina Gudiel Álvarez on October 13, 2004 (file of annexes to the merits report, tome I, annexes 12 and 16, folios 411 and 428); affidavit made by Florentín Gudiel Ramos on October 11, 2004 (file of annexes to the merits report, tome I, annex 14, folios 417 and 418); testimony of Makrina Gudiel Álvarez provided before the Public Prosecution Service on April 8, 2008 (file of annexes to the merits report, tome I, annex 18, folio 483); Psychosocial impact report on the Gudiel-Álvarez family (file of annexes to the pleadings and motions brief, tome VII, annex B1, folio 12261), and CEH, *supra*, volume VII, annex II, pp. 314, 315 and 381.

72. The family recounts that they felt harassed by the Police and, therefore, decided to abandon their home in Santa Lucía. Given that they lived outside the country, they did not take legal actions in Guatemala to determine José Miguel's whereabouts. However, the next of kin stated that they had reported his disappearance to churches and humanitarian organizations in the United States of America, and before the United Nations. The CEH included the case of José Miguel in the section on cases "presented" in its final report, and in this regard indicated that, based on a "simple presumption," he had been captured by presumed members of the security force and forcibly disappeared.

## 2. Orencio Sosa Calderón<sup>76</sup>

73. Orencio Sosa Calderón was 39 years old at the time of his disappearance; he was married and had four children. Mr. Sosa Calderón was a primary school teacher and a doctor. He worked at the Universidad de San Carlos de Guatemala and in a hospital. The *Diario Militar* records Orencio Sosa Calderón as follows:

### 17. ORENCIO SOSA CALDERÓN

(alias) VICENTE. Was a member of the N.D. of the PGT-PC., founder of the Party's Medical Committee. He is responsible for helping foreign correspondents film different guerrilla fronts. 25-10-83: Captured in Chimaltenango, when he was on the way to Antigua Guatemala, Sacatepéquez. He resisted, firing at his captors. 07-02-84: 300.<sup>77</sup>

74. On October 24, 1983, Orencio Sosa Calderón was in the hospital and as part of his work, he operated on two victims of gunshot wounds who he did not know. His colleagues at the hospital told his family that, when the wounded men were still under the anesthetic, four men came to take them, but Mr. Sosa Calderón refused and requested a court order. The men allegedly threatened Mr. Sosa Calderón. The next day, four men with machine guns intercepted Mr. Sosa Calderón near the hospital where he worked; forced him out of his car, which they took, and put him in a white pick-up without license plates. Furthermore, some witnesses told the family that, during the operation, shots had been fired, which coincides with the entry in the *Diario Militar*. That same day, the wounded men on whom Mr. Sosa Calderón had operated were removed from the hospital and, as of that time, Mr. Sosa Calderón's whereabouts are unknown.

75. Mr. Sosa Calderón's wife and three daughters moved to Guatemala City and, on the way, they were followed by a car with armed men. Subsequently, they went to Mexico for their safety. Among other actions, the family reported the incident to the Police, the courts and the media and, in 1983, met with the Head of State, but to no avail. They also visited all the morgues in the country and the cemeteries in the municipality of Chimaltenango.

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<sup>76</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 360); copy of the registration of the identify card of Orencio Sosa Calderón (file of annexes presented by the State on October 17, 2008, tome II, folio 6626); affidavit made by Laurenta Marina Sosa Calderón on October 18, 2004 (file of annexes to the merits report, tome I, annex 20, folios 488 and 489); affidavit made by Iris Carolina Sosa Pérez on October 21, 2004 (file of annexes to the merits report, tome I, annex 21, folios 492 and 493); testimony of Laurenta Marina Sosa Calderón filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 22, folio 495); attestation issued by the First Instance Court of the department of Chimaltenango on June 25, 1985 (file of annexes to the merits report, tome I, annex 25, folio 505); *Chimaltenango: Médico secuestrado* [Doctor kidnapped], *El Gráfico*, October 26, 1983 (file of annexes presented by the State on October 17, 2008, tome II, folio 6528); Historical Archive of the National Police (hereinafter "AHPN"), Decision No. 07431/DIT/of.3ro.grgp, GT PN 50 S004, No. 16234, and Investigation Report of March 22, 1984, GT PN 50 S004, No. 16240 (file of annexes to the pleadings and motions brief, tome VI, annex D4, folios 11429 and 11431), and CEH, *supra*, volume VII, annex II, pp. 190 and 253-254.

<sup>77</sup> According to the next of kin, the photograph that appears in the *Diario Militar* is not of Mr. Sosa Calderón.

76. Following the complaint, in 1984, the National Police interviewed Mr. Sosa Calderón's sister and, in 1985, the court hearing the case placed on record that no one had been accused or arrested, and it had no information on the whereabouts of Mr. Sosa Calderón. The CEH included the case of Mr. Sosa Calderón in the section on cases "presented" of its final report, indicating that, based on a "simple presumption," he had been captured by presumed members of the security force and forcibly disappeared.

### 3. Oscar Eduardo Barillas Barrientos<sup>78</sup>

77. Oscar Eduardo Barillas Barrientos was 35 years old, the second of three children, and lived in Guatemala City, where he was a primary school teacher. He had been an architecture student at the Universidad de San Carlos de Guatemala and he worked in the Department for the Conservation of Monuments and Sites. In addition, he made documentaries on different topics including the struggle of the social movements. He was linked to the Patriotic Youth and the Military Committee of the Guatemalan Labor Party (hereinafter "PGT"), where he was responsible for the newspaper "*Claridad*." The *Diario Militar* records Oscar Eduardo Barillas as follows:

30. OSCAR EDUARDO BARRILLAS BARRIENTOS

(alias) TONO. Member of the PGT. PC. 21-12-83: Captured in Zone 2 at 14:00 hrs. Responsible for the printing of the newspaper, "*CLARIDAD*." 21-01-84: 300. Handed over the house where he had the printing material and microfilm located on 15th Street 15-20, Zone 1.

78. On December 21, 1983, Oscar Eduardo Barillas Barrientos left his home heading to the Sports Arena, but never reached his destination. His family began the search on December 22 in hospitals and in the offices of the National Police, where days later they reported his disappearance, as well as before the courts of justice. After the disappearance, the family feared for their lives. However, they became members of the organization *Grupo de Apoyo Mutuo* (hereinafter also "GAM")

79. On July 16, 1984, a first instance judge appeared before the Second Corps of the National Police to execute a writ of *habeas corpus* and the result was negative. On September 25, 1984, the Technical Investigations Department of the National Police (hereinafter "DIT") recorded in its log that "to date, it has not been possible to resolve [the case], noting that he has [...] not been arrested [...] or found [...] in any medical center," and that it would continue the investigation. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Barillas Barrientos and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the

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<sup>78</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 364); copy of birth certificate of Oscar Eduardo Barillas Barrientos (file of annexes presented by the State on October 17, 2008, tome II, folio 6680); affidavit made by Bertha Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos and Edgar Leonel Barillas Barrientos on November 22, 2004 (file of annexes to the merits report, tome I, annex 30, folios 568 to 570); testimony of Juan Francisco Barillas Barrientos filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome I, annex 31, folio 573); Note No. 03679 of July 9, 1986, addressed to the First Vice Minister of the Interior (file of annexes to the merits report, tome I, annex 32, folio 579); Note No. 4154 of July 18, 1986, from the Ministry of the Interior to Berta Barrientos de Barillas (file of annexes presented by the State on October 17, 2008, tome II, folio 6679); complaint filed by Juan Francisco Barillas Barrientos before the PDH on May 27, 2004, and Decision REF-EXP-ORG-GUA-453-2004/DI of May 27, 2004 (file of annexes to the merits report, tome I, annex 33, folios 582 to 584 and 585); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11753, 11764 and 11765); AHPN, Note on the complaint filed on December 29, 1983, GT PN 50-08 S001, 13190 (file of annexes to the pleadings and motions brief, tome VI, annex D27, folio 11846), and Decision No. 0080-SISI-84-o1n of the DIT of September 25, 1984 (file of annexes presented by the State with briefs of March 20, 2008, and October 10, 2008, annex B, folio 5242).

country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs [...] it had verified that [Mr. Barillas Barrientos] has not [...] been charged [...] or detained [...] by members of this Department." In 1996, the intervention of the Ministry of the Interior was sought, and the latter advised that it was "continuing to conduct the necessary investigations."

80. In addition, on May 26, 2004, the brother of Oscar Eduardo Barillas Barrientos reported the facts to the PDH, which opened a case file, requested a report from the Prosecutor's Office, the Minister of the Interior, and the National Police Directorate, and ordered that "the necessary measures be taken to verify the report, as well as the corresponding decision."

#### **4. José Porfirio Hernández Bonilla<sup>79</sup>**

81. José Porfirio Hernández Bonilla was 35 years of age at the time of his disappearance; he was married and had three children, and he was a farmer. He had been a member of the PGT and possibly of the Guatemalan Army of the Poor (hereinafter "EGP"). The *Diario Militar* records José Porfirio Hernández Bonilla as follows:

41. JOSÉ PORFIRIO HERNÁNDEZ BONILLA  
(alias) CHUS and LUCIO. Member of the PGT. PC. 07-01-84: Was captured in Jalapa. 21-01-84: 300.

82. In December 1983, Mr. Hernández Bonilla went to seek safety in a safe house in Japala, where the *Diario Militar* indicated that he was captured. The family saw him for the last time on approximately December 20 that year. Around that time, several soldiers came to the house of Mr. Hernández Bonilla's wife, and questioned her brother about her husband's whereabouts; they "left him a message that in a few days [Mr. Hernández Bonilla] would be a dead man" and, under threat of death, they took Mr. Hernández Bonilla's motorcycle. His wife said that she did not file a complaint or an application for *habeas corpus* following his disappearance, because if she reported it they would look for him and, as he was in a safe place, "he would not want to be located." His wife went to live in Guatemala City for protection and years later took her children there.

#### **5. Octavio René Guzmán Castañeda<sup>80</sup>**

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<sup>79</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 367); affidavit made by Reyna de Jesús Escobar Rodríguez and Marlyn Carolina Hernández Escobar on March 2, 2005 (file of annexes to the merits report, tome I, annex 37, folio 593); testimony of Reyna de Jesús Escobar Rodríguez, the authenticity of which was certified by notary on March 28, 2008 (file of annexes to the merits report, tome I, annex 38, folio 596); Attestation of the Guillermo Toriello Foundation (file of annexes to the pleadings and motions brief, tome V, annex A163, folio 10837), and file card of the Identification Bureau of the National Police for José Hernández Bonilla (file of annexes presented by the State on October 17, 2008, tome II, folio 6761).

<sup>80</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 367); Copy of the birth certificate of Octavio René Guzmán Castañeda (file of annexes presented by the State on October 17, 2008, tome II, folio 6810); AHPN, List of "disappeared" reported by Amnesty International since General Oscar Humberto Mejía Víctores took office in August 1983, and Note of the Ministry of the Interior of June 4, 1985, Amnesty International List, GT PN 30-01 S004, Nos. 12466 and 12442 (file of annexes to the pleadings and motions brief, tome VI, D6, folios 11464 11469); Parliamentary Human Rights Group, Bitter and Cruel... An Interim report of the Parliamentary Human Rights Group, following a mission to Guatemala in October 1984, 1984, p. 33 (file of annexes to the merits report, tome II, annex 90, folio 903); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765), and AHPN, Notes Nos. 24881, 24883, 24882, 24884 and

83. Octavio René Guzmán Castaneda was a student and was 21 years of age at the time of his disappearance. The *Diario Militar* recorded Octavio René Guzmán as follows

42. OCTAVIO RENÉ GUZMÁN CASTAÑEDA  
(alias) FRANCISCO. Member of the FERC military squad of the EGP. 17-01-84: Captured in Colonia Primero de Julio, Zona 19. 07-02-84: 300.

84. On January 17, 1984, he was captured by armed men at a health clinic in Zone 19 of Guatemala City. His name was recorded by the Ministry of the Interior on the "Amnesty International list" of disappeared persons. On July 16, 1984, and in December 1985, a judge went to the offices of the National Police to execute a writ of *habeas corpus* on his behalf and the result was negative. In September 1984, the DIT requested information from five Units of the National Police. On August 9, 1985, the Supreme Court issued a writ of *habeas corpus* for Mr. Guzmán Castaneda and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that that "having examined the records and logs [...] it had verified that [Mr. Guzmán Castañeda] has not [...] been charged [...] or detained [...] by members of this Department." In December 1995, a writ of *habeas corpus* was implemented on his behalf before the National Police, with negative results.

## 6. Álvaro Zacarías Calvo Pérez<sup>81</sup>

85. Álvaro Zacarías Calvo Pérez was 26 years old, married, and had a son. He was a primary school teacher and was in the third year of law studies at the Universidad de San Carlos de Guatemala, where he was a member of the Law Students' Association. The *Diario Militar* records Alvaro Calvo Pérez as follows:

47. ÁLVARO ZACARÍAS CALVO PÉREZ  
(alias) FELIX. He started in the FERG, and now belongs to the EGP., he knows PGT and ORPA people. 20-01-84: He was captured at the IGSS General Hospital. 07-02-84: 300.

86. On January 20, 1984 Mr. Calvo Pérez collected his son from his mother-in-law's house and went to visit a friend at the General Hospital of the Guatemalan Social Security Institute. Later, they were on their way to the mechanic when they were intercepted by armed men who shot Mr. Calvo Pérez in the left leg, blindfolded and gagged him and tied his hands, while they sedated his son, José Ernesto. At around 5.30 p.m., an unknown man

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24885 of the DIT of September 28, 1984, GT PN 50 S047, Nos. 11794, 11795, 11796, 11797 and 11798 (file of annexes to the pleadings and motions brief, tome VI, D64, folios 12066 to 12075).

<sup>81</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 368); affidavit made by Ana Dolores Monroy Peralta de Calvo on November 2, 2004 (file of annexes to the merits report, tome I, annex 39, folios 602 and 603); testimony of Ana Dolores Monroy Peralta authenticated el March 29, 2008 (file of annexes to the merits report, tome II, annex 40, folio 606); affidavit made by José Ernesto Calvo Monroy on June 7, 2005 (file of annexes to the merits report, tome II, annex 41, folio 614); copy of entry for neighborhood identity card of Álvaro Zacarías Calvo Pérez (file of annexes presented by the State on October 17, 2008, tome II, folio 6885); AHPN. Log, GT PN 26 S001, 11828 (file of annexes to the pleadings and motions brief, tome VI, annex D57, folio 11993); Note No. 890/jrscd of the Chief of Police to the First Criminal Judge of Peace of January 21, 1984 (file of annexes to the pleadings and motions brief, tome IV, annex A86, folios 10582); Note of the First Court of Peace of Mixco on January 22, 1984, affidavit made by complainant on January 24, 1984, Note of January 24, 1984, Letter of the First Criminal for Drug-trafficking and Environmental Offenses to the General Archive of the Courts of May 20, 2004 (file of annexes to the merits report, tome II, annex 42, folios 622, 623, 624 and 627); file forwarding the complaint filed on October 9, 2006 and Record of verbal complaint before the Office of the District Prosecutor of Guatemala of August 2, 2006 (file of annexes presented by the State on October 17, 2008, tome II, folios 6823, 6825 and 6826), and Human Rights Office of the Archbishopric of Guatemala (ODHAG), *Guatemala Nunca Más. Informe del Proyecto Interdiocesano "Recuperación de la Memoria Histórica"*, 1998, tome IV, Chapter 4, p. 418 (file of annexes to the merits report, tome II, annex 43, folio 638).

returned José Ernesto to his grandmother and said that Mr. Calvo Pérez had had an accident and was in the General Hospital of the Guatemalan Social Security Institute. The family searched for him at the hospital, but they were told that he had not entered the premises, so they also looked in other hospitals, morgues, police stations and detention centers.

87. On January 21, 1984, the wife of Mr. Calvo Pérez, Ana Dolores Monroy Peralta reported the disappearance to the Police and the latter forwarded the report to the First Peace Court of Mixco. The following day, the said court ordered an investigation of the facts and, among other measures, summoned Mrs. Monroy Peralta to testify on January 24, 1984. That same day, the said court declared its lack of competence and the case file was transferred to the First Criminal Court of First Instance, which ordered that “all necessary measures for the clarification of the events” be taken. Nevertheless, this Court has not been provided with any information after this order, beyond a request for a certified copy in 2004.

88. Mrs. Monroy Peralta indicated that for “years she went to the Police Identification Bureau to find out if they had any record of him. [She] also went to the morgue constantly, but all was in vain.” In 1997, she testified before the Human Rights Office of the Archbishopric of Guatemala (ODHAG) in the context of the Inter-diocesan Project for the Recovery of the Historical Memory. In addition, in 2006, Mrs. Monroy Peralta filed a new complaint with the District Prosecutor of Guatemala, which was forwarded to the Office of Human Rights Prosecutor.

## **7. Víctor Manuel Calderón Díaz<sup>82</sup>**

89. Víctor Manuel Calderón Díaz was 26 years of age at the time of his disappearance; he was married and had three children. He was a tailor and a construction worker. The *Diario Militar* records Víctor Manuel Calderón Díaz as follows:

49. VÍCTOR MANUEL CALDERÓN DÍAZ  
(alias) PEDRO. Member of the U.M.S., traveled to El Salvador, where he was a combatant. 23-01-84: Captured in La Castellana Avenue and 8th Street, Zone 8. A.k.a.: HECTOR MANUEL MÉNDEZ.

In addition, under the number 51, the *Diario Militar* records Héctor Manuel Méndez Carballo, with a photograph similar to that of Víctor Manuel Calderón Díaz.

51. HECTOR MANUEL MÉNDEZ CARBALLO  
(alias) PEDRO. Member of the U.M.S., went to fight in El Salvador. 23-01-84: Captured in La Castellana Avenue and 8th Street, Zone 8. 03-02-84: Traveled to El Salvador. THIS ONE was not captured; the name corresponds to the photo.”

In addition, in the Historical Archive of the National Police there is a memorandum that describes how, on January 23, 1984, between 8 a.m. and 12 m. the first Corps of the National Police carried out a random inspection operation at La Castellana Avenue and 8<sup>th</sup> Street, Zones 8 and 9, indicating the name of the inspector in charge. According to the

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<sup>82</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 369); affidavit made by Sonia Guisela Calderón Revolorio on November 30, 2004 (file of annexes to the merits report, tome II, annex 44, folios 640 and 641); copy of entry for neighborhood identity card of Víctor Manuel Calderón Díaz (file of annexes presented by the State on October 17, 2008, tome III, folio 6912); affidavit made by Zonia Odilia Ortega on February 14, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C25, folios 12993, 12997 and 12998); affidavit made by Víctor Manuel Calderón Ortega on June 14, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C23, folio 12983); affidavit made by Lourdes Melissa Calderón Ortega on February 16, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C26, folio 13007); AHPN. Memorandum of the First Corps of the National Police of January 23, 1984, GT PN 23, No. 25377 (file of annexes to the pleadings and motions brief, tome VI, annex D83, folio 12201), and Peace Secretariat, *supra*, p. 267.

Peace Secretariat, “[t]he similitude between the date and the address of the capture, leads to the conclusion that, evidently, this was an operation with other purposes than the simple inspection of vehicles by the National Police.”

90. The family last saw Mr. Calderón Díaz on January 23, 1984, when he left his house in the morning to buy a piñata and a cake for his youngest child’s birthday. According to information received by the family, Víctor Manuel had had a “machine gun [aimed at him], he was forced into a car and taken away.” The daughter of Mr. Calderón Díaz stated that, at different times, she has heard rumors that her father has been seen in different places and that he had been granted asylum in Canada. The family did not conduct searches because they were afraid.

## **8. Amancio Samuel Villatoro<sup>83</sup>**

91. Amancio Samuel Villatoro was 47 years of age; he was married and had four children. He had studied industrial engineering at the Universidad de San Carlos de Guatemala for three years and worked in the Adams Chewing Gum factory where he was Secretary General of the labor union. He was also a member of the National Workers Confederation (hereinafter “CNT”) and of the National Trade Union Confederation. At the same time, Mr. Villatoro was a member of the Rebel Armed Forces of Guatemala (hereinafter “FAR”). The *Diario Militar* recorded Amancio Samuel Villatoro as follows:

### **55. AMANCIO SAMUEL VILLATORO**

(alias) GUILLERMO and RENÉ. Member of the FAR and CNT coordinator at the national and international level, employed with a salary of Q.1000.00, also in communication with GARCIA MARQUEZ in México. 30-01-84: Captured on 15th Street and 2nd Avenue, Zone 1. 29-03-84: 300.

92. On January 30, 1984, Mr. Villatoro left his house and did not return for lunch. His wife went to wait for him at the bus stop that evening. According to her account, while she waited, two cars arrived with about eight armed men in white *guayaberas* with a red scarf covering their face. She started walking home, the men beat her and “took an attaché case with [her] husband’s paperwork and money”; they threatened to kill the family, telling them not to file a complaint, and upon leaving they locked the door. Before the Inter-American Commission, a witness stated that he had seen Mr. Villatoro in a detention center, where

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<sup>83</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 371); Certified copy of entry for neighborhood identity card of Amancio Samuel Villatoro (file of annexes presented by the State on October 17, 2008, tome III, folio 7032); affidavit made by María del Rosario Bran de Villatoro on December 2, 2004 (file of annexes to the merits report, tome II, annex 47, folios 653 to 655); affidavit made by Sergio Saúl Villatoro Bran, Norma Carolina Villatoro Bran and Samuel Lisandro Villatoro Bran on December 21, 2004 (file of annexes to the merits report, tome II, annex 48, folios 657 and 658); testimony given by Néstor Amílcar Villatoro Bran before the Public Prosecution Service on August 18, 1999 (file of annexes to the merits report, tome II, annex 49, folio 667); testimony of Sergio Raúl Villatoro Bran filmed and authenticated on March 28, 2008 (file of annexes to the merits report, tome II, annex 50, folio 671); letter from the *Universidad San Carlos de Guatemala* to the Prosecution Unit for Special Cases and Human Rights Violations of July 13, 2006 (file of annexes presented by the State on October 17, 2008, tome III, folio 7013); CEH, *supra*, volume VIII, annex II, p. 352; copy of the petition filed on June 24, 1985, of Case No. 9303 before the Inter-American Commission on Human Rights (file of annexes to the merits report, tome II, annex 51, folio 681); AHPN, Summary of the crimes committed over the period from 7FEB84 to 14FEB84, GT PN 50 S003, 11901 (file of annexes to the pleadings and motions brief, tome VI, annex D12, folio 11490); AHPN, Application for *Habeas corpus* of February 28, 1984, GT PN 50 S004, No. 25072 (file of annexes to the pleadings and motions brief, tome VI, annex D21, folios 11678 a 11679); AHPN, Note to file, GT PN S001, No. 11888 (file of annexes to the pleadings and motions brief, tome VI, annex D11, folio 11487); AHPN, Investigation report dated March 22, 1984, GT PN 50 S004, No. 16240 (file of annexes to the pleadings and motions brief, tome VI, annex D4, folio 11431); AHPN, Investigation report dated June 25, 1984, GT PN 50 S004, No. 25066 (file of annexes to the pleadings and motions brief, tome VI, annex D21, folio 11672); AHPN, Note to file, GT PN 50 S001, No. 11924 (file of annexes to the pleadings and motions brief, tome VI, annex D15, folios 11506 and 11507), and Peace Secretariat, *supra*, p. 131.

“most [people] were hanging by their feet” or with hoods over their heads, while another witness indicated to the CEH that he had recognized his voice in the Matamoros prison.

93. In the following days, the family began searching hospitals, morgues, prisons and military bases, reported the disappearance to the National Police, and filed at least two applications for *habeas corpus* in 1984. On February 8, a first instance judge went to the police station to execute a writ of *habeas corpus*, with negative results. The Historical Archive of the National Police records that, on April 13, 1984, it was reported that Mr. Villatoro was not detained in the DIT. That year, the National Police went to Mr. Villatoro's home twice and interviewed an eyewitness of the events and Mr. Villatoro's wife. In addition, the investigators went to “all the public and private hospitals and the detention centers in order to find Mr. [Villatoro], but always with negative results.” It is also recorded that a report on the investigation was provided to the General Directorate of the National Police on March 30, April 17, June 20, July 4, 1984, and on April 17 and November 27, 1985. According to Mr. Villatoro's son, in 1993, the family was summoned to testify by the Public Prosecution Service.

## 9. Manuel Ismael Salanic Chiguil<sup>84</sup>

94. Manuel Ismael Salanic Chiguil was 18 years of age; he was the second of four siblings and a student in his last year of a teaching degree; according to his family, he wanted to be a doctor. The *Diario Militar* recorded Manuel Ismael Chiguil as follows:

### 65. MANUEL ISMAEL SALANIC CHIGUIL

<sup>84</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 374); Affidavit made by Manuel Ismael Salanic Tuc on April 18, 2012 (file of documents received during the public hearing, folios 13033, 13034, 13035, 13036, 13037, 13038 to 13041 and 13043); testimony of María Ofelia Salanic Chiguil filmed and authenticated on March 28, 2008 (file of annexes to the merits report, tome II, annex 54, folio 691); affidavit made by Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil on February 9, 2005 (file of annexes to the merits report, tome II, annex 53, folios 688 and 689); complaint filed by Manuel Ismael Salanic Tuc before the PDH on January 22, 1988, and Letter from Manuel Ismael Salanic Tuc to the PDH; Note No. 329 of the Vehicle Registration Section of the Transportation Department of March 10, 1988, and Note No. 2988 of the General Directorate of the National Police of May 22, 1992 (file of annexes to the merits report, tome II, annex 61, folios 723, 725, 745 and 754); CEH, *supra*, volume VIII, annex II, p. 351; *Habeas corpus* application of February 17, 1984 (file of annexes to the merits report, tome II, annex 58, folio 709); AHPN, Telegram of February 17, 1984, GT PN 26-01 S003, No. 25034 (file of annexes to the pleadings and motions brief, tome VI, annex D51, folio 11973); AHPN, Telegram of February 21, 1984, GT PN 26-01 S002, No. 11758 (file of annexes to the pleadings and motions brief, tome VI, annex D53, folio 11977); AHPN, Complaint No. 3237 of March 5, 1984, GT PN 50 S020, No. 25039 (file of annexes to the pleadings and motions brief, tome VI, annex D49, folio 11968); AHPN, Letter from the Ministry of the Interior to the Director of the National Police of August 27, 1984, GT PN 50 S004, No. 12070 (file of annexes to the pleadings and motions brief, tome VI, annex D31, folio 11859); Decision No. 109-SISI-84/lgd of October 15, 1984 (file of annexes presented by the State on October 17, 2008, tome III, folio 7048); AHPN, Decision No. 31748 of November 29, 1984, and Telegram of October 26, 1984, GT PN 50 S004, Nos. 12014 and 12015 (file of annexes to the pleadings and motions brief, tome VI, annex D30, folios 11853 and 11854); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice dated August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); Decision No. 1223/dmr of the First Corps of the National Police of December 20, 1984 (file of annexes presented by the State on October 17, 2008, tome III, folio 7052); Letter from the Ministry of the Interior to the Director General of the National Police of February 20, 1986 (file of annexes presented by the State on October 17, 2008, tome III, folio 7043); complaint filed by Manuel Salanic Tuc before the Minister of the Interior on February 5, 1988 (file of annexes to the merits report, tome II, annex 60, folios 716 and 717); IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, Doc. 16, October 3, 1985, Chapter II, paras. 36, annex 5 to the merits report, available at <http://www.IACHR.org/countryrep/Guatemala85sp/indice.htm> (last visited: November 12, 2012), and letter from the PDH to the Special Prosecution Unit of June 20, 2008 (file of annexes presented by the State on October 17, 2008, tome III, folios 7073 to 7075).

(alias) MOISÉS, aged 19. Member of structure of (alias) ROBERTO (Gatica Paz), in the FU-ORC, EGP.  
14-02-84: Was captured at 0100 hours in a house in Ciudad Real, Zone 12. 06-03-84: 300.<sup>85</sup>

95. During the night of the February 13, 1984, and the early morning of February 14, heavily armed men arrived at the house in Ciudad Real where Manuel Ismael lived with his family. According to the statements of the family, they broke down the fence with one of their vehicles; one group climbed onto the roof of the house and another broke down the front door. They interrogated Manuel Ismael and subjected him to electric shocks, after which they took him away in his underclothes. The family was threatened so that they would not report the incident. According to Manuel Ismael's family members, some of the men wore the uniform of the "Special Operations and Response Battalion (BROE) of the Fifth National Police Corps." This case was included in the section on cases "presented" in the CEH report, which indicated, with "complete conviction" that Manuel Ismael had been captured by "members of the BROE" and forcibly disappeared. In addition, according to information received by the CEH, Manuel Ismael had been held in the basement of a museum.

96. On February 17, 1984, the family filed the first application for *habeas corpus* and, that same day, the court sent a telegram to the head of the Fourth National Police Corps, which was answered on February 21 indicating that he had not been detained by that Corps. On March 5, Manuel Ismael's father reported the disappearance to the National Police and the following day he filed another application for *habeas corpus*. On July 16, 1984, a first instance judge executed a writ of *habeas corpus* in the National Civil Police, but with a negative result. In August, Mr. Salanic Chiguil's father reported the incident to the Minister of the Interior, and the latter asked the National Police to investigate the disappearance. On October 15, 1984, the National Police issued a communication indicating that it had not located Mr. Salanic Chiguil, "therefore, the investigation continue[d]." On October 26, Mr. Salanic Chiguil's father was summoned to appear. However, in November that year, the DIT recorded that "to date, the investigation [...] has not been conducted." In addition, in December 1984, the National Police referred the case to the First Criminal Peace Court.

97. On August 9, 1985, the Supreme Court issued a writ of *habeas corpus* for Mr. Salanic Chiguil and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs [...] it had verified that [Mr. Salanic Chiguil] has not [...] been registered [...] or detained [...] by members of this Department." In December 1995, another writ of *habeas corpus* was executed on his behalf before the National Police, with negative results.

98. On May 30, 1986, another application for *habeas corpus* was filed. That year, the Ministry of the Interior asked the National Police to reopen the investigation into the case and to advise the Ministry of any relevant progress. The family recounted that, the DIT authorities inspected the house, questioned the family members about what happened, and advised them that "it had been established that [Mr. Salanic Chiguil] had been removed but they still did not know where he had been taken." During the investigation a 9 mm bullet was found in the house and, according to his father, this was "for the exclusive use of the Armed Forces."

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<sup>85</sup> According to his father, the photograph that appears in the *Diario Militar* under this name corresponds to Manuel Ismael Salanic Chiguil's brother and not to him.

99. In addition, in November 1984, the case was submitted to the then Head of State and the Tripartite Commission, consisting of the Public Prosecution Service, the Ministry of the Interior and the Ministry of Defense. The disappearance was also communicated to the Inter-American Commission, which, in turn, referred it to the State without obtaining a response. Meanwhile, the family reported the incident to the media and searched for Manuel Ismael in detention centers and hospitals. His father continued denouncing the incident through the GAM and the *Asociación de Familiares de Detenidos Desparecidos de Guatemala* (hereinafter "FAMDEGUA").

100. In 1988, the incident was reported to the PDH, which requested information from, among others, the National Police, the Commander of the No. 1 Military Zone and the court where the application for *habeas corpus* had been filed. The latter responded indicating the measures it had taken, including summoning Manuel Ismael's father, who, according to the court, had not appeared. The court also indicated that the application had been declared inadmissible because it had been established that Manuel Ismael Chiguil Salanic had appeared that same day and that there had been an error in the complaint because the name "of the person who had appeared [was] Manuel Ismael Salamic Tuc." The PDH was also able to obtain information about the owner of the vehicle which, according to the next of kin, the armed men used at the time of capture. The PDH concluded that "the authorities were refusing to provide information on or explain the whereabouts of [Manuel Ismael Salamic Chiguil]" and that the disappearance "could only have taken place with the intervention of the authorities or paramilitary groups." The PDH reactivated the investigation in 1992 when it made further requests for information from State agencies and institutions, based on which it determined that Manuel Ismael had no criminal record. In 1999, with the appearance of the *Diario Militar*, the Public Prosecution Service offered to assist the family and to meet their health care needs with a public institution.

#### **10. Carlos Guillermo Ramírez Gálvez<sup>86</sup>**

101. Carlos Guillermo Ramírez Gálvez was 19 years of age; he was a student at the Technical Training Institute and undergoing an internship at the Roosevelt Hospital because

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<sup>86</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 339 and 374); Affidavit made by Natalia Gálvez Soberanis on April 18, 2012 (file of documents received during the public hearing, folios 13061, 13062, 13064 and 13067); Letter from Carlos Alberto Ramírez Pereira to the Head of State, Oscar Humberto Mejía Víctores, of February 15, 1984 (file of annexes to the merits report, tome II, annex 63, folio 779); affidavit made by Jorge Alberto Ramírez Gálvez on February 4, 2005 (file of annexes to the merits report, tome II, annex 64, folios 782 and 783); affidavit made by Hugo Leonel Ramírez Gálvez on January 28, 2005 (file of annexes to the merits report, tome II, annex 66, folios 785 and 786); complaint filed by Natalia Gálvez Soberanis and Hugo Leonel Ramírez Gálvez before the Public Prosecution Service on August 22, 2008 (file of annexes presented by the State on October 17, 2008, tome III, folios 7178 to 7180); Decision No. 01534 of the General Secretariat of the Head of State of February 17, 1984 (file of annexes presented by the State on October 17, 2008, tome III, folio 7106); testimony of Natalia Gálvez Soberanis filmed and authenticated on March 29, 2008, (file of annexes submitted to the Commission by the petitioners, folio 5084); AHPN, Note No. 03454 of February 16, 1984, GT PN 50 S010, No. 14832 (file of annexes to the pleadings and motions brief, tome VI, annex D66, folio 12089); *Habeas corpus* application of April 18, 1984 (file of annexes to the merits report, tome II, annex 67, folios 793 and 794); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985 and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); AHPN, Decision No. 0069-SISI-84/o1n of August 13, 1984, GT PN 50 S004, No. 12052 (file of annexes to the pleadings and motions brief, tome VI, annex D34, folios 11875 and 11876); *Habeas corpus* application of June 4, 1986 (file of annexes to the merits report, tome II, annex 77, folio 824), and Letter from Carlos Alberto Ramírez Pereira to the Peace Commission of April 11, 1984 (file of annexes to the merits report, tome II, annex 78, folios 826 and 827).

he wanted to be a doctor. The *Diario Militar* records Carlos Guillermo Ramírez Gálvez as follows:

66. CARLOS GUILLERMO RAMÍREZ GÁLVEZ

(alias) DOUGLAS. 14-02-84: Captured in Zone 5, delivering grenades and detonators. He sold a 30-caliber carbine, possibly to a farmer. 06-03-84: 300.

In addition, section three of the *Diario Militar* identified him as a “militant of the [Revolutionary] Organization of the People in Arms (ORPA).”

102. On the evening of February 13, 1984, Carlos Guillermo accompanied his mother to his grandmother's house and then decided to sleep at his aunt's house. In the early morning hours of February 14, 1984, heavily armed men arrived at the house where Mr. Ramírez Gálvez lived and entered indicating that they would conduct a search, because they believed that Mr. Ramírez Gálvez had a rifle and grenades. Since Mr. Ramírez Gálvez was not there, they took his father so that the latter could to take them to him. On finding him, they asked for a wet towel and used it to give Mr. Ramírez Gálvez electric shocks while they interrogated him. On learning what had happened, his brother Jorge Alberto, went to his parents' home and he recounted that, upon arriving, he was held at gunpoint and questioned and saw how they broke a bottle on his brother's head.

103. The same day, the family filed a first complaint before the Police. The following day, the father of Mr. Ramírez Gálvez requested the intervention of the then Head of State, who received them on one occasion and called for the intervention of the Ministry of Interior. That same day, the family filed an application for *habeas corpus*, which determined that he was not detained in the DIT. On April 18, 1984, they filed another application for *habeas corpus*. On July 16, 1984, a first instance judge went to the offices of the National Police to execute one of the writs for *habeas corpus* with a negative result.

104. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Ramírez Gálvez and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that “having examined the records and logs, [...] it had verified that [Mr. Ramírez Gálvez] has not [...] been registered [...] or detained [...] by members of this Department.” In addition, on August 13 that year, the DIT recorded that owing to “insufficient data leading to the clarification of the whereabouts of both the person kidnapped and the kidnappers, to date, it has not been possible to resolve [the case].” In December 1985, a writ of *habeas corpus* on his behalf was executed before the National Civil Police. On June 24, 1986, another application for *habeas corpus* was filed on his behalf. The mother of Mr. Ramírez Gálvez testified that she had filed a total of six applications for *habeas corpus* and that, on one occasion, the Public Prosecution Service told her “not to file any more; it's a waste of time; he is no longer alive; it's a waste of time.” The family also sought assistance from the Universidad San Carlos de Guatemala and the Pro Peace Commission.

## 11. Sergio Saúl Linares Morales<sup>87</sup>

<sup>87</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 377); copy of the entry for the neighborhood identity card of Sergio Saúl Linares Morales (file of annexes presented by the State on October 17, 2008, tome III, folio 7197); affidavit made by Wilfrida Raquel Morales Cruz on December 13, 2004 (file of annexes to the merits report, tome II, annex 79, folio 829); affidavit made by Ruth Crisanta Linares Morales on November 30, 2004 (file of annexes to the merits report, tome II, annex 80, folios 832 and 833); affidavit made by Mirtala Elizabeth Linares Morales on December 10, 2004 (file of annexes to the merits report, tome II, annex 82, folios 839 and 840); affidavit made by Mirtala Elizabeth Linares Morales on October 9, 2007 (file of annexes to the merits report, tome II, annex 85, folios 851 and 852); testimony of Ruth Crisanta Linares Morales before the Public Prosecution Service on October 24, 2006 (file of annexes presented by

105. Sergio Saúl Linares Morales was 30 year old; he was married with a daughter, and his wife was pregnant at the time of his disappearance. He studied civil engineering at the Universidad de San Carlos de Guatemala, where he taught classes and was a member of the University Students' Association. He also worked at the Municipal Development Institute. The *Diario Militar* records Sergio Saúl Linares Morales as follows:

74. Ing. SERGIO SAÚL LINARES MORALES

(alias) OTTO. Member of the PGT-CC, responsible for the Central Region. Member of the Manuel Andrade Roca Sectional Unit (OSMAR). 23-02-84: Captured in Zona 9. 29-03-84: 300.

106. Sergio Saúl Linares Morales disappeared on February 23, 1984, when a group of individuals came to his place of work in Zone 9 of the city and took him away in a car. Shortly afterwards, several individuals went to the home of Mr. Linares Morales; they searched his room, behaved in a violent manner towards his mother, and took personal belongings and valuables. A soldier told the family that Mr. Linares Morales "had been detained in a clandestine prison, [was] tortured and that, as a result of the torture, he was blind and in a wheelchair." Regarding this case, the CEH "reached the conclusion that State agents captured Sergio Saúl Linares Morales and made him disappear [...], by covert actions previously decided by State authorities, violating his right to liberty and to physical and mental integrity."

107. The family searched for him in the morgue and reported the events to the National Police and the Judicial Police, the then Head of State, the Ministry of Defense, and the media, among others. Sergio Saúl's sisters testified that Sergio's wife never returned to their home because she was afraid and then went to Mexico.

108. On February 24, 1984, an application for *amparo* was filed on behalf of Mr. Linares Morales. The next day the judge went to the Fourth Corps of the National Police, recorded that Mr. Linares Morales was not detained on those premises, and requested information from other police corps. On July 16, 1984, a judge executed a writ of *habeas corpus* with the National Police, but the result was negative. In addition, in October 1984, the General Directorate of the National Police recorded in its logs that "to date it has not been possible to clarify [the case], noting that he had not [...] been detained [...] and is not [...] in any health clinic," so that the investigation would continue.

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the State on October 17, 2008, tome III, folio 7220); CEH, *supra*, volume VI, pp. 147, 149 and 152; Application for *amparo* filed in favor of Sergio Saúl Linares Morales before the Supreme Court of Justice on February 24, 1984 (file of annexes to the merits report, tome II, annex 88, folio 863); AHPN, Note No. 344-JAG-osh-sria of February 25, 1984, GT PN 26-01 S002, No. 11763 (file of annexes to the pleadings and motions brief, tome VI, annex D92, folio 12227); AHPN, Note of February 25, 1984, GT PN 26-01 S002, No. 11764 (file of annexes to the pleadings and motions brief, tome VI, annexes D93, folio 12229); Decision No. 0101-SISI-84-oln of the General Directorate of the National Police of October 1, 1984 (file of annexes presented by the State with briefs of March 20 and October 10, 2008, annex B, folios 5232 and 5234); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985 and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); AHPN, Decision No. 0069-SISI-84-oln of August 13, 1984, GT PN 50 S004, No. 12052 (file of annexes to the pleadings and motions brief, tome VI, annex D34, folios 11875 and 11876); AHPN, Note to file, GT PN 50 S001, No. 25178 (file of annexes to the pleadings and motions brief, tome VI, annex D96, folio 12258); Letter from the PDH to the Special Prosecution Unit of June 19, 2008 (file of annexes to the merits report, tome II, annex 93, folios 916 to 918); Letter from the Prosecutor of the Public Prosecution Service to the Head of the Permanent Attention Office of September 14, 2006 (file of annexes presented by the State on October 17, 2008, tome III, folio 7188), and *Habeas corpus* application of February 23, 2006 (file of annexes to the merits report, tome II, annex 68, folios 798 and 799).

109. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Linares Morales and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs, [...] it had verified that [Mr. Linares Morales] has not [...] been registered [...] or detained [...] by members of this Department." On August 13, the DIT recorded that "owing to insufficient data leading to the clarification of the whereabouts of the person kidnapped and of his kidnappers, [...] to date, it has not been possible to resolve [the case]." In September, the judge was informed that Mr. Linares Morales had not been detained or registered by the DIT. In December 1985, a judge went to the offices of the National Police to execute a new writ of *habeas corpus* with negative results and, on June 2, 1986, another application for *habeas corpus* was filed. According to his sister, "the authorities refused to accept that he was detained and told [them] that, consequently, [they] were wasting their time there."

110. Meanwhile, on February 27, 1984, the rector of the Universidad de San Carlos de Guatemala advised the PDH of the facts. In 1988, the PDH, after having sought information from several entities, concluded that "the disappearance of [Sergio Saúl Linares Morales] could only have happened with the intervention of the authorities or paramilitary groups." Consequently, it declared that his disappearance "constitutes a human rights violation." In 1992, the PDH reopened the investigation and, in 1993, it suspended it for lack of evidence. In 2006, the facts were again denounced, and an application for *habeas corpus* was filed on his behalf.

## 12. Luz Haydée Méndez Calderón and 13. Wendy Santizo Méndez<sup>88</sup>

<sup>88</sup> The evidence regarding these victims is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 380); statement provided by Wendy Santizo Méndez at the public hearing on April 25, 2012; affidavit made by Wendy Santizo Méndez on November 3, 2004 (file of annexes to the merits report, tome II, annex 94, folios 920 to 923); complaint filed before the PDH on August 13, 1991 (file of annexes to the merits report, tome II, annex 96, folios 928 and 929); testimony of Wendy Santizo Méndez and Marcia Méndez Calderón before the Public Prosecution Service on June 11, 1999 (file of annexes to the merits report, tome II, annex 98, folios 934 to 936 and 938); Peace Secretariat, *supra*, pp. 192-193; Testimony given by Marcia Méndez Calderón before the Prosecutor of the Human Rights Section on June 11, 2007 (file of annexes presented by the State on October 17, 2008, tome III, folio 7400); AHPN, File card of March 30, 1984, GT PN 50-08-S001, No. 15408 (file of annexes to the pleadings and motions brief, tome VI, annex D28, folios 11848 and 11849); AHPN, File card of March 30, 1984, GT PN 50-08 S001, No. 15409 (file of annexes to the pleadings and motions brief, tome VI, annex D29, folio 15451); *Habeas corpus* application of March 9, 1984 (file of annexes to the merits report, tome II, annex 69, folios 801 and 802); *Habeas corpus* application of March 10, 1984 (file of annexes to the merits report, tome II, annex 71, folio 807); Letter from the Ministry of the Interior to the Director General of the National Police of March 12, 1984 (file of annexes to the merits report, tome II, annex 95, folio 926); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); Note No. 1420 of April 2, 1984 file of annexes presented by the State on October 17, 2008, tome III, folio 7350); Decision No. 0101-SISI-84-oln of the General Directorate of the National Police of October 1, 1984 (file of annexes presented by the State with briefs of March 20 and October 10, 2008, annex B, folios 5233 and 5234); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); Letter from the PDH to the Special Prosecution Unit of May 7, 2008 (file of annexes presented by the State with brief of October 17, 2008, tome III, folio 7415); request to open a special investigation proceeding filed on February 26, 2008 (file of annexes to the merits report, tome II, annex 100, folios 943 to 946); Ruling of the Supreme Court of Justice, Criminal Chamber of March 24, 2008, and Note of the Public Prosecution Service to the Supreme Court of Justice, Criminal Chamber of April 2, 2008 (file of annexes presented by the State with brief of October 17, 2008, tome III, folios 7454 to 7456); CEH, *supra*, volume VI, p. 148; Decision No. 17-2008 de April 3, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7405); Request for information submitted by the Special Prosecution Unit to the Superintendence of Tax Administration on April 4, 2008, and Request for information submitted by the Special Prosecution Unit to the Transportation Department on April 4, 2008 (file of annexes presented by the State with brief of October 17, 2008, tome III, folio 7423 and 7435), and Rulings of the Supreme Court of Justice, Criminal Chamber, of April 9 and July

111. Luz Haydée Méndez Calderón was 34 years of age; she studied at the Humanities Faculty of the Universidad de San Carlos de Guatemala and was a member of the PGT. She was married and had two children, Wendy and Igor Santizo Méndez, who were 9 and 11 years old, respectively, when their mother disappeared. The *Diario Militar* records Luz Haydée Méndez Calderón as follows:

83. LUZ HAYDÉE MÉNDEZ CALDERÓN

(alias) CHAVE. A.k.a.: SOFIA ESTRADA. Member of the PGT-CC Secretariat. In charge of the party's international affairs and propaganda. When (alias) JULIAN came from Mexico, he stayed at (alias) Chave's house. Her husband, MARCO ANTONIO SANTIZO VELASQUEZ (alias) TITO or CABALLON, is responsible for the Office where the ND [national directorate] meets in Zone 10, Floor 4 of the Rodríguez Building. In 1968, she was in Russia. 08-03-84: captured on 3<sup>rd</sup> Avenue 22-16, Zone 19, Colonia San Francisco. 02-05-84 Transferred to U-4.

112. In 2005, two documents appeared in the Historical Archive of the National Police, consisting of two file cards dated March 30, 1984, with information on two people who had presumably intervened in the capture of Luz Haydée Méndez Calderón, one of whom had credentials from the Army Intelligence Service and from the General Directorate of the Treasury Guard.

113. Her daughter, Wendy Santizo Méndez, who was nine years old when her mother was captured, has testified to and denounced the events that surrounded the capture and subsequent disappearance of her mother. According to Wendy Santizo Méndez, upon arriving home that day with her brother, they found around 10 individuals in military uniforms inside the house, who questioned them about their parents' activities. After locking them in their parents' room (while their mother was in another part of the house), they separated them and, according to the testimony of Wendy Santizo Méndez, one of the men who was taking part in the operation to capture her mother, raped her.

114. Then they were taken to the courtyard of the house where the ill-treatment and questioning continued and they were subjected to simulated executions. Wendy testified that she was almost unable to recognize her mother owing to the beating she had received and that they had made them watch when "they pulled her mother's nails out, one by one, with pliers"; also that, at one point, she had seen that they had shot her mother in the stomach. Later, they were taken (she, her brother and her mother) "to a National Police station." She testified that although she "does not remember the order in which everything happened there," they "were subjected to electric shocks on the body and [she and her brother] were obliged to watch while they did the same to [their] mother." Days later, Wendy and Igor Santizo Méndez were returned to their home. The family moved them to the grandmother's home in Jutiapa, where they lived for two years until they went to Canada to meet up with their father. Mrs. Méndez Calderón's sister stated that she received threats at the time of the disappearance.

115. According to Mrs. Méndez Calderón's sister, when a neighbor called the National Police to ask what was happening in the home of the Santizo Méndez family, she was told that it was a police operation. The CEH report recorded that a witness, who had been detained, said that he had seen, "in the place where he was detained," the words "Luz Haydée Méndez de Santizo was here" written on the wall.

116. The family looked for Mrs. Méndez Calderón in hospitals, detention centers and police stations. On March 9 and 10, they filed applications for *habeas corpus* on her behalf and,

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8, 2008, and Ruling of the Supreme Court of Justice of July 9, 2008 (file of annexes presented by the State with brief of October 17, 2008, tome III, folios 7478, 7484, 7490 and 7491).

days later, they reported the events to the Ministry of Interior and the latter passed the information on to the National Police. On July 16, 1984, a first instance judge went to the Second Corps of the National Police to execute a writ of *habeas corpus* with negative results. In October 1984, the General Directorate of the National Police recorded that “to date, it has not been possible to resolve [the case], noting that she has not [...] been detained [...] and she is not [...] in any clinic.” The Ministry of Interior reached the same conclusion. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mrs. Méndez Calderón and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country’s chiefs of police, among others. In response, the DIT indicated that “having examined the records and logs [...] it had verified that [Mrs. Méndez Calderón] has not [...] been registered [...] or detained [...] by members of this Department.” In December 1985, a writ of *habeas corpus* on her behalf was executed with the National Police, with negative results.

117. In 1991, the family reported the disappearance to the PDH, which requested information from the National Police and, in 1994, concluded that “there was no specific evidence to enable the Ombudsman to issue a substantive statement about the disappearance of the said person” and ordered the provisional suspension of the procedure.

118. Parallel to the investigation conducted by the Special Prosecution Unit (*infra* para. 174), on February 23, 2006, an application for habeas corpus was filed on behalf of Mrs. Méndez Calderón and, in 2008, a request for a special investigation procedure was filed before the Supreme Court of Justice. In response, the Public Prosecution Service was ordered to investigate the events. The Public Prosecution Service advised that it had requested information from various entities, obtained statements from Mrs. Méndez Calderón’s daughter and sister, and from the owner of the vehicle that was allegedly used during the capture. The National Police advised that “there [was] no case file related to the disappearance of [Mrs. Méndez Calderón]” and forwarded information on the identity of the senior officers of the Police Force in May and June 1984, regarding whom information was requested from several institutions. In April that year, the Criminal Chamber of the Supreme Court convened a hearing on July 8, 2008; however, it was suspended given the discontinuance of the special investigation procedure.

#### **14. Juan Pablo Armira López and 15. María Quirina Armira López<sup>89</sup>**

119. Juan Pablo Armira López, who was 13 years of age and María Quirina Armira López, who was 16, were siblings. According to the family, their father was being harassed by the Army, and therefore the family had moved to Guatemala City, changed their surname and stopped using their traditional dress. The *Diario Militar* records John Pablo Armira López as follows:

86. JUAN PABLO ARMIRA LÓPEZ  
(alias) SERGIO. 12 years old, responsible for connecting and paying the FAR houses. 10-03-84:  
Captured. Sent to Chimaltenango”.

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<sup>89</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 381, 384 and 386); Affidavit made by María Froilana Armina López on March 31, 2012 (file of documents received during the public hearing, folios 13051 to 13054, 13057 and 13058); affidavit made by Eduarda López Pinol, María Froilana Armina López and María Lidia Marina Armira López on July 28, 2005 (file of annexes to the merits report, tome II, annex 101, folio 948); Complaint filed before the *¿Dónde Están?* Association (file of annexes to the merits report, tome II, annex 102, folios 951, 952 and 955); letter from the National Compensation Program to the Special Prosecution Unit of July 3, 2008 (file of annexes presented by the State on October 17, 2008, tome III, folio 7525), and copy of the birth certificate of María Quirina Armina López (file of annexes presented by the State on October 17, 2008, tome III, folios 7562).

Meanwhile, the *Diario Militar* records María Quirina Armira López as follows:

94. MARÍA QUIRINA ARMIRA LÓPEZ

(alias) VERONICA. Mistress of (alias) Lieut. Joel. 14/03/84: At 1200 hours, she was warned by her brother (alias) SERGIO and captured in Colonia Atlántica, Zone 18. Time passed and when (alias) SERGIO saw his sister, he was broken and immediately indicated the house where the kidnapped person was, because he had gone there several times to leave money for the maintenance of the house and the occupants. A reconnaissance was carried out and, at 1730 hours, an operation began with the support of the blues and an M-8 of the Mariscal Zavala Brigade, which it was not necessary to use, because owing to the speed and strength of the operation, someone emerged with their hands up; and this was the person in charge of the house (alias) YURO. Then, two more men and two women with two children emerged, and inside the building there was a "people's prison" where JOSÉ CLEMENTE BARAHONA BARRIOS was being kept, and he was found alive, three months after his abduction. The operation took only 10 minutes. Address: 3rd Street, Lot 13, Section H, Zone 4, Mixco, Colonia Monte Verde.

The individuals captured during the operation are then listed. In addition, page 30 of the sixth section of the *Diario Militar*, contains the following note:

"Together with all those handed over to Chimaltenango, were: MARÍA QUIRINA ARMIRA LÓPEZ (alias) VERONICA, mistress of (alias) JOEL. JUAN PABLO ARMIRA LÓPEZ (alias) SERGIO, aged 12 years."

120. On March 10, 1984, Juan Pablo López Armira went to meet a member of the Revolutionary Armed Forces who would give him money for the maintenance of the house. According to the family, he was intercepted by some men in cars with polarized windows and taken to an unknown place. Four days later, heavily armed men came to the family home located in Colonia Atlántica and asked María Quirina Armira López if she was "Veronica," which she denied. Then they asked her to accompany them and told her family that they would send her back later. However, that was the last time her family saw her. The family did not file a complaint for fear of further reprisals. According to their sister, a witness affirmed that he had seen Juan Pablo in a detention center.

## 16. Lesbia Lucrecia García Escobar<sup>90</sup>

121. Lesbia Lucrecia García Escobar was 25 years of age at the time of her disappearance and she worked in a hospital and in a restaurant, where she was a union leader. She was also a member of the PGT. The *Diario Militar* records Lesbia Lucrecia García Escobar under the record for Fidel Antonio Ávila Revelorio, indicating:

116. FIDEL ANTONIO AVILA REVOLORIO

(alias) LEONEL and ROBERTO: a.k.a.: CATARINO RAUL ESTRADA VALENZUELA, Member of PGT. 1981, traveled to Russia, and was there for 10 months with 4 other companions; on his return, he went to Cuba to take a course on intelligence and counter-intelligence. He was in the PGT for five months. They knew him as (alias) NESTOR and RENÉ abroad, and in the ORPA as (alias) LEONEL and ROBERTO. He revealed the address of his room, where he was using as a front D.S. LESBIA LUCRECIA GARCIA ESCOBAR (alias) MANUELA, 22 Avenue. 'A' 12-42, Zone 6, and where they had an M-16, 5 grenades, detonators, pistols and propaganda. 29-04-84: Captured carrying an H.K. 9 mm. and a Russian-made fragmentation grenade and two cyanide capsules. This individual took part in the action against the Presidency's Public Relations Office in Plaza 6-26 and the Polytechnic.

In addition, under a photograph of Lesbia Lucrecia appears the note: "06-05-84: 300."

<sup>90</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 391); Testimony given by Efrain García at the public hearing on April 25, 2012; affidavit made by Efrain García and Helver Vinicio García on November 29, 2004 (file of annexes to the merits report, tome II, annex 103, folios 957 and 958); Copy of entry for neighborhood identity card of Lesbia Lucrecia García Escobar (file of annexes presented by the State on October 17, 2008, tome IV, folio 7616); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985 and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765).

122. On April 17, 1984, she was captured near her workplace. According to information given to her family by one of Lesbia Lucrecia's co-workers, they were both intercepted by heavily armed men in a white van which they forced Lesbia Lucrecia to get into. The co-worker died the following day.

123. The next day, the family reported the incident to the National Police and the Judicial Guard, where, according to their account, they refused to receive the complaint. The family also searched hospitals and prisons in Antigua and in the capital. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Ms. Garcia Escobar and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs [...] it had verified that [Ms. Garcia Escobar] has not [...] been registered [...] or detained [...] by members of this Department." In addition, Ms. Garcia Escobar's father received information from someone who worked in the G-2 about the name of a person involved in the disappearance of his daughter, and his informant was subsequently murdered. Ms. Garcia Escobar's father was a member of the GAM and, during the public hearing, stated that he had felt threatened.

### 17. Otto René Estrada Illescas<sup>91</sup>

124. Otto René Estrada Illescas was 31 years of age; he was married and had a son at the time of his disappearance. He was studying economics at the Universidad de San Carlos de Guatemala, where he also worked in the publications area, and was a member of the labor union, and also a member of the Executive Committee of the University Students' Association and of the PGT. Some days before his disappearance, several members of the Students' Association had presumably been kidnapped; consequently, Otto René felt threatened and, with his wife, moved to another house for protection. The *Diario Militar* records Otto René Estrada Illescas as follows:

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<sup>91</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 396); affidavit made by Beatriz María Velásquez Díaz on January 22, 2005 (file of annexes to the merits report, tome II, annex 104, folios 960 to 965); affidavit made by Paulo René Estrada Velásquez on December 20, 2004 (file of annexes to the merits report, tome II, annex 106, folios 971 and 972); Peace Secretariat, *supra*, p. 220; Note of the Administrative Council of the Economics Faculty of the *Universidad de San Carlos de Guatemala*, *Prensa Libre*, September 10, 1984 (file of annexes to the merits report, tome II, annex 127, folio 1074); AHPN, Summary of the log of the Criminal Investigation Department, GT PN 50, No. 13579 (file of annexes to the pleadings and motions brief, tome VI, annex D46, folio 11952); *Habeas corpus* application of May 17, 1984 (file of annexes to the merits report, tome II, annex 110, folios 994 and 995); Note No. 1266/SN-rpo of the Section Deputy Commander to the Director General of the National Police of May 18, 1984 (file of annexes presented by the State on October 17, 2008, tome IV, folio 7675); Note No. 1000/84 of June 19, 1984 (file of annexes presented by the State on October 17, 2008, tome IV, folio 7676); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Note of the DIT of September 20, 1984 (file of annexes to the pleadings and motions brief, tome VI, annex D78, folio 12154); AHPN, Decision No. 0101-SISI-84-o1n of October 1, 1984 (file of annexes to the pleadings and motions brief, tome VI, annex D63, folios 12059 and 12061); AHPN, Decision No. 0169-SISI-84-o1n of August 13, 1984 (file of annexes to the pleadings and motions brief, tome VI, annex D34, folios 11875 and 11876); AHPN, Note to file of April 17, 1985, GT PN 50 S001, No. 25180 (file of annexes to the pleadings and motions brief, tome VI, annex D80, folio 12188); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); Telegram of May 30, 1984 (file of annexes to the merits report, tome II, annex 108, folio 987); CEH, *supra*, tome VI, pp. 147, 219 and 223, and letter from the Vice Minister of the Interior to the Director General of the National Police of April 10, 1985 (file of annexes to the merits report, tome II, annex 112, folios 1000 and 1001).

133. OTTO RENÉ ESTRADA ILLESCAS

(alias) PALMIRO. Was in military intelligence, is currently working on the People's Commission, Central Committee, Central Region of the PGT. 15-05-84: At 1100 hours, was captured on 1st Street and 2nd Avenue, Zone 1, upon trying to resist, he was shot in the gluteal region. 01-08-84: 300.

125. Mr. Estrada Illescas disappeared on May 15, 1984, in Guatemala City. According to information received by the family, at approximately 11 a.m., after leaving a barber's shop and on the way to his car, Otto René was intercepted by heavily armed men. On resisting capture, they shot him. The Rector of the Universidad de San Carlos told his wife that "Otto was alive in a clandestine prison," but later retracted this statement.

126. That same day, the family filed an application for *habeas corpus* and the judge went to the Criminal Investigations Department where he was informed that Otto René had not been detained by that department. The following day, the family began to report the incident to the media. In their search, they visited the morgue, went to the places that Otto René frequented, found his car, and a witness told them what had happened the previous day. On May 17, 1984, they filed another application for *habeas corpus* and the judge went to the offices of the National Police where they told him that, according to their records of detainees, Mr. Estrada Illescas had not been detained. On July 16, 1984, a first instance judge again went to the offices of the National Police to execute a writ of *habeas corpus* and the result was negative. In September, the DIT granted the family an audience. In August and October 1984, the National Police recorded that "owing to the insufficient information to clarify the whereabouts of the person who has been kidnapped or his kidnappers, to date it has not been possible to resolve [the case]."

127. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Estrada Illescas, and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs [...] it had verified that [Mr. Estrada Illescas] has not [...] been registered [...] or detained [...] by members of this Department." In December, another judge went to the office of National Police to execute a writ of *habeas corpus*; however the result was negative.

128. The wife of Mr. Estrada Illescas, Beatriz María Velásquez Díaz, met with the Head of State on several occasions and, in May 1984, he told her that he had ordered a "thorough investigation of [the] case." Beatriz testified that, with the change of Government, the new President had offered "to look for corpses in clandestine cemeteries; but [she] only received a report indicating that they had searched everywhere for [her] husband and that he had not appeared, [and] they offered [her] the possibility of filing a suit to declare his presumed death." The CEH included the disappearance of Otto Estrada Illescas as part of the information on the repression that, according to the CEH, was suffered by the members of the University Students' Association.

129. The night of Otto René's disappearance, Beatriz went with her son to her parents' house for safety. On one occasion, she had been threatened by the Director of the National Police so that "she would not spread the news internationally." Beatriz testified that she had been harassed following the creation of the GAM.

## 18. Julio Alberto Estrada Illescas<sup>92</sup>

<sup>92</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 403); affidavit made by Beatriz María Velásquez Díaz, on January 22, 2005 (file of annexes to the merits report, tome II, annex 104, folios 961 to 965); affidavit made by María Hercilia Illescas Paiz widow of Estrada on November 29, 2004 (file of annexes to the merits report, tome II, annex 105, folio 968); affidavit made by Paulo René Estrada Velásquez, on December 20, 2004 (file of annexes to the merits report, tome II, annex 106,

130. Julio Alberto Estrada Illescas was the older brother of Otto René Estrada Illescas; he was 33 years of age and had studied political science at the Universidad de San Carlos de Guatemala. When he was at the university he was a member of a student group known as *Frente* and a member of the PGT. Following the disappearance of his brother, he tried to protect himself; however, it was Julio Alberto who, together with Otto René's wife, took on the search for his brother. The *Diario Militar* records Julio Alberto Estrada Illescas as follows:

156. JULIO ALBERTO ESTRADA ILLESCAS

(alias) JUAN, ATILIO, 21. A.k.a.: JOSÉ ROLANDO ROSALES RODRÍGUEZ. Member of the PGT leadership. Head of Operations, together with (alias) GUANACO, 20, who is abroad. 14-06-84: Captured at 1800 hours at the Anillo Periférico, in front of the Hermano Pedro Hospital, Zone 11. Informed that E.M.G. is composed of: Head of E.M.G. is (alias) RAMIRO; Head of Logistics or Int. is (alias) JOSÉ. Head of Information is (alias) RAUL; Head of Military Health is (alias) RAUL, 43.

131. On June 14, Julio Alberto did not arrive at an appointment he had with Beatriz, Otto René's wife, to continue the search for his brother. The family received information that, several days previously, some men had been following Julio Alberto, and that Julio Alberto "had been murdered at the border trying to cross into Mexico." However, Julio Alberto's mother testified that he had told her that he was going to Canada, so that it was not until the publication of the *Diario Militar* that she knew what had happened.

## 19. Rubén Amílcar Farfán<sup>93</sup>

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folios 971 and 972), and certified copy of the birth certificate of Julio Alberto Estrada Illescas of July 31, 2006 (file of annexes presented by the State on October 17, 2008, tome IV, folio 7800).

<sup>93</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 397); affidavit made by Aura Elena Farfán on February 7, 2005 (file of annexes to the merits report, tome II, annex 113, folio 1003); testimony of Aura Elena Farfán filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 114, folio 1006); Peace Secretariat, *La autenticidad del Diario Militar a la luz de los documentos históricos of the National Police*, Guatemala, p. 129 (file of annexes to the merits report, tome I, annex 9, folio 162); CEH, *supra*, tome VI, pp. 149 and 152; *Habeas corpus* application of May 18, 1984 (file of annexes to the merits report, tome II, annex 117, folio 1014); AHPN, Note No. 962-JAG-osh-aría of May 18, 1984. GT PN 31, No. 13373 (file of annexes to the pleadings and motions brief, tome VI, annex D44, folio 11945); AHPN, Note No. 1641-Jnr of July 7, de 1984, GT PN 23, No. 5000 (file of annexes to the pleadings and motions brief, tome VI, annex D32, folio 11864); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); Ruling of the Supreme Court of Justice of June 13, 1984 (file of annexes to the merits report, tome II, annex 118, folios 1018 and 1019); ); AHPN, Note of the DIT of September 20, 1984 (file of annexes to the pleadings and motions brief, tome VI, annex D78, folio 12153); Decision No. 0101-SISI-84-oln of the General Directorate of the National Police of October 1, 1984 (file of annexes presented by the State with briefs of March 20 and October 10, 2008, annex B, folios 5232 and 5234); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); AHPN, Decision No. 0069-SISI-84-oln of August 13, 1984, GT PN 50 S004, No. 12052 (file of annexes to the pleadings and motions brief, tome VI, annex D34, folios 11875 and 11876); AHPN, radiogram of October 24, 1985, GT PN 50 S005, No. 13335 (file of annexes to the pleadings and motions brief, tome VI, annex D41, folio 11930); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11731); Applications for *habeas corpus* of January 10, April 10 and May 30, 1986, and October 6, 1987 (file of annexes to the merits report, tome II, annex 119 and 120, folios 1021, 1022, 1024 and 1025); Request for the intervention of the PDH on January 22, 1988 (file of annexes to the merits report, tome II, annex 122, folio 1029); Notes of January 25 and February 12 and 24, 1988, of the PDH, Exp. P-059-88 and Note No. 221 gjl of the National Transportation Department of February 22, 1988 (file of annexes to the merits report, tome II, annex 122, folios 1030, 1032, 1033 and 1041); letter from the Vice Minister of the Interior to the Director General of the National Police of April 10, 1985 (file of annexes to the merits report, tome II, annex 112, folios 1000 and 1001), and *Ellos esperan el regalo más bello esta navidad* [They are hoping for the best possible present this Christmas], *Prensa Libre*, December 13, 1984, (file of annexes to the merits report, tome II, annex 107, folios 974 and 975).

132. Rubén Amílcar Farfán was 40 years of age at the time of his disappearance. He had graduated as a primary school teacher and went on to study literature at the university. He was also a member of the labor union of the Universidad de San Carlos and worked at the University Press. The *Diario Militar* records Rubén Amílcar Farfán as follows:

134. RUBEN AMILCAR FARFÁN

(alias) VILA. Responsible for the Central Committee, State Sector. 15-05-84: At 1600 hours, at 12th Avenue and 9th Street, Zone 1, was found and upon resisting was 300.

133. Mr. Farfán disappeared on May 15, 1984, after leaving the university's printing house. The next day, armed men arrived at the family home and advised that Ruben Amílcar had been captured at the university. A military intelligence agent testified before the Human Rights Office of the Archbishopric of Guatemala (hereinafter "ODHAG") that he had seen Rubén Amílcar Farfán, and that he "was taken to the DIT offices [...] and subsequently transferred to the former Polytechnic School [...], where the 'counter-intelligence headquarters' were located." In addition, the Rector of the Universidad de San Carlos de Guatemala had assured the family that Rubén Amílcar was in the hands of the Army, the G-2 and the DIT. Regarding this case, the CEH "reached the conclusion that State agents captured and disappeared [...] Rubén Amílcar Farfán in covert actions previously decided by State authorities, violating his right to liberty and to physical and mental integrity."

134. On learning of Mr. Farfán's capture, his family went immediately to the Police. On May 18, 1984, his brother filed an application for *habeas corpus* and, that day, the judge went to the Fourth Corps of the National Police, but the result was negative. In addition, there is evidence that, *inter alia*, on July 7, 1984, the First Corps of the Police responded to a writ of *habeas corpus* indicating that he had not been detained by that corps while, on July 16, 1984, a first instance judge went to offices of the National Police to execute another writ of *habeas corpus* and the result was negative. The same day, the Supreme Court of Justice rejected the application for *habeas corpus* indicating that Mr. Farfán "had not been detained and that no arrest warrant [had been issued] against him. Consequently, there were no elements to substantiate the admissibility of the application; however, there were elements for the competent court to investigate the whereabouts of the said individual." In September, the DIT granted the relatives a hearing, while in October 1984 it was recorded that the investigation remained open.

135. On August 9, 1985, the Supreme Court issued a writ of *habeas corpus* for Mr. Farfán and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. In response, the DIT indicated that "having examined the records and logs [...] it had verified that [Mr. Farfán] has not [...] been registered [...] or detained [...] by members of this Department." In August and October of that year, the DIT recorded that, owing to the "insufficient data leading to the clarification of the whereabouts of the kidnapped persons, and of his kidnappers, to date, it has not been possible to resolve [the case]" and that, according to the file on detainees and the log, Mr. Farfán had not been detained. In December 1985, another writ of *habeas corpus* was executed on his behalf with the National Police, with negative results.

136. On January 10, April 10 and May 30, 1986, further applications for *habeas corpus* were filed. On January 22, 1988, a complaint regarding the events was filed before the PDH, which requested information from various entities and opened the respective file in February that year. On February 24, 1988, the PDH concluded that "the disappearance of the said person could not have occurred without the intervention of the authorities or paramilitary groups." The information collected by the PDH included, *inter alia*, the record of the owners of the cars whose license plates had been reported as those seen at the place of the

capture. His family also reported the incident to the media and met with the then Head of State on three occasions in 1984 and 1985.

## 20. Sergio Leonel Alvarado Arévalo<sup>94</sup>

137. Sergio Leonel Alvarado Arévalo was 20 years of age, and the youngest of five children. He was a student in the Economics Faculty of the *Universidad de San Carlos de Guatemala*, where he was a member of the secretariat of the University Students' Association; he was also a member of the PGT. The *Diario Militar* records Sergio Leonel Alvarado Arévalo as follows:

### 138. SERGIO LEONEL ALVARADO AREVALO

(alias) OTTO and ANGEL. Member of the PGI-PGT Organizational Structure. Responsible, together with (alias) CARLOS or JUAN, for trying to make a photographic and microfilm report on the PGI-PGT. Participated in several operations, removing (alias) GUNTER, RIVAS or 32 from the Roosevelt Hospital in March 1984. 20-05-84. Captured on 7th Avenue, in front of the IGSS General Hospital, Zone 9. 06/05/84: 300.

138. The family last saw him on May 19, 1984, when he left for the university. They began their search in hospitals, the morgue, police stations, immigration offices, and the General Directorate for Prisons, which responded that 24 detention centers had assured that Mr. Alvarado Arévalo was not detained in those centers.

139. His father filed an application for *habeas corpus*. On June 14, 1984, the Supreme Court of Justice dismissed the application indicating that "[t]he Ministers of the Interior and of Defense, and the Assistant Director of the National Police ha[d] reported that Sergio Leonel Alvarado Arévalo ha[d] not been detained" and ordered that "the [corresponding] investigation be opened." In addition, documents appeared in the Historical Archive of the National Police, according to which, *inter alia*, on July 7, the Police responded to a writ of *habeas corpus* indicating that he had not been detained by that entity and, on July 16, 1984, a first instance judge went to the National Police to execute a writ of *habeas corpus*, with a negative result. In August, the DIT reported that owing to "insufficient data leading

<sup>94</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 398); affidavit made by Luis Rodolfo Alvarado Arévalo on April 18, 2005 (file of annexes to the merits report, tome II, annex 123, folio 1056); affidavit made by Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo on November 2, 2004 (file of annexes to the merits report, tome II, annex 124, folio 1059); testimony of Miguel Ángel Alvarado Arévalo filmed and authenticated on March 27, 2008 (file of annexes to the merits report, tome II, annex 125, folio 1063); Note No. 0299-85 of the General Directorate of Prisons of the Republic of March 8, 1985 (file of annexes to the merits report, tome II, annex 126, folios 1069 to 1071); Ruling of the Supreme Court of Justice. Criminal Chamber sitting as a Court of *Habeas Corpus* of June 14, 1984 (file of annexes to the merits report, tome II, annex 128, folios 1078 and 1079); AHPN, Note No. 1641-Jnr of July 7, 1984, GT PN 23, No. 5000 (file of annexes to the pleadings and motions brief, tome VI, annex D32, folio 11864); AHPN, Decisions No. 0069-SISI-84/oln of August 16, 1985, GT PN 50 S004, No. 12052, and 0101-SISI-84/oln of October 3, 1984, GT PN 50 S004, No. 12073 (file of annexes to the pleadings and motions brief, tome VI, annex D34 and D 63, folios 11876 and 12058); Applications for *habeas corpus* of October 9, 1984 (file of annexes to the merits report, tome II, annex 129, folio 1081); letter from the Vice Minister of the Interior to the Director General of the National Police of April 10, 1985 (file of annexes to the merits report, tome II, annex 112, folios 1000 and 1001); *Habeas corpus* application of April 29, 1985 (file of annexes to the merits report, tome III, annex 130, folios 1053 bis and 1054 bis); AHPN, Note to the Third First Instance Criminal Judge of October 10, 1984, GT PN 50 S005, 25150, and Note No. 10726 of October 9, 1984 GT PN 24-05 5004, No. 15515 (file of annexes to the pleadings and motions brief, tome VI, Annexes D37 and D38, folios 11899 and 11912); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985 and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folio 11753); AHPN, Note to the Sixth First Instance Criminal Judge of December 7, 1985, GT PN 50 S005, No. 13683 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11732), and Note of the Administrative Council of the Economics Faculty of the Universidad de San Carlos de Guatemala of September 10, 1984, *Prensa Libre*, and *Preocupación por la ola de secuestros* [Concern about the wave of kidnappings], *El Gráfico*, May 23, 1983 (file of annexes to the merits report, tome II, annex 127, folios 1074 and 1075).

to the clarification of the whereabouts [...] to date, it has not been possible to resolve [the case]" and, in October 1984, it was recorded that the investigation remained open.

140. On October 9, 1984, and April 29, 1985, other applications for *habeas corpus* were filed. In response, the DIT and the Second Corps of the National Police established that there was no record of the detention of Mr. Alvarado Arévalo in those departments. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Alvarado Arévalo and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country's chiefs of police, among others. However, in response, the DIT indicated that "having examined the records and logs, [...] it had verified that [Mr. Alvarado Arévalo] has not [...] been registered [...] or detained [...] by members of this Department." In December 1985 another writ of *habeas corpus* was attempted with the National Police.

141. In addition, the family reported the disappearance to the media and to civic, religious and military leaders, and met with the Head of State. The authorities of the Universidad de San Carlos also took part in the search.

## **21. Joaquín Rodas Andrade<sup>95</sup>**

142. Joaquin Rodas Andrade was 23 years of age; he was the second of four children, and a student and teacher of Agronomy at the *Centro Universitario de Occidente*. He was also a member of the ORPA Patriotic Youth for Labor (a section of the PGT), and a leader of the Western University Students' Association. The *Diario Militar* records Joaquin Rodas Andrade as follows:

### **174. JOAQUÍN RODAS ANDRADE**

(alias) JAVIER. Responsible for MRP.IXIM Propaganda; ORPA dissident. "Javier" is a dissident from the PGT-COMIL. Relative of "PELO LINDO." 020900MAR85; captured on 4th Street and Avenue 14 and 15, Zone 3, in Quetzaltenango. 061500MAR85, was delivered to S-2 of Xela, in San Lucas.

143. Mr. Rodas Andrade disappeared on March 2, 1985, when he went to do some field work related to his studies. Shortly before, an unknown person had telephoned his home asking if Mr. Rodas Andrade was still there. According to information received by the family, that day, around 9 a.m., someone dressed like Mr. Rodas Andrade was intercepted a block away from the house, when some men in a white pickup shot him in the leg and had then taken him away. The family testified that, the next day, the press reported that shots had been fired in that area and they could see a bullet mark on the wall.

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<sup>95</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 409); certified copy of the birth certificate of Joaquin Rodas Andrade of August 21, 2006 (file of annexes presented by the State, tome V, folio 8176); affidavit made by Augusto Jordán Rodas Andrade on November 19, 2004 (file of annexes to the merits report, tome III, annex 132, folio 1061 bis); affidavit made by Joséfa Elizabeth Andrade Reyes de Rodas, José Augusto Rodas Ralón and Olivia Berenice Rodas Andrade on November 19, 2004 (file of annexes to the merits report, tome III, annex 133, folios 1064 bis and 1065 bis); affidavit made by Héctor Salomón Rodas Andrade on November 19, 2004 (file of annexes to the merits report, tome III, annex 134, folio 1068 bis); Testimony given by Joséfa Elizabeth Andrade Reyes de Rodas before the Inter-American Commission on October 9, 2007; AHPN. Confidential report of July 16, 1985, GT PN 50 S004, No. 25211 (file of annexes to the pleadings and motions brief, tome VI, annex D59, folio 12008); AHPN. Note of the DIT of March 19, 1985, GT PN 50 S004, No. 25206 (file of annexes to the pleadings and motions brief, tome VI, annex D58, folio 12003); Letter of the representatives of the INVO Professors, Quetzaltenango, to the Head of State, Humberto Mejía Víctores, of March 6, 1985 (file of annexes to the merits report, tome III, annex 137, folio 1091); AHPN, Note of the Ministry of the Interior of June 3, 1985, GT PN 50 S004, No 25218 (file of annexes to the pleadings and motions brief, tome VI, annex D59, folio 12015); AHPN, Decision No. 16607 of the General Directorate of the National Police of August 29, 1985, GT PN 50 S004, No. 25226 (file of annexes to the pleadings and motions brief, tome VI, annex D22, folio 11681), and CEH, *supra*, volume IX, p. 786.

144. Some days after the disappearance, the family observed how torches were being shone at the windows from outside the house. Also, Joaquín Rodas Andrade's mother stated that, sometime later, she received a threatening telephone call warning her not to continue denouncing the incident.

145. The family went to the premises of the Fifth Military Zone, near the place where the incident occurred; there, the family was told that it "had nothing to do with what had happened" and invited them to come in and inspect the facilities, which they did not do, thinking that he had already been taken to a clandestine prison. According to the testimony of the family members, the Colonel who received them made telephone calls to try and locate him. They also searched for him in the morgue, police stations, military brigades, prisons and hospitals, and reported the incident to the media. Friends of the family and the *Centro Universitario de Occidente* also joined in the search for Mr. Rodas Andrade, while international organizations asked the State for information on his whereabouts.

146. In 1985, Mr. Rodas Andrade's father filed an application for *habeas corpus*, with negative results. In addition, the DIT requested information on his whereabouts. The family met with the wife of President Mejía Vítores and with the Head of the Presidential Palace, who told them that an investigation would be launched and, subsequently, informed them that the investigation had been unsuccessful. On August 29, 1985, the Chief of Staff and the Head of State asked for an investigation to be opened. The CEH included the case of Mr. Rodas Andrade in the section on cases "presented" of its final report, indicating, based on a "founded presumption" that he had been the victim of enforced disappearance by members of the National Police.

## 22. Alfonso Alvarado Palencia<sup>96</sup>

147. Alfonso Alvarado Palencia was 35 years of age, married with three children. He worked for the municipality and was a trade unionist; hence his family feared for his life. Two documents appeared in the Historical Archive of the National Police recording that, in 1979, Mr. Alvarado Palencia was a CNT leader and that, on one occasion, he had been arrested for "possession of subversive propaganda." The *Diario Militar* recorded Alfonso Alvarado Palencia as follows:

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<sup>96</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 372); Affidavit made by Carla Fabiola Alvarado Sánchez on March 31, 2012 (file of documents received during the public hearing, folios 13017, 13018, 13019 and 13026); testimony of Jesús Palencia Juárez de Alvarado filmed and authenticated on March 26, 2008 (file of annexes to the merits report, tome III, annex 140, folio 1100); affidavit made by Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez on August 11, 2006 (file of annexes to the merits report, tome III, annex 141, folios 1106 and 1107); Copy of entry for neighborhood identity card of Alfonso Alvarado Palencia (file of annexes presented by the State on October 17, 2008, tome V, folio 8203); AHPN, Note to file, GT PN 50 S001, No. 11926 (file of annexes to the pleadings and motions brief, tome VI, annex D16, folio 11509); AHPN, Note of the DIT of December 7, 1985, GT PN 50 S005, No. 14265 (file of annexes to the pleadings and motions brief, tome VI, annex D25, folio 11734); AHPN, Log for July 16, 1984, GT PN 51-01 S004, No. 4231 (file of annexes to the pleadings and motions brief, tome VI, annex D8, folio 11478); AHPN, Note No. 676/Ref.Of.ETA of the Fifth Corps of the National Police, GT PN 32 S007, No. 13624 (file of annexes to the pleadings and motions brief, tome VI, annex D17, folio 11512); AHPN, Note to file, GT PN 50 S001, No. 11927 (file of annexes to the pleadings and motions brief, tome VI, annex D87, folio 11512); AHPN, Decision No. 07431 of March 30, 1984 (file of annexes to the pleadings and motions brief, tome VI, annex D4, folio 11430); letter from the Vice Minister of the Interior to the Director General of the National Police of April 10, 1985 (file of annexes to the merits report, tome II, annex 112, folios 1000 and 1001); AHPN, Ruling of the Supreme Court of Justice of August 9, 1985, and Note No. 19795 of the DIT to the Supreme Court of Justice of August 11, 1985, GT PN 50 S005, Nos. 13401 and 13402 (file of annexes to the pleadings and motions brief, tome VI, annex D26, folios 11749, 11751, 11764 and 11765); letter from the PDH to the assistant prosecutor of the Special Prosecution Unit of May 29, 2008 (file of annexes to the merits report, tome III, annex 142, folios 1110 and 1111), and CEH, *supra*, volume VIII, annex II, p. 370.

58. ALFONSO ALVARADO PALENCIA

(alias) FELIPE. Member of FAR and CNT. 31-01-84: Captured on Roosevelt and 5th Avenue, Zone 11, in front of INCAP, together with MILQUICIDET MIRANDA CONTRERAS (alias) OTTO. 06-03-84: 300.

148. On January 31, 1984, Alfonso was captured near INCAP, according to information received by his family. In addition, the Historical Archive of the National Police contains a DIT report of December 1985 according to which Mr. Alvarado Palencia “was found murdered four days later.” According to information received by the family, Mr. Alvarado Palencia was detained in the Polytechnic School.

149. His family searched for him in morgues and clandestine graves. His mother went to the cemetery to look for him every day that month. They also reported the incident to the authorities and the media, and filed an application for *habeas corpus*. On February 2 and July 16, 1984, a first instance judge went to the offices of the National Police to execute a writ of *habeas corpus*, but the result was negative. In March 1984, the DIT recorded that Mr. Alvarado Palencia had not been “detained by that department or referred to the courts. The same month, the National Police recorded in its files that “an attempt had been made to interview the family members, but it was not possible to contact them, because their address was unknown.”

150. On August 9, 1985, the Supreme Court of Justice issued a writ of *habeas corpus* for Mr. Alvarado Palencia and ordered that information be requested from the Ministry of Defense, the Ministry of the Interior and the country’s chiefs of police, among others. In response, the DIT indicated that “having examined the records and logs, [...] it had verified that [Mr. Alvarado Arévalo] has not [...] been registered [...] or detained [...] by members of this Department.”

151. In addition, in 1988, the family reported the incident to the PDH, and the latter requested information from, *inter alia*, the courts, the National Police, and the Minister of Defense. In March that year, the PDH concluded that “the disappearance of [Mr. Alvarado Palencia] could not have happened without the intervention of the authorities or paramilitary groups.” The CEH included the case of Mr. Alvarado Palencia in the section on cases “presented” of its final report, indicating, based on a “founded presumption,” that he had been the victim of enforced disappearance by members of the National Police.

152. His family recounted having received threats and harassment after his disappearance. Mr. Alvarado Palencia’s wife was pregnant “and, owing to her husband’s disappearance and the distress this caused, [...] she suffered a miscarriage.”

### **23. Zoilo Canales Salazar and 24. Moisés Canales Godoy<sup>97</sup>**

153. Zoilo Canales Salazar was 52 years of age at the time of his disappearance. He had two sons, one of whom was Moisés Canales Godoy, and he lived with his wife. Zoilo, Moisés and his family worked for the PGT; therefore they moved constantly and used false names

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<sup>97</sup> The evidence regarding these victims is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 377 and 378); certified copy of birth certificate of Zoilo Canales Salazar issued on May 2, 2002 (file of annexes presented by the State on October 17, 2008, tome V, folio 8244); copy of the birth certificate of Moisés Canales Godoy issued on October 1, 2001 (file of annexes to the pleadings and motions brief, tome V, annex A150, folio 10794); statement made by Yordin Eduardo Herrera Urizar on April 23, 2011, notarized on February 6, 2012 (file of annexes to the pleadings and motions brief, tome VII, annex C21, folio 12695); statement made by Yordin Eduardo Herrera Urizar on August 25, 2006 (file of annexes to the merits report, tome III, annex 143, folio 1114), and affidavit made by Elsa Noemí Urizar Sagastume on March 21, 2007 (file of annexes to the merits report, tome III, annex 143, folio 1118).

for fear of attacks. In February 1984, Moisés, who was 23 years of age, went to live with his girlfriend, who was pregnant, and his family was in contact with him every other day.

154. The *Diario Militar* recorded Zoilo Canales Salazar as follows:

75. ZOILO CANALES SALAZAR

(alias) SALVADOR. Member of the PGT-CC ND [National Directorate], Right Wing; was responsible for the military apparatus; lived in Los Alamos, was betrayed by Claudia at 1730 hours on 15th Avenue "A", Zona 1, near Gerona A.k.a.: ABRAHAM URIZAR ORTEGA. CRECENCIA MÉLCHOR SALAZAR. 29-03-84: 300.

155. The *Diario Militar* records Moisés Canales Godoy as follows:

77. MOISÉS CANALES GODOY

(alias) CANCRE. Member of the PGT-CC. Responsible for liaison with the personnel of the Western Regional Office (Jalapa, Jutiapa). 01-03-84: Captured at a vegetable stand in Colonia Paulo VI, Calzada San Juan, Zona 7. Working in Jutiapa military zone.

156. Zoilo's youngest son, who was nine years old at the time of the facts, recalls that when the family lost contact with Moisés, they began to move house every two days. In March 1984, Mr. Canales Salazar went to his former home in Zone 1 and did not return. Days later, armed men entered Zoilo's house using his keys and arrested and blindfolded his youngest son and his wife, taking them away "to a small room with nothing but a mattress covered in blood where they were left for four days while being threatened and interrogated," and from where they could hear how other people were being mistreated, until they were released. The family did not report any of the facts or conduct a search out of fear.

## **25. Félix Estrada Mejía<sup>98</sup>**

157. Félix Mejía Estrada was 25 years of age at the time of his disappearance. He had five siblings, was a member of the Patriotic Youth for Labor and PGT (a section of the PGT) and was in the fifth year of his studies for a teaching degree. The *Diario Militar* records Félix Mejía Estrada as follows:

131. FELIX ESTRADA MEJÍA

(alias) MELESTO and ANTONIO. Liaison between the PGT Leadership and College Education; Left Wing. 15-05-84: At 0835 hours, was captured on 6th Avenue, Zone 9. 05-06-84: 300.

158. Felix disappeared on May 15, 1984, but the family did not report the facts immediately for fear of reprisals. Two weeks later, the family began searching hospitals, cemeteries and morgues. According to a brother, the family felt threatened when they went to search for him, and although they did not file a complaint about the incident, after 1999, they founded an organization called *Clavel Rojo* [Red Carnation] to commemorate those who had disappeared.

## **26. Crescencio Gómez López<sup>99</sup>**

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<sup>98</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 396); affidavit made by Salomón Estrada Mejía on August 14, 2006 (file of annexes to the merits report, tome III, annex 145, folio 1121); testimony of Salomón Estrada Mejía authenticated on March 27, 2008 (file of annexes to the merits report, tome III, annex 146, folio 1123), and complaint filed by Salomón Estrada Mejía before the Public Prosecution Service on July 7, 1999 (file of annexes to the merits report, tome III, annex 147, folio 1130).

<sup>99</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folios 404); affidavit made by Fredy Anelson Gómez Moreira on August 1, 2006 (file of annexes to the

159. Crescencio Gomez López was 41 years of age at the time of his disappearance; he had a common-law wife and five children. Mr. Gómez López was a construction worker and supported the Coca Cola labor union, from the outside. The *Diario Militar* records Gómez López Crescencio as follows:

158. CRESENCIO GÓMEZ LÓPEZ

(alias) SULIVAN. Member of the PGT-PC. 23-06-84: Was captured in the main entrance, near the outpatients department of the Hospital Roosevelt. 01-08-84= 300.

160. Crescencio Gómez López disappeared on June 23, 1984, when he went to Roosevelt Hospital to visit his son. The family searched for him on the premises of the National Police, the Army, the G-2 Judicial Command, and also in hospitals and morgues. However, initially, they did not file a formal complaint out of fear. Subsequently, on July 7, 1999, his brother went to the Public Prosecution Service to report his disappearance, so that it would be investigated.

## **27. Luis Rolando Peñate Lima<sup>100</sup>**

161. Luis Rolando Peñate Lima was 24 years of age and a primary school teacher. He was married and his wife was pregnant at the time of his disappearance. The *Diario Militar* records Luis Rolando Peñate Lima as follows:

165. LUIS ROLANDO PEÑATE LIMA

(alias) "Manuel," "Moses," "Ricardo." (a.k.a.) CARLOS JOSÉ MENDOZA RIVERA. (a.k.a.) VÍCTOR MANUEL SAMAYOA GÁLVEZ. Deputy Head of the S.O.E. of the PGT-LEFT; lawyer by profession, Inferi. 11-10-84. Was captured at 17:30 hours in Cemetery Avenue and 14th Street, Zone 5. Handed over weapons, including a Galil he had at his home in Barrio San Miguel, San José Pinula. Delivered to the D.I on 302030ABR85.

162. His family recounts that, on the morning of the day of his disappearance, his car was found to have four flat tires. In the afternoon, when his wife arrived home, she realized that there were armed men inside, who searched the house and took valuables, including Mr. Peñate Lima's car. The family searched for him in hospitals, morgues and detention centers, but did not file a formal complaint.

## **28. Rudy Gustavo Figueroa Muñoz<sup>101</sup>**

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merits report, tome III, annex 150, folio 1136), and FAMDEGUA file card with general information on the victim Crescencio Gómez López of May 20, 1999 (file of annexes to the merits report, tome III, annex 261, folio 1393).

<sup>100</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 406); affidavit made by Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía on August 2, 2006 (file of annexes to the merits report, tome III, annex 151, folios 1139 and 1140), and certification by the municipality of Jutiapa (file of annexes presented by the State on October 17, 2008, tome V, folio 8441).

<sup>101</sup> The evidence regarding this victim is found in: *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 407); testimony of Mercedes Muñoz Rodas de Figueroa filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome III, annex 152, folio 1142); testimony of Rudy Alberto Figueroa Maldonado filmed and authenticated on March 28, 2008, (file of annexes submitted to the Commission by the petitioners, folio 5095); affidavit made by Rudy Alberto Figueroa Maldonado on August 22, 2006 (file of annexes to the merits report, tome III, annex 153, folio 1152); copy of the birth certificate of Rudy Gustavo Figueroa Muñoz (file of annexes presented by the State on October 17, 2008, tome V, folio 8471); letter from the Fingerprint Section of the Criminalistics Unit, National Civil Police of Guatemala to the Assistant Prosecutor of the *Diario Militar* Coordinator of July 18, 2001 (file of annexes to the merits report, tome III, annex 157, folio 1173), and death certificate of Rudy Gustavo Figueroa Muñoz (file of annexes presented by the State on October 17, 2008, tome I, folio 6369).

163. Rudy Gustavo Figueroa Muñoz was 32 years of age; he had two children and his wife was pregnant at the time of his death. Mr. Figueroa Muñoz taught at the University and had worked at the Guatemalan Social Security Institute, where he had been a member of the labor union. The *Diario Militar* records Rudy Gustavo Figueroa Muñoz as follows

166. RUDY GUSTAVO MUÑOZ (A.K.A.) JUAN CARLOS ESTRADA GALINDO. (alias) "Chayo", "Martinez", "Alfredo", "Gustavo." Head of the S.O.E. of the PGT-LEFT, took over from "Guanaco." 12-10-84. Captured at 08:30 hours in his office located on Route 3, 2-70, Zona 4. He handed over another Galil that was in his apartment located on 8th Avenue and 9th Street, Zone 7, Apartment "C", Colonia Landívar. 3-12-84=300. COL. JRB 3-21.

164. Among other measures to find Mr. Figueroa Muñoz while he was presumably disappeared, the family filed an application for *habeas corpus*, they searched for him on police premises, and reported the facts to the media. In early December 1984, approximately two months after his disappearance, the body of Mr. Figueroa Muñoz appeared on the street near his parents' home. It was determined that his death was due to "injuries to his neck, chest, and abdomen caused by a sharp instrument." The family did not continue to denounce the facts out of fear.

#### **D) Investigation opened in 1999**

165. After the appearance of the *Diario Militar*, the non-governmental organizations FAMDEGUA and GAM denounced the events recorded in the *Diario Militar*, on behalf of the victims in May 1999.<sup>102</sup> They asked the Public Prosecution Service<sup>103</sup> to verify the authenticity of the document, requested archives from various Army intelligence units, asked the Ministry of Defense to provide information on the identity of the senior, middle and junior commanders of military intelligence between 1982 and 1985, and also that their statements be obtained.<sup>104</sup> Furthermore, on August 3, 1999, the Ombudsman filed a complaint concerning the facts described in the said document against those who held the positions of, *inter alia*, Head of State, National Director of the National Police, and Inspector of G-2 Intelligence, at the time of the facts.<sup>105</sup>

166. The different complaints filed following the appearance of the *Diario Militar* were distributed, on an individual basis, to the 35 Prosecution Agencies that existed "at that time" in the Metropolitan Circuit.<sup>106</sup> In 1999 and 2000, the different agencies requested

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<sup>102</sup> The complaint was filed on behalf of, *inter alia*, all the disappeared victims in this case. Cf. Note of January 31, 2008, of the Special Prosecution Unit for human rights violations to the Permanent Attention Office of the District Prosecution Service of Guatemala (file of annexes presented by the State on October 17, 2008, tome I, folios 5846 to 5852).

<sup>103</sup> At this date, the accusatory model of criminal procedure was already in force in Guatemala; it came into effect on July 1, 1994, with the Code of Criminal Procedure approved by Decree No. 51-92 (file of annexes to the pleadings and motions brief, tome II, annex A10, folios 9472 to 9605). Although the decree was issued on December 7, 1992, the Code only entered into force on July 1, 1994, as indicated in its article 555 (file of annexes to the pleadings and motions brief, tome II, annex A10, folio 9605). This entry into force was established by article 1 of Decree No. 45-93 (file of annexes to the pleadings and motions brief, tome II, annex A10, folio 9605).

<sup>104</sup> Cf. Complaint filed by FAMDEGUA before the Prosecutor General and Head of the Public Prosecution Service on May 21, 1999 (file of annexes to the pleadings and motions brief, tome IV, annex A47, folios 10448 and 10449); Testimony given by María Emilia García before the Public Prosecution Service on June 9, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6688), and letter from the assistant prosecutor of the Public Prosecution Service to the Executive Secretariat of the Office of the Prosecutor General of the Republic of July 7, 2004 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6695 to 6697).

<sup>105</sup> Cf. Report of the Prosecutor of the Human Rights Section on case 16737-2005 of May 22, 2012 (hereinafter "Report of the Special Prosecution Unit") (merits file, tome IV, folio 1840).

<sup>106</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folio 1840).

information on the victims from various State entities and offices such as the General Immigration Directorate or Immigration Control Division of the Public Prosecution Service,<sup>107</sup> the Civil Registry Office,<sup>108</sup> the Ombudsman,<sup>109</sup> and civil society organizations, such as the Universidad de San Carlos, labor unions, human rights organizations, and foreign Governments.<sup>110</sup>

167. In addition, on June 10, 1999, Prosecution Agency No. 20 of the Public Prosecution Service requested specific information on the heads and deputy heads of various National Defense institutions and agencies between 1983 and 1985.<sup>111</sup> On June 16, 1999, the Ministry of Defense responded to this request indicating the names of some of the high-ranking officials of different sections of the Army. However, it refused to provide information on the heads of Military Intelligence, the Coordinators of the Self-defense Patrols and the Commanders of the Military Zones of the Republic, on the grounds that the questions had not been posed in the manner required by the Code of Criminal Procedure.<sup>112</sup> In addition, Prosecution Agencies Nos. 1, 2, 6 and 19 also requested information from the Ministry of Defense regarding the specific cases of some victims of the instant case.<sup>113</sup> In response to these requests, in some cases the Ministry of Defense responded that the request did not meet the requirements of the Code of Criminal Procedure, “regarding the name of the members of the Army who had been accused of committing a crime, as well as identification

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<sup>107</sup> With regard to José Miguel Gudiel Álvarez and Crescencio Gómez López: *Cf.* requests for information from the General Immigration Directorate of August 23, 1999, and letter from the Migratory Control Division to the Public Prosecution Service of August 18 and September 14, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6454, 6455 and 6456 and tome V, folios 8396 and 8397). These institutions responded that they had no information on migratory movements for the victims.

<sup>108</sup> *Cf., inter alia*, Requests for information from the Civil Registry Office of the municipality of Guatemala City with regard to Orencio Sosa Calderón, Lesbia Lucrecia García Escobar, Félix Estrada Mejía and Crescencio Gómez López of June 14, July 9 and September 9, 1999, and request for information from the Citizens Registry of July 14, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6518 and 6519; tome IV, folio 7600 and tome V, folios 8328, 8363, 8364, 8367 and 8370)

<sup>109</sup> *Cf., inter alia*, requests for information from the Ombudsman with regard to José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Joaquín Rodas Andrade, Zoilo Canales Salazar, Félix Estrada Mejía and Crescencio Gómez López of May 29 and 31, June 10 and 14 and October 12, 1999, and May 24, 2000; letter from the Office of the Ombudsman to the assistant prosecutor of the Public Prosecution Service of June 23, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6749 and 6790 to 6792; tome III, folio 7118; tome IV, folios 7590, 7591; tome V, folios 8117, 8118, 8237, 8240, 8406, and file of annexes to the merits report, tome II, annex 99, folio 941).

<sup>110</sup> See, *inter alia*, requests for information from the General Confederation of Workers of Guatemala, the Trade Union Unity Confederation, and the Trade Union of Workers of the Coca Cola Bottling Company with regard to Joaquín Rodas Andrade and Crescencio Gómez López (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8108, 8109, 8110, 8404, 8407), and Requests for information from Consulate of El Salvador with regard to José Miguel Gudiel Álvarez and to the Canadian Embassy with regard to Lesbia Lucrecia García Escobar, Félix Estrada Mejía and Crescencio Gómez López (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6457 to 6460; tome IV, folios 7594, and tome V, folios 8401 and 8402).

<sup>111</sup> *Cf.* Note of June 21, 1999, from the Coordinator of cases of disappeared persons (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8127 and 8128).

<sup>112</sup> *Cf.* Note No. 226-MDN-99 of the Ministry of Defense of June 16, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8129 to 8132).

<sup>113</sup> *Cf., inter alia*, requests of the Public Prosecution Service to the Minister of Defense with regard to Orencio Sosa Calderón, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Lesbia Lucrecia García Escobar, Zoilo Canales Salazar and Félix Estrada Mejía of May 31 and July 8 and 12, 1999, and Note No. 201-MDN-99 of the Ministry of Defense to the Public Prosecution Service of June 10, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6510 and 6511, 6759, 6791 and 6792; tome V, folio 8239 and file of annexes to the merits report, tome III, annex 175, folio 1219).

of the proceedings in which they were investigated”<sup>114</sup> while, in others, its answer does not appear in the evidence provided to the Court.

168. In addition, some of the prosecution agencies requested information from the National Civil Police<sup>115</sup> and the Ministry of the Interior.<sup>116</sup> On some occasions, when the requests were made directly to the Criminal Investigation Section of the Minors and Disappeared Persons Section of the National Police, the latter responded that it did not have the information requested because the Archive of the Criminal Investigative Service only contained paperwork from 1987 and the Section had begun to operate in 1988.<sup>117</sup> In addition, the Criminal Investigation Service of the Homicide Section answered, in relation to the investigations into two victims in the instant case, that its General Archive “only contains files from 1997 to date” and that, in the years corresponding to the events of the case “the [...] DIT functioned as an investigative body, and the actual investigation service has none of its files.”<sup>118</sup>

169. The Public Prosecution Service also requested the collaboration of, or summoned to appear, the next of kin of the victims or persons of interest to the National Police or to non-governmental organizations,<sup>119</sup> although the case file contains no evidence of whether these measures or the respective statements were taken. In addition, in 1999, the daughter of Víctor Manuel Calderón Díaz came forward to testify before the Public Prosecution

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<sup>114</sup> Regarding Orencio Sosa Calderón, Zoilo Canales Salazar, Lesbia Lucrecia García Escobar and Félix Estrada Mejía, see Notes Nos. 221-MDN-99, 222-MDN-99 and 201-MDN-99 of the Ministry of Defense to the Public Prosecution Service of June 10, 15 and 21, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6512; tome V, folio 8239, and file of annexes to the merits report, folio 1200).

<sup>115</sup> Regarding Orencio Sosa Calderón, José Porfirio Hernández Bonilla, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Joaquín Rodas Andrade, Zoilo Canales Salazar, Félix Estrada Mejía and Crescencio Gómez López: Cf. Requests for information from the Head of the Investigation Service of the National Civil Police of May 31 and June 17, 1999, to the National Civil Police on June 2 and 17, 1999, on August 26, 1999, and in September 2000, to the Identification Bureau of the National Civil Police of July 9 and August 27, 1999; Request for information from the Disappeared Persons Section of the National Civil Police of July 2, 1999; Note No. 1324-99 REF. SREG of the Criminal Investigation Service of the Children and Disappeared Section to the Public Prosecution Service of June 7, 1999; Request for information from the Transportation Department of the National Civil Police of July 14, 1999 (file of annexes presented by the State on October 17, 2008, tome II, folios 6516, 6517, 6570, 6752, 6753, 6754, 6755, 6759, 6760, 6761, 6762, 6763, 6764; 7589, 7595, 7596, 8104, 8238, 8362 8366 and 8369).

<sup>116</sup> Specifically, information was requested on the heads and deputy heads of different State institutions such as the Minister of Security, and the Director and Deputy Director of the National Police between 1983 and 1986. There is no evidence of a response to this request in the file presented to the Court. Cf. Request for information made by the Public Prosecution Service to the Ministry of the Interior on June 14, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8112).

<sup>117</sup> Cf. Notes No. 1324-99 REF. SREG and No. 1329-99 REF. SREG sent by the Criminal Investigation Service of the Children and Persons Disappeared Section to the Public Prosecution Service on June 7, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8107 and 8238).

<sup>118</sup> Note No. 1995-99 of June 9, 1999, of the Criminal Investigation Service, Homicide Section (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8326).

<sup>119</sup> Cf. Requests for summons sent by the Public Prosecution Service to the National Police with regard to Orencio Sosa Calderón, Álvaro Zacarías Calvo Pérez, Carlos Guillermo Ramírez Gálvez, Lesbia Lucrecia García Escobar, Félix Estrada Mejía and Luis Rolando Peñate Lima on May 26, June 2, 8, 9 and 14, and July 26, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6513, 6841; tome III, folio 7109; tome IV, folios 7587, 7598, and tome V, folio 8431). Also, on June 14, 1999, the collaboration of María Emilia García, of the *Grupo de Apoyo Mutuo* was requested in order to issue summons to the next of kin of different victims (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7109; tome IV, folio 7602, and tome V, folio 8329). According to the information in the case file, Mrs. García Escobar's father did not appear before the prosecutor's office and did not justify his failure to appear. Cf. Note of the Public Prosecution Service of May 31, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folio 7597).

Service.<sup>120</sup> In addition, statements were taken from two of Amancio Samuel Villatoro's children who came forward voluntarily to testify before the Public Prosecution Service, and a writ was issued to summon Mr. Villatoro's wife, who appeared on July 13, 1999.<sup>121</sup> In addition, Marcia Méndez Calderón and Wendy Santizo Méndez, sister and daughter of Luz Haydée Méndez Calderón came forward to testify,<sup>122</sup> and the mother of Julio Alberto Estrada Illescas was summoned to testify,<sup>123</sup> although there is no record of whether she made a statement; also, Axel Roberto Estrada Illescas, the brother of the last victim, came forward to testify,<sup>124</sup> as well as the father of Joaquin Rodas Andrade<sup>125</sup> and the brother of Felix Estrada Mejia.<sup>126</sup> Furthermore, the collaboration of the brother of Crescencio Gómez López was requested.<sup>127</sup> That same year, two investigators from the Public Prosecution Service went to Joaquin Rodas Andrade's family home and interviewed his mother who testified about the disappearance of her son and provided information on two possible witnesses who had supposedly seen her son in 1996 and 1997. According to Josefa Elizabeth Andrade Reyes de Rodas, she never heard anything further about the investigations conducted by these experts.<sup>128</sup>

170. In April 2000, Prosecution Agency No. 34 informed the Special Prosecution Office for the Coordination of *Diario Militar* Cases that it had requested information from various institutions "which could have links to the [the disappeared] persons," interviewed their next of kin, and requested the necessary permission to travel to places where family members indicated that these persons might be, which were not granted. The agency suggested to the Special Prosecution Office that "the investigation of the cases had not been obstructed, [even though it was] true [that] some cases had not achieved positive results," and that the different agencies that were processing the cases should be informed of the

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<sup>120</sup> Cf. Testimony given by Sonia Guisela Calderón Revolorio before the Public Prosecution Service on May 25, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 6927 and 6928).

<sup>121</sup> Cf. Testimony given by Néstor Amílcar Villatoro Bran before the Public Prosecution Service on August 18, 1999 (file of annexes to the merits report, tome II, annex 49, folios 665 to 669); affidavit made by Sergio Raúl Villatoro Bran, Norma Carolina Villatoro Bran and Samuel Lisandro Villatoro Bran on December 21, 2004 (file of annexes to the merits report, tome II, annex 48, folio 657 to 660); request to summons María del Rosario Bran sent by the Public Prosecution Service to the National Civil Police on June 29, 1999 (file of annexes to the merits report, tome II, annex 49, folio 662), and note of the Public Prosecution Service case 321-99 JC of July 13, 1999 (file of annexes to the merits report, tome II, annex 49, folios 663 and 664).

<sup>122</sup> Cf. Summons request sent by the Public Prosecution Service to the National Civil Police on June 3, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7328), and testimony of Wendy Santizo Méndez and Marcia Méndez Calderón before the Public Prosecution Service on June 11, 1999 (file of annexes to the merits report, tome II, annex 98, folios 934 to 939).

<sup>123</sup> Cf. Request of the Public Prosecution Service for the collaboration of María Illescas de Estrada of July 28, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folio 7776).

<sup>124</sup> Cf. Testimony given by Axel Roberto Estrada Illescas before the Public Prosecution Service on August 9, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folios 7777 and 7778).

<sup>125</sup> Cf. Testimony given by José Augusto Rodas Ralón before the Public Prosecution Service on July 5, 1999 (file of annexes to the merits report, tome III, annex 139, folios 1095 to 1098).

<sup>126</sup> Cf. Testimony given by Salomón Estrada Mejía before the Public Prosecution Service on July 7, 1999 (file of annexes to the merits report, tome III, annex 147, folio 1130).

<sup>127</sup> Cf. Request by the Public Prosecution Service for the collaboration of Fredy Anelson Gómez Moreira of July 14, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8371).

<sup>128</sup> Cf. Affidavit made by Joséfa Elizabeth Andrade Reyes de Rodas on October 9, 2007 (file of annexes to the merits report, tome III, annex 135, folios 1071 bis to 1079 bis); *MIP nombra equipo especial para el caso de Quincho* [MIP appoints special team for the Quincho case], *La Idea Creativa*, June-July 1999 (file of annexes to the merits report, tome III, annex 136, folio 1087), and preliminary report on the investigation concerning the youth Joaquín Rodas Andrade dated July 29, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8141).

results obtained “even though these results are known owing to information that is circulating in judicial circles.”<sup>129</sup>

171. Subsequently, the Public Prosecution Service combined all the complaints under one Prosecution Office, which it called the *Diario Militar* Coordinator attached to the Office for the Prosecution of Administrative Offenses, which continued the investigation.<sup>130</sup> Between 2002 and 2004, the *Diario Militar* Coordinator requested information on the disappeared victims from State institutions or offices, such as the Supreme Electoral Tribunal,<sup>131</sup> the Tax Administration Superintendence,<sup>132</sup> the Civil Registry Office,<sup>133</sup> and the National Civil Police.<sup>134</sup> Also, in December 2002, the testimony was taken of Orencio Sosa Calderón's sister, who came forward voluntarily before the Special Prosecutor's Office of the Public Prosecution Service<sup>135</sup> and, in April 2003, Wendy Santizo Méndez, daughter of Luz Haydée Méndez Calderón, was summoned to testify,<sup>136</sup> although the respective statement does not appear in the case file. In addition, in 2001, the *Diario Militar* Coordinator requested a meeting with the two investigators who had conducted “the prosecution's original inquiries in [the] case” of Joaquin Rodas Andrade (*supra* para. 169), in order to provide it with “guidelines to follow,” although the case file does not reveal the resulting measures ordered or taken.<sup>137</sup>

172. In particular, regarding the case of Rudy Gustavo Figueroa Muñoz, whose remains appeared in 1984 (*supra* para. 164), the *Diario Militar* Coordinator requested information from the National Civil Police, which sent photographs of the corpse found in 1984 and

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<sup>129</sup> Cf. Letter from the prosecutor of the Public Prosecution Service to the Special Prosecutor of the Public Prosecution Service of April 18, 2000 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 6907).

<sup>130</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folios 1840 a 1843).

<sup>131</sup> Cf., *inter alia*, requests for information by the *Diario Militar* Coordinator to the Supreme Electoral Tribunal with regard to 12 of the disappeared victims of September 17, 2001, February 7 and April 9, 25 and 29, 2002 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6451 and 6796, and tome III, folios 6910, 6921, 7370, 7495 and 7553), and notes of April 12 and 19, 2002 (file of annexes to the merits report, tome III, annex 163, folio 1187 and file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7124 and tome IV, folio 7684).

<sup>132</sup> Cf., *inter alia*, requests for information by the *Diario Militar* Coordinator to the Tax Administration Superintendence with regard to 23 of the disappeared victims and Rudy Gustavo Figueroa Muñoz of April 30, June 5, 7, 19, 20, 21 and 28 and July 2, 5, 9, 10 and 11, 2002 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6452, 6612, 6691, 6768, 6797, 6839; tome III, folios 6918, 7057, 7119, 7125, 7201, 7379, 7496, 7554; tome IV, folios 7623, 7687, 7786, 7951, 7995, and tome V, folios 8205, 8285, 8341, 8412, 8437, and file of annexes to the merits report, tome III, annex 164, folio 1189).

<sup>133</sup> Cf., *inter alia*, requests to the Civil Registry Office of Guatemala of June 28 and September 11, 2001, May 14 and 24, and January 15, 2003; request to the Civil Registry Office of Jutiapa of May 15, 2002; requests to the Civil Registry Office of Civil de San Antonio of May 16, 2002, and January 8, 2003, and request to the Civil Registry Office of Pajapita of November 7, 2001, with regard to 11 of the disappeared victims and Rudy Gustavo Figueroa Muñoz (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 7127, 7203, 7371; tome IV, folios 7689, 7799, 7949, 7997; tome V, folios 8269, 8343, 8414, 8418 and file of annexes to the merits report, tome III, annex 161, folio 1183 and annex 162, folio 1185).

<sup>134</sup> Cf., *inter alia*, requests of July 12 and September 11, 2001, with regard to Luz Haydée Méndez Calderón and Moisés Canales Godoy (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7367 and tome V, folio 8264).

<sup>135</sup> Cf. Testimony given by Laurenta Marina Sosa Calderón before the Public Prosecution Service on December 10, 2002 (file of annexes to the merits report, tome I, annex 27, folios 511 to 514).

<sup>136</sup> Cf. Summons request sent to the National Civil Police in April 2003 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7381).

<sup>137</sup> Cf. Request of the *Diario Militar* Coordinator to the Criminal Investigations Department of the Public Prosecution Service of June 22, 2001 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8101).

advised that, according to its records, Mr. Gustavo Figueroa had died as a result of “stab wounds.”<sup>138</sup> Information was also requested from the Director of the Forensic Medicine Service, whose answer does not appear in the case file, the Criminal Investigation Service of the National Civil Police, and the Criminal Investigation Department of the Public Prosecution Service, which in response forwarded a photograph album of the site where the victim’s remains had appeared.<sup>139</sup> The Public Prosecution Service interviewed the victim’s wife Alba Marina Campos Polanco and, in October 2001, issued a report concluding, based on the information obtained, that the remains of Mr. Figueroa Muñoz were buried in the Los Cipreses Cemetery.<sup>140</sup>

173. In 2004, the *Diario Militar* Coordinator indicated that, “despite all the efforts and determination to achieve the desired results, problems have arisen during this investigation, including the passage of time, [which has permitted several institutions to destroy their archives, because more than 10 years have elapsed; and also], there is scant information [...] on the disappeared persons. In addition, it indicated that it “was making a request in order to hear the interrogation of [Oscar Humberto Mejia Víctores] and then decide his legal situation.”<sup>141</sup>

174. On August 1, 2005, the case file corresponding to the investigation of the facts of the *Diario Militar* was forwarded to the recently created Unit for Special Cases and Human Rights Violations of the Public Prosecution Service (hereinafter the “Special Prosecution Unit”), which has conducted the said investigation from that time until today.<sup>142</sup>

175. According to the report prepared by the said Special Prosecution Unit and submitted to the Court as useful evidence (*supra* paras. 11 and 15), the measures taken by this unit included the preparation of a “general matrix of all the persons mentioned in the *Diario Militar*,” with their data, as well as the measures taken with regard to each of them. Furthermore, “file cards” were prepared on each of the victims and, to this end, different institutions were required to provide “all the information [...] needed to establish a profile of the victims,” such as birth certificates, death certificates, neighborhood identity cards certifications, and other documents. It indicated that it was “analyzing the information provided by the Historical Archive of the National Police.” In addition, the unit advised that it had requested information from the Ministry of Defense “concerning the identity of the Commanders, Seconds-in-Command, and members of the Staff of the zones of Cobán, Quetzaltenango and Retalhuleu,” and had also sought the authorization of the courts to require this information regarding the military zone of Chimaltenango, because, regarding

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<sup>138</sup> Letter from the Graphology Section, Criminalistics Unit, National Civil Police of Guatemala to the assistant prosecutor, *Diario Militar* Coordinator of July 18, 2001 (file of annexes to the merits report, tome III, annex 157, folio 1173).

<sup>139</sup> Cf. Letter from the assistant prosecutor of the *Diario Militar* Coordinator to the Director of the Criminal Investigation Service of the National Civil Police of July 10 and 19, 2001; letter from the Criminal Investigation Service, Homicide Section, to the assistant prosecutor of the *Diario Militar* Coordinator of July 26, 2001, and letter from the assistant prosecutor to the Director of the Forensic Medicine Service of July 6, 2001 (file of annexes to the merits report, tome III, Annexes 158, 159 and 160, folios 1175, 1177 to 1181); requests from the *Diario Militar* Coordinator to the Criminalistics Investigation Department of June 28 and July 6, 2001 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8462, 8465). Sub-Directorate of Investigations, Public Prosecution Service, Photograph album of October 29, 2001 (file of annexes presented by the State with its brief of October 17, 2008, tome V, folios 8467 a 8470).

<sup>140</sup> Cf. Note of October 29, 2001, of the assistant prosecutor, Public Prosecution Service, *Diario Militar* Coordinator (file of annexes to the merits report, tome III, annex 165, folio 1191).

<sup>141</sup> Cf. Letter from the assistant prosecutor of the Public Prosecution Service to the Executive Secretariat of the Office of the Prosecutor General of the Republic of July 7, 2004 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6695 to 6697).

<sup>142</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folios 1840 to 1843).

the latter, the Ministry of Defense had advised that it “did not have the required information in its files.” In addition, it indicated that “judicial authorization was obtained to require information from the Ministry of Defense [concerning members of] the Staff of various military zones,” but did not mention whether it had received an answer in this regard.<sup>143</sup>

176. According to the case file of this investigation provided to the Court, in 2006 and 2007, the Public Prosecution Service again requested information on the disappeared victims from different State entities and offices, such as the Universidad de San Carlos,<sup>144</sup> the General Immigration Directorate,<sup>145</sup> the Civil Registry Office,<sup>146</sup> and the National Police,<sup>147</sup> among other State and civil society institutions and organizations.

177. In addition, two next of kin of Mr. Gudiel Álvarez<sup>148</sup> and the sister of Mr. Sosa Calderón were summoned, and the latter testified before the Public Prosecution Service in July 2006.<sup>149</sup> That year, the Prosecution requested the collaboration of FAMDEGUA in order to summon the next of kin of Álvaro Zacarías Calvo Pérez, the wife of Amancio Samuel Villatoro, the father of Manuel Ismael Salanic Chiguil, and the father of Lesbia Lucrecia García Escobar to testify. In 2007, it ordered the National Police to summon Mrs. Monroy Peralta on two occasions, the brother and wife of Otto René Estrada Illescas on three occasions, and two of Mr. Alvarado Arévalo’s next of kin.<sup>150</sup> There is no record in the judicial

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<sup>143</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folios 1840 to 1843).

<sup>144</sup> Cf., *inter alia*, requests of the Special Prosecution Unit to the Universidad de San Carlos with regard to 18 of the disappeared victims of July 10, 2006, and February 20, 2007 (file of annexes to the merits report, tome III, annex 194, folio 1256 and annex 182, folio 1232 and file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6465, 6615, 6770, 6799; tome III, folios 6960, 7012, 7058, 7128, 7382, 7498, 7556; tome IV, folios 7625, 7706, 7788, 7953, 8000, and tome V, folio 8147), and answers dated July 13, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6464, 6616, 6771, 6800; tome III, folios 6961, 7013, 7059, 7129, 7383, 7499, 7557; tome IV, folios 7626, 7707, 7789, 7954, 8001, and tome V, folio 8153).

<sup>145</sup> Cf., *inter alia*, requests of the Special Prosecution Unit to the General Immigration Directorate with regard to 19 of the disappeared victims of May 23 and July 10, 2006 and August 1, 2007 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6466, 6618, 6730, 6773, 6802, 6849; tome III, folios 6929, 6930, 7015, 7061, 7131, 7252, 7385, 7501, 7559; tome IV, folios 7709, 7791, 7956, 8003, 8079, and tome V, folios 8151).

<sup>146</sup> Cf., *inter alia*, with regard to 13 of the disappeared victims, requests to the Civil Registry Office of July 19, 20, 24 and 25, 2006; requests to the Civil Registry Office of Santa Lucía of July 19, 2006 and July 24, 2006; request to the Civil Registry Office of Pueblo Nuevo of July 20, 2006; request to the Civil Registry Office of Tecun Uman of July 24, 2006; request to the Civil Registry Office of Mazatenango of July 25, 2006; request to the Civil Registry Office of Malacatán of July 19, 2006; request to the Civil Registry Office of Villa Nueva of July 24, 2006; request to the Civil Registry Office of Quetzaltenango of July 24, 2006, and request to the Civil Registry Office of Huehuetenango of July 24, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6473, 6477, 6624, 6735, 6781, 6809, 6863; tome III, folios 7021, 7022, 7068, 7070, 7071; tome IV, folios 7720, 7799, 7962, 7965, 8020, and tome V, folio 8175).

<sup>147</sup> Cf., *inter alia*, with regard to 4 of the disappeared victims: request to the Personnel Sub-directorate of the National Civil Police of November 14, 2007 (file of annexes to the merits report, tome II, annex 62, folio 777); requests for information of September 22 and October 17, 2006, and request to the Head of the Disappeared Persons Section of September 18, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7215; tome IV, folios 7692, 7727 and 8047).

<sup>148</sup> Cf. Writ of summons of the Special Prosecution Unit to FAMDEGUA of July 24, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6643).

<sup>149</sup> Cf. Testimony given by Laurenta Marina Sosa Calderón before the Public Prosecution Service on July 27, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6614).

<sup>150</sup> Cf. Writ of summons of the Special Prosecution Unit to FAMDEGUA of July 24, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6643 and 6861 and tome IV, folio 7653), and writ of summons of the Special Prosecution Unit to the National Police of March 16, August 1 and 17, September 3, 12 and 17, 2007 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6844 and 6882; tome IV, folios 7726, 7741, 7745, 7746 and 8077).

case file that these statements were in fact received. Also, in 2006, the daughter of Víctor Manuel Calderón Díaz was summoned, and she came forward to testify on May 25 that year; the son and nephew of the Estrada Illescas brothers, who came forward to testify on August 2, 2006, and Mario Alcides Polanco, complainant in the case of the disappearance of Sergio Leonel Alvarado Arévalo, who came forward to testify on September 23, 2006.<sup>151</sup> The sister of Luz Haydée Méndez Calderón, Marcia Méndez Calderón, also came forward to testify in June 2007.<sup>152</sup>

178. In the case of Sergio Saúl Linares Morales, in 2006, the Public Prosecution Service summoned several of his family members.<sup>153</sup> In July that year, his sisters Ruth Crisanta Linares Morales and Mirtala Elizabeth Linares Morales came forward to testify, and provided information on a person who had taken part in the capture of Sergio Saúl, according to information published in the newspapers in 1999.<sup>154</sup> The Prosecution required the Criminal Investigation Department to investigate this and, consequently, information was requested from the media and several institutions were asked for information on this potential witness.<sup>155</sup> The report prepared by the Prosecution Office in charge of the investigation indicated that the witness was located in Canada, and that he had expressed his "total willingness to collaborate with the investigation."<sup>156</sup> In addition, the Prosecution Office provided information on the implementation of other measures aimed at locating other possible witnesses of the capture of Sergio Saúl Linares Morales, without noting the date they were taken.

179. In addition, in February 2007, information was requested from the National Civil Police concerning the Heads and Deputy Heads of Technical Investigation Directorate and the Director of the National Police in 1983. In response to this request, the National Police forwarded the names of the senior members of the National Police in 1983.<sup>157</sup> In February

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<sup>151</sup> Cf. Writ of summons of the Special Prosecution Unit of May 19, 2006, and Testimony given by Sonia Guisela Calderón Revolorio before the Public Prosecution Service on May 25, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 6925, 6927 and 6928); writ of summons of the Special Prosecution Unit to FAMDEGUA of July 24, 2006, and testimony before the Public Prosecution Service by Paulo René Estrada Velásquez on August 2, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folios 7724, 7725 and 7798); writ of summons of the Special Prosecution Unit to Mario Alcides Polanco of September 21, 2006, and testimony provided before the Special Prosecution Unit by Mario Alcides Polanco on September 26, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folio 8041 and 8042).

<sup>152</sup> Cf. Testimony given by Marcia Méndez Calderón before Prosecutor of the Human Rights Section on June 11, 2007 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7400).

<sup>153</sup> Cf. Request for appearance from the Special Prosecution Unit to Raquel Morales widow of Linares of October 17, 2006, and writ of summons of the Special Prosecution Unit to FAMDEGUA of July 24, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7217 and 7298).

<sup>154</sup> Cf. Testimony given by Mirtala Elizabeth Linares before the Public Prosecution Service on July 28, 2006 (file of annexes to the merits report, tome II, annex 84, folios 844 to 846); Edgar Gabriel Rosales, *Ex guerrillero confiesa: Delaté a compañeros del PGT* [Former members of the guerrilla confesses: betrays PGT companions], *Siglo Veintiuno* of August 13, 1999 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7223), and Testimony given by Ruth Crisanta Linares Morales before the Public Prosecution Service on October 24, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7218 to 7221).

<sup>155</sup> Cf. Requests of the Special Prosecution Unit to the Criminalistics Investigation Directorate, the Transportation Department and a the Tax Administration Superintendence in 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7228, 7230 to 7236, 7240 and 7247).

<sup>156</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folio 1842).

<sup>157</sup> Cf. Request for information by the Public Prosecution Service to the National Civil Police of February 20, 2007 (file of annexes to the merits report, tome III, annex 188, folio 1244), and Decision No. 141-2007 of the General Personnel Directorate of February 22, 2007 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6699 to 6709).

2007, the Director of the National Police in 1983 was summoned and appeared. This former Director affirmed that the National Police had no knowledge of disappeared persons at the time of the facts; that the said institution only worked with ordinary offenses by order of the Minister of the Interior; that he was “absolutely sure that none [of the disappeared persons] was taken to any Corps of the National Police,” and that the National Police had received no complaints concerning disappeared persons, and therefore “no investigation had been conducted” in this regard.<sup>158</sup>

180. Information was also requested from the Ministry of Defense on the military intelligence officers in 1983.<sup>159</sup> However, the Ministry of Defense refused to respond to the request owing to the absence of an order from a competent court<sup>160</sup> and, on two other occasions, responded by indicating that it could not provide the information because the request did not meet the requirements of the Code of Criminal Procedure.<sup>161</sup> In addition, information was requested from the National Police on the heads and deputy heads of that entity in 1983, to which it responded with the names of the Police Lieutenant Colonel and Major.<sup>162</sup>

181. In 2008, the Public Prosecution Service requested information on the disappeared victims, mainly from the PDH,<sup>163</sup> the Guatemalan Forensic Anthropology Foundation (hereinafter “FAFG”),<sup>164</sup> and the National Compensation Program,<sup>165</sup> among other State and

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<sup>158</sup> Cf. Testimony given by Héctor Rafael Bol de la Cruz before the Special Prosecution Unit on February 26, 2007 (file of annexes to the merits report, tome III, annex 170, folios 1202 and 1203), and writ of summons of the Public Prosecution Service of February 20, 2007 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6713).

<sup>159</sup> Cf. Letter of the Public Prosecution Service to the Minister of Defense dated February 20, 2007 (file of annexes to the merits report, tome III, annex 168, folio 1198), and Request for information from the Special Prosecution Unit to the Ministry of Defense of September 22, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folio 8045).

<sup>160</sup> Cf. Letter of the Minister of Defense to the Public Prosecution Service of March 13, 2007 (file of annexes to the merits report, tome III, annex 171, folio 1205).

<sup>161</sup> Cf. Notes Nos. 7470 6440 of the Ministry of Defense to the Public Prosecution Service of September 29 and November 13, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7214 and tome IV, folio 8046).

<sup>162</sup> Cf. Request for information from the Special Prosecution Unit to the National Civil Police of March 3, 2008, and Decision No. 11-2008 of March 14, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6652 and 6663).

<sup>163</sup> Cf., *inter alia*, requests to the PDH with regard to 23 of the disappeared victims and Rudy Gustavo Figueroa of April 10 and 14, 2008, and answers of the la PDH of May 5 and 20, 2008 (file of annexes to the merits report, tome I, annex 35, folio 589, tome III, Annexes 196, 197, 198, 199, 205, 208, 211, 216, 218, 250, 221, 224, 230, 233, 238, 244 and 247, folios 1260, 1262, 1264, 1266, 1278, 1284, 1290, 1300, 1304, 1368, 1310, 1316, 1328, 1334, 1344, 1356 and 1362 and file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6669; tome III, folio 7564; tome IV, folio 7806; tome V, folios 8224, 8296, 8297 and 8348).

<sup>164</sup> Cf., *inter alia*, requests for information from the Special Prosecution Unit to the FAFG with regard to 24 of the disappeared victims and Rudy Gustavo Figueroa Muñoz of June 26, 2008 (file of annexes to the merits report, tome I, annex 36, folio 591 and tome III, Annexes 200, 201, 202, 203, 204, 207, 210, 213, 214, 220, 223, 226, 229, 232, 242, 246, folios 1268, 1270, 1272, 1274, 1276, 1282, 1288, 1294, 1296, 1308, 1314, 1320, 1326, 1332, 1352 and 1360 and file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6673; tome III, folios 7176, 7573; tome IV, folios 7814; tome V, folios 8233, 8300, 8357 and 8456).

<sup>165</sup> Cf., *inter alia*, requests for information from the Special Prosecution Unit with regard to 22 of the disappeared victims and Rudy Gustavo Figueroa to the National Compensation Program of April 16, and June 4 and 9, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6672; tome III, folio 7566; tome V, folios 8225, 8298, 8349 and file of annexes to the merits report, tome I, annex 34, folio 587 and tome III, Annexes 189, 190, 191, 206, 209, 212, 217, 219, 255, 222, 225, 228, 231, 234, 240, 245, 248, folios 1246, 1248, 1250, 1280, 1286, 1292, 1302, 1306, 1378, 1312, 1318, 1324, 1330, 1336, 1348, 1358 and 1364).

civil society organizations and institutions, such as the Universidad de San Carlos de Guatemala, the General Transportation Directorate, and some human rights organizations.

182. On February 21, 2008, the Public Prosecution Service interviewed the sister of Mr. Gudiel Álvarez, Makrina Gudiel Álvarez, on the circumstances of her brother's disappearance and, in April that year, she asked the Prosecution to expedite the investigation, considering that it had not achieved any results.<sup>166</sup> Based on the information provided by Makrina Gudiel Álvarez, on April 14, 2008, the Prosecution requested information on the current residents of the house where José Miguel Gudiel had lived, without obtaining any results.<sup>167</sup> In addition, it summoned the brother and mother of Mr. Ramírez Gálvez to testify, and they appeared before the Public Prosecution Service on August 22 that year.<sup>168</sup> Similarly, in August 2008, the sister of Juan Pablo and María Quirina was summoned; however, her testimony was not received because "the summons [...] had expired."<sup>169</sup> In addition, two family members of Otto René Estrada Illescas were summoned, although their statements do not appear in the file before the Court.<sup>170</sup>

183. Meanwhile, in response to a complaint filed by the *Coordinación Nacional de Viudas de Guatemala* [National Coordination of Guatemalan Widows], the Public Prosecution Service appointed members of the FAFG as experts to "investigate the area that had been occupied by the Comalapa Military Detachment" because, according to testimony, it could contain clandestine graves. In September 2003, a grave found in the Detachment was exhumed and, on November 22, 2011, the remains of Amancio Samuel Villatoro and Sergio Saúl Linares Morales were identified. Their bodies were found together with those of three other individuals, who have been identified.<sup>171</sup>

## VIII MERITS

184. The Court will now proceed to rule on the alleged international responsibility of the State for: (1) the forced disappearances of the 26 victims who remained disappeared when the case was submitted; the motive for these disappearances, and the rights of the child of Juan Pablo and María Quirina Armira López; (2) the obligation to investigate these

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<sup>166</sup> Cf. Testimony given by Makrina Gudiel Álvarez before the Public Prosecution Service on February 21, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome II, folios 6483 a 6484), and Testimony given by Makrina Gudiel Álvarez before the Prosecution on April 8, 2008 (file of annexes to the merits report, tome I, annex 18, folio 483).

<sup>167</sup> The Property Registry indicated that it was not possible to locate this information without the property registration data. Cf. Request for information from the Special Prosecution Unit to the Property Registration and Appraisal Unit of April 14, 2008 (file of annexes to the merits report, tome III, annex 195, folio 1258), and Report No. 462-2008-DRF of the Property Registration and Appraisal Directorate (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6491).

<sup>168</sup> Cf. Writ of summons by the Special Prosecution Unit to the National Civil Police of August 13, 2008, and Testimony given by Natalia Gálvez Soberanis and Hugo Leonel Ramírez Gálvez before the Public Prosecution Service on August 22, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7177 and 7178 to 7180).

<sup>169</sup> Cf. Writ of summons by the Special Prosecution Unit to the National Civil Police of August 14, 2008, and Note No. 146-2008 REF HESL of the III Official of the National Civil Police to the Prosecutor of the Human Rights Section of August 27, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7532 and 7533).

<sup>170</sup> Cf. Writ of summons of the Special Prosecution Unit to the National Civil Police of August 26, 2008, and Letter from the Agent of the National Civil Police to the assistant prosecutor of September 1, 2008 (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folios 7767 and 7769).

<sup>171</sup> Cf. Affidavit made by Fredy Peccerelli on April 16, 2012 (file of annexes received at the public hearing, tome I, folios 13103, 13096 and 13122).

disappearances and the death of Rudy Gustavo Figueroa Muñoz, as well as the alleged detention and torture of Wendy and Igor Santizo Méndez, and (3) the alleged violations of the right to personal integrity, movement and residence, protection of the family, rights of the child, and freedom of association, to the detriment of the next of kin of Rudy Gustavo Figueroa Muñoz and of the 26 disappeared victims.

## **VIII-1**

### **FORCED DISAPPEARANCE OF THE 26 VICTIMS RECORDED IN THE *DIARIO MILITAR***

185. In this chapter, the Court will examine the forced disappearances of the 26 victims whose whereabouts remained unknown when the instant case was submitted, as well as the alleged violations of freedom of association and expression as a motive for the disappearances of the said persons.

#### ***1. Regarding the forced disappearance of the 26 victims***

##### **A) Position of the Inter-American Commission and arguments of the parties**

186. The Commission observed that, “in this case, it has been demonstrated that [the 26 victims] were forcibly disappeared by agents of the State of Guatemala,” according to the entries in the *Diario Militar*. In addition, it stated that the available testimony, together with the *modus operandi* used at the time of the facts, “allow the conclusion to be reached that the victims were captured arbitrarily and violently” and that torture was used in almost all the interrogations of those detained clandestinely. The Commission also noted that, regarding “17 of the 26 victims [...], the encoded information in the *Diario Militar* indicates that they were allegedly extrajudicially executed.” In this regard, it indicated that “the *Diario Militar* suggests that most of the victims were held in clandestine prisons for between two weeks and two months prior to being executed” and, subsequently, disappeared. In addition, it observed that despite receiving threats, some family members filed complaints or applications for *habeas corpus*, which produced no result. Lastly, the Commission concluded that “the disappearances in this case “formed part of [a] systematic pattern of forced disappearances in Guatemala” and therefore “constituted crimes against humanity.”

187. The representatives argued that “the 26 victims of forced disappearance were captured illegally and arbitrarily, tortured and, to date, their whereabouts are unknown, [and] their remains have not been found, except in the cases of Amancio Samuel Villatoro and Sergio Saúl Linares [Morales].” Likewise, they indicated that “most of the victims were detained [...] in clandestine prisons,” which constitutes an aggravating factor of State responsibility. The representatives also indicated that next of kin were threatened “in order to obstruct the measures they were taking to find those detained.” They asked the Court to consider the detention, torture and presumed execution of the victims as a crime against humanity. In this regard, they indicated that “the *Diario Militar* is convincing proof that the State of Guatemala systematically attacked the civilian population” and reveals, together with the other evidence, that “State intelligence agencies designed, planned and implemented a counterinsurgency policy based on the National Security Doctrine.” In addition, they indicated that the appearance of the remains of Sergio Saúl Linares Morales and Amancio Samuel Villatoro reveals “the coordination among State agencies to carry out and conceal the disappearances.” They also emphasized that the use of clandestine graves in these two cases denotes the intent to conceal the evidence.

188. The State indicated that “the appearance of the [*Diario Militar*] reveals that the cases of forced disappearance that are the subject-matter of [this case], were committed by State

agents." Thus, it accepted its responsibility for the violation of Articles 3, 4, 5 and 7 of the Convention in relation to Article 1(1) thereof, as well as of Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the 24 victims who are still missing and of Amancio Samuel Villatoro and Sergio Saúl Linares Morales, whose bodies have been identified. However, the State contested the violation of Article II of the Inter-American Convention on Forced Disappearance, "considering that the content of this provision constitutes a definition [...] and not an obligation in itself."

189. In addition, both the Commission and the representatives alleged that the State had violated Article 19 of the Convention, to the detriment of the siblings, Juan Pablo and María Quirina Armira López, who were under 18 years of age at the time of their disappearance. This violation was recognized by the State (*supra* para. 17(b)(2)). The representatives also pointed out that Juan Pablo and María Quirina were denied "access to their indigenous culture," a matter on which the State did not comment.

## **B) Considerations of the Court**

190. In the instant case there is no dispute between the parties on the State's international responsibility for the forced disappearance of the 26 victims whose whereabouts were unknown when the case was submitted. Furthermore, the mere fact that a record exists of the 26 disappearances in the *Diario Militar*, whose authenticity has been acknowledged by the State, proves the State's participation in these disappearances. Similarly, the Court recalls that the CEH indicated, with different degrees of certainty, that the facts that occurred to eight of the victims in this case constituted forced disappearance (*supra* paras. 72, 76, 95, 106, 128, 133, 146 and 151). Consequently, in this chapter, the Court will examine, in light of the acknowledgment of international responsibility, the alleged violations of the right to recognition of juridical personality,<sup>172</sup> to life,<sup>173</sup> to personal integrity,<sup>174</sup> and to personal liberty,<sup>175</sup> in relation to the obligation to respect rights<sup>176</sup> established in the American Convention, as well as of Articles I,<sup>177</sup> II<sup>178</sup> and XI<sup>179</sup> of the

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<sup>172</sup> Article 3 of the American Convention establishes that "[e]very person has the right to recognition as a person before the law."

<sup>173</sup> Article 4(1) of the American Convention establishes that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>174</sup> The pertinent part of Article 5 of the American Convention establishes that: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

<sup>175</sup> Article 7(1) of the American Convention establishes that "[e]very person has the right to personal liberty and security."

<sup>176</sup> Article 1(1) of the American Convention establishes "[t]he States Parties to this Convention 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, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>177</sup> Article I of the Inter-American Convention on Forced Disappearance of Persons establishes that: "[t]he 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; (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; (c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; (d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention."

<sup>178</sup> Article II of the Inter-American Convention on Forced Disappearance of Persons establishes that "[f]or the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to

Inter-American Convention on Forced Disappearance to the detriment of the 26 disappeared victims, and in relation to the rights of the child,<sup>180</sup> in the case of Juan Pablo and María Quirina Armina López.

191. Since 1988, the Court has established in its case law<sup>181</sup> the permanent or continuing nature of the forced disappearance of persons,<sup>182</sup> which has been recognized repeatedly by international human rights law.<sup>183</sup> In addition, this Court's case law has been a pioneer in consolidating a comprehensive perspective of the multiple violation of the rights affected and the permanent nature of the offense of forced disappearance of persons,<sup>184</sup> in which the act of disappearance and its execution are originated with the deprivation of liberty of the person and the subsequent lack of information about their fate, and this remains until the whereabouts of the disappeared person are known or their remains are identified with certainty.<sup>185</sup>

192. In this regard, the Court has indicated that this multiple violation of various rights protected by the American Convention places the victim in a situation of complete defenselessness, giving rise to other related violations, and is particularly serious when it forms part of a systematic pattern or practice applied or tolerated by the State.<sup>186</sup> In addition, the preamble of the Inter-American Convention on Forced Disappearance reaffirms "that the systematic practice of forced disappearance of persons constitutes a crime against humanity." In sum, the practice of forced disappearance entails a blatant abandonment of

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acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

<sup>179</sup> Article XI of the Inter-American Convention on Forced Disappearance of Persons establishes that "[e]very person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities."

<sup>180</sup> Article 19 of the American Convention establishes that: "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

<sup>181</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 155, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 112.

<sup>182</sup> According to Article III of the Inter-American Convention on Forced Disappearance of Persons "[t]his offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined."

<sup>183</sup> In the sphere of international human rights law, an operational definition of the phenomenon was developed by the United Nations Working Group on Enforced or Involuntary Disappearances in the 1980s. The conceptual elements established by this Working Group were taken up subsequently in the definitions in different international instruments. Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 82, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 112. See also, el Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-seventh session, U.N. Doc. E/CN.4/1435, of 22 January 1981, para. 4; Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-ninth session, U.N. Doc. E/CN.4/1983/14, of 21 January 1983, paras. 130 to 132, and Report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, Report on the visit made to Sri Lanka by three members of the Working Group, 7 to 18 October 1991, U.N. Doc. E/CN.4/1992/18/Add. 1 of January 5, 1992, para. 186.

<sup>184</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, paras. 155 to 157, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 112.

<sup>185</sup> Cf. *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, paras. 155 to 157, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 112.

<sup>186</sup> Cf. *Case of Molina Theissen v. Guatemala. Reparations and costs*. Judgment of July 3, 2004. Series C No. 108, para. 41, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 83.

the essential principles upon which the inter-American human rights system is founded<sup>187</sup> and its prohibition has achieved the status of *jus cogens*.<sup>188</sup>

193. Thus, the following have been indicated as concurrent and constituent elements of forced disappearance: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned.<sup>189</sup> This Court had developed this characterization of forced disappearance even before the definition contained in Article II of the Inter-American Convention on Forced Disappearance, and it is consistent with other definitions contained in different international instruments,<sup>190</sup> the case law of the European human rights system,<sup>191</sup> decisions of the Human Rights Committee of the International Covenant on Civil and Political Rights,<sup>192</sup> and decisions of domestic high courts.<sup>193</sup>

194. According to subparagraphs (a) and (b) of Article I of the Inter-American Convention on Forced Disappearance, the States Parties undertake not to practice or tolerate the forced disappearance of persons under any circumstance, and to punish those responsible for this crime within their jurisdiction. This is consistent with the State's obligation to respect and to ensure rights contained in Article 1(1) of the American Convention, which can be complied

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<sup>187</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 158, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 114.

<sup>188</sup> Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 84, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 114.

<sup>189</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs. Judgment of 22 de November de 2005. Series C No. 136*, para. 97, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 115.

<sup>190</sup> Cf. Article 2 of the International Convention for the Protection of All Persons against Enforced Disappearance, U.N. Doc. A/RES/61/177, of 20 December 2006; article 7(2) subparagraph (i) of the Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, of 17 July 1998, and preamble to the Declaration on the Protection of All Persons against Enforced Disappearance, U.N. Doc. A/RES/47/133 of 12 February 1993. See also, *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202*, para. 60, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 115.

<sup>191</sup> In this regard, the following cases of forced disappearance of persons may be consulted: ECHR, *Cyprus v. Turkey* [Grand Chamber], no 25781/94, paras. 132 to 134 and 147 to 148, 10 May 2001, and ECHR, *Varnava and others v. Turkey* [Grand Chamber], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, paras. 111 to 113, 117 and 118, 133, 138 and 145, 10 January 2008.

<sup>192</sup> In this regard, see, *Messaouda Grioua and Mohamed Grioua v. Algeria*, CCPR/C/90/D/1327/2004 (2007), Communication No. 1327/2004, 16 August 2007, para. 7.2, 7.5 to 7.9; *Yasoda Sharma and Surya Prasad Sharma v. Nepal*, CCPR/C/94/D/1469/2006 (2008), Communication No. 1469/2006, 6 November 2008, para. 7.4, 7.6 to 7.9; *Zohra Madoui and Menouar Madoui v. Algeria*, CCPR/C/94/D/1495/2006 (2008), Communication No. 1495/2006, 1 December 2008, para. 7.2, 7.4 to 7.8, and *Nydia Erika Bautista de Arellana v. Colombia*, CCPR/C/55/D/563/1993, Communication No. 563/1993, 13 November 1995, para. 8.3 to 8.6.

<sup>193</sup> Cf. *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007 (declaring the multiple and continuing offenses involved in the crime of forced disappearance); Supreme Court of Justice of Mexico, Ruling: P./J. 87/2004, "Forced disappearance of persons. The time frame for calculating its prescription only begins when the victim appears or his or her fate has been determined" (affirming that forced disappearances are permanent offenses and that prescription must begin to be calculated only when the perpetration ceases); *Case of the withdrawal of immunity from Pinochet*, Plenary of the Supreme Court of Chile, judgment of August 8, 2000; *Case of Sandoval*, Appeal No. 11821-2003, Fifth Chamber of the Court of Appeal of Santiago de Chile, judgment of January 5, 2004 (all the judges declared that the crime of forced disappearance is continuing, a crime against humanity, not subject to the statute of limitations, and cannot be subject to amnesty); *Case of Videla et al.*, National Federal Chamber of Criminal and Correctional Appeal of Argentina, judgment of September 9, 1999 (declaring that forced disappearances are continuing crimes and crimes against humanity, and are not subject to the statute of limitations); *Case of José Carlos Trujillo*, Constitutional Court of Bolivia, constitutional judgment No. 1190/01-R of November 12, 2001 (declaring that crimes of forced disappearance are continuing crimes and that the time frame for calculating their prescription only begins when the perpetration ceases), and Constitutional Court of Peru, judgment of March 18, 2004, Case No. 2488-2002-HC/TC (declaring that forced disappearance is a permanent crime until the whereabouts of the victim are determined, and also recognizing that it involves numerous offenses).

with in different ways depending on the specific right that the State must ensure and on the specific needs for protection.<sup>194</sup>

195. The Court recalls that the permanent nature of forced disappearance means that it continues until the whereabouts of the disappeared person are known and his or her identity is determined with certainty.<sup>195</sup> With regard to the instant case, the Court notes that the remains of Amancio Samuel Villatoro and Sergio Saúl Linares were identified in November 2011 (*supra* paras. 42 and 183). As of that moment, the forced disappearance of these two individuals concluded. However, as acknowledged by the State, this does not affect the classification as forced disappearance of the acts perpetrated against them over the time they were disappeared; in other words, from February and March 1984 to November 2011. Regarding the other 24 victims, their disappearance has not yet ceased, because their whereabouts or fate is still unknown.

196. The Court considers it appropriate to recall the legal grounds that substantiate an integral perspective of forced disappearance of persons, owing to the multiple conducts that, combined towards a single objective, violate rights protected by the Convention permanently, while those conducts subsist.<sup>196</sup> Consequently, the legal analysis of forced disappearance must be consequent with the complex violation of human rights that it entails.<sup>197</sup> Hence, when analyzing a presumed forced disappearance, it must be taken into account that the individual's deprivation of liberty should be understood as merely the beginning of the constitution of a complex violation that is prolonged over time until the victim's fate and whereabouts are known. The analysis of a possible forced disappearance should not focus in an isolated, divided and fragmented manner only on the detention, or on the possible torture, or on the risk of loss of life, but rather the focus should be on all the facts that are present in the case being considered by the Court, bearing in mind the Court's case law when interpreting the American Convention.<sup>198</sup>

197. Regarding Article 7 of the American Convention, the Court has reiterated that the right to personal liberty may only be restricted for the reasons and under the conditions previously established by the Constitution or by laws enacted in keeping with the latter (substantive aspect), and also, strictly subject to the procedures objectively defined in it (formal aspect).<sup>199</sup> Furthermore, the Court has considered that any detention, regardless of the reason for it or its length, must be duly recorded in the pertinent document, indicating clearly, at the very least, the reasons for the detention, who executed it, the time of detention and of release, as well as an annotation that the competent judged was informed,

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<sup>194</sup> Cf. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 73, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 144.

<sup>195</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 59, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, paras. 112 and 113.

<sup>196</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 138, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 114.

<sup>197</sup> Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2009. Series C No. 186, para. 112, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 129.

<sup>198</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 112, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 175.

<sup>199</sup> Cf. *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 176.

in order to protect against any unlawful or arbitrary interference with physical liberty.<sup>200</sup> Otherwise, the rights established in Articles 7(1) and 7(2) of the American Convention, in relation to Article 1(1) of this instrument, are violated.<sup>201</sup>

198. The deprivation of liberty which initiates a forced disappearance, whatever form it takes, is contrary to Article 7 of the American Convention. In the instant case, the Court noted that the 26 victims were disappeared between September 22, 1983, and March 2, 1985.

199. According to the entries in the *Diario Militar*, which include the date of capture and of presumed execution, 12 victims were detained from 15 to 40 days; Otto René Estrada Illescas was detained for 79 days, and Orencio Calderón Sosa for 106 days, while Ruben Amílcar Farfán was presumably executed the day of his capture, even though his remains have not been found or identified.<sup>202</sup> According to the *Diario Militar*, the remaining victims, whose entries include relevant dates, were sent to other detention centers, after at least five days of captivity, or to other unknown destinations.<sup>203</sup> Specifically, frequently transferring detainees to unofficial detention centers was a practice noted during the armed conflict,<sup>204</sup> with the purpose of “erasing the traces of the victims, precluding any possible legal action by removing the detainees from access to justice and the care of their family; [as well as] to take them to special interrogation centers.”<sup>205</sup> This Court considers that the detention of the 26 presumed victims involved a violation of their liberty, in the broadest possible sense of Article 7(1) of the Convention, because, after more than 25 years, the whereabouts of 24 of the 26 victims are unknown.

200. In addition, with regard to the right to personal liberty and persons deprived of liberty, the Court has recognized that the State is in a special position as guarantor of the rights of those detained,<sup>206</sup> so that the deprivation of liberty in legally recognized centers and the existence of records of detainees constitute fundamental safeguards, *inter alia*,

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<sup>200</sup> 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. 53, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 178.

<sup>201</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 54, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 178.

<sup>202</sup> The 12 victims who remained in captivity from 15 to 60 days are: Sergio Leonel Alvarado Arévalo, Alfonso Alvarado Palencia, Oscar Eduardo Barillas Barrientos, Álvaro Zacarías Calvo Pérez, Félix Estrada Mejía, Octavio René Guzmán Castañeda, Crescencio Gómez López, José Porfirio Hernández Bonilla, Sergio Saúl Linares Morales, Carlos Guillermo Ramírez Gálvez, Manuel Ismael Salanic Chiguil and Amancio Samuel Villatoro.

<sup>203</sup> These victims are: Joaquín Rodas Andrade, José Miguel Gudiel Álvarez, Luz Haydée Méndez Calderón, Luis Rolando Peñate Lima, Juan Pablo Armira López and María Quirina Armira López. Cf. *Diario Militar*, *supra*, folios 357, 380, 386, 409 and 406. According to the Report of the Peace Secretariat on the *Diario Militar*, when this document indicates “Transferred to U-4” (such as in the entry for Luz Haydée Méndez Calderón) “apparently this refers to a military unit.” In addition, according to Katharine Doyle, the annotation “D.I.” (indicated in the entry for Luis Rolando Peñate Lima) refers to the Intelligence Directorate, while “S-2” refers to a branch of military intelligence. Cf. Peace Secretariat, *supra*, p. 112, and expert opinion provided by Katharine Doyle before the Inter-American Commission on Human Rights at the public hearing on October 12, 2007, annex 2 of the merits report, available at <http://www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=es&Session=13>.

<sup>204</sup> Cf. CEH, *supra*, volume II, p. 421, para. 2082, and Human Rights Office of the Archbishopric of Guatemala (ODHAG), *Guatemala Nunca Más. Informe del Proyecto Interdiocesano “Recuperación de la Memoria Histórica*, 1998, tome II, Chapter 2, p. 53 (file of the proceedings before the Commission, Annexes, tome I, folio 3540).

<sup>205</sup> Cf. CEH, *supra*, volume II, p. 421, para. 2083.

<sup>206</sup> Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 177.

against forced disappearance.<sup>207</sup> *Contrario sensu*, the creation and maintenance of clandestine detention centers constitutes, *per se*, non-compliance with the obligation of guarantee, because it directly violates the rights to personal liberty, personal integrity, life, and juridical personality.<sup>208</sup> This principle which is constantly reiterated by the Court is codified in Article XI of the Inter-American Convention on Forced Disappearance.

201. In this regard, the Court underscores that, when the disappearances began, there was a pattern of the use of clandestine detention centers.<sup>209</sup> In the instant case, the State “accept[ed ...] that it had not complied with [its obligation] to keep these people in officially recognized detention centers.”<sup>210</sup> Also, the evidence provided includes testimony according to which at least five victims in this case were seen in clandestine detention centers (*supra* paras. 92, 106, 125, 133 and 148).<sup>211</sup> The use of such centers is also revealed by the responses to the applications for *habeas corpus* filed by the next of kin of at least four victims, advising them that the person had not been detained.<sup>212</sup> The Court emphasizes that one of these victims was precisely Sergio Saúl Linares Morales, whose remains were found in an old military detachment, even though, when the application for *habeas corpus* was filed on his behalf in 1984, the National Police recorded “that he ha[d] not been detained and was not in any health clinic,” which reveals that he was detained without any legal control (*supra* para. 108). Consequently, it can be concluded that, by using unofficial detention centers, the State of Guatemala failed to comply with the obligation established in Article XI of the Inter-American Convention on Forced Disappearance with regard to the 26 disappeared victims.

202. The Court emphasizes that the use of clandestine prisons formed part of the authorities' refusal to acknowledge the deprivation of liberty of the victims and to provide information about their fate or whereabouts, even in response to the measures taken by their families and by the entities in charge of the investigations.<sup>213</sup> With the 1999 discovery and publication by unofficial channels of the *Diario Militar*, more than 14 years after the disappearances had begun, it was revealed that the 26 disappeared victims had been detained by State agents, while the complaints and the applications for *habeas corpus* had been rejected by the State. In the instant case, it has been verified that the State authorities denied the detentions of the presumed victims. In only two cases have the whereabouts of the victims been determined, with the discovery and identification of their remains (*supra* para. 183 **Error! Reference source not found.**). And, even though, following the State's acknowledgement of the authenticity of the *Diario Militar*, it accepted that the forced disappearances had occurred, the lack of information about the whereabouts of the other victims subsists.<sup>214</sup>

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<sup>207</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 63, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 177. Similarly, Cf. Article XI of the Inter-American Convention on Forced Disappearance of Persons.

<sup>208</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 63, and *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 77.

<sup>209</sup> Cf. CEH, *supra*, volume II, pp. 415 to 424.

<sup>210</sup> Answering brief (merits file, tome II, folio 1129).

<sup>211</sup> This refers to the cases of Amancio Samuel Villatoro, Sergio Saúl Linares Morales, Otto René Estrada Illescas, Rubén Amílcar and Alfonso Alvarado Palencia.

<sup>212</sup> With regard to Oscar Eduardo Barillas Barrientos, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón and Rubén Amílcar Farfán.

<sup>213</sup> Cf. CEH, *supra*, volume II, p. 421, paras. 2082 and 2083.

<sup>214</sup> According to the information provided in this case, the State acknowledged the authenticity of the *Diario Militar* for the first time in 2007, during a public hearing before the Inter-American Commission. Cf. Public hearing

203. Regarding Article 5 of the American Convention, this Court has maintained that forced disappearance violates the right to personal integrity, because the mere fact of prolonged isolation and coercive solitary confinement represents cruel and inhuman treatment contrary to paragraphs 1 and 2 of Article 5 of the Convention; hence it is evident that, in a forced disappearance, every dimension of the personal integrity of the victim is violated.<sup>215</sup>

204. In any event, the Court has established that submitting those detained to official law enforcement units, State agents, or private individuals acting with their acquiescence or tolerance, who commit acts of torture and murder with impunity is, in itself, a breach of the obligation to prevent violations of the rights to personal integrity and to life, even if it is not possible to prove such violations in the specific case.<sup>216</sup> These circumstances entail a violation of Articles 5(1) and 5(2) of the American Convention

205. Regarding Article 4 of the American Convention, the Court has considered that, owing to the very nature of forced disappearance, the victims are in an aggravated situation of vulnerability, which gives rise to the risk that different rights will be violated, including the right to life. In addition, the Court has established that forced disappearance has frequently included the execution of those detained, in secret and without a trial, followed by the concealment of the corpse in order to erase any material trace of the crime and to procure the impunity of those who committed it, which signifies a violation of the right to life, recognized in Article 4 of the Convention.<sup>217</sup> Indeed, the Court has verified that this was the practice during the internal armed conflict in Guatemala.<sup>218</sup>

206. The Court observes that different reports of government and non-governmental organizations that have studied the *Diario Militar* have determined that the annotation of the number 300 in the *Diario Militar* means that the person against whose name the number appeared was executed (*supra* para. 61). Thus, the *Diario Militar* records the execution of 17 of the 26 victims who were disappeared in this case.<sup>219</sup> This confirms the presumption of the violation of the right to life mentioned above, and, consequently, the violation of Article 4(1) of the American Convention, in relation to Article 1(1) of this instrument.

207. The Court cannot fail to mention that, in cases of forced disappearance where there is evidence that the victim has died, the determination of whether this phenomenon has been constituted and its cessation, if applicable, necessarily entails finding the remains and establishing, as validly as possible, the identity of the individual to whom the remains that

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held before the Inter-American Commission on October 12, 2007, annex 2 to the merits report, available at: <http://www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=En&Session=13>.

<sup>215</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 187, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 116.

<sup>216</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 175, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 117.

<sup>217</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 157, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 185.

<sup>218</sup> Cf. CEH, *supra*, volume II, pp. 241, 415, 421 and 423, paras. 2068, 2082, 2083 and 2087, and *Case of Molina Theissen v. Guatemala. Merits. Judgment of May 4, 2004. Series C No. 106*, para. 40.4.

<sup>219</sup> The 17 persons that were executed according to the *Diario Militar* were: Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Alvaro Zacarías Calvo Pérez, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Lesbía Lucrecia García Escobar, Otto René Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Félix Estrada Mejía and Crescencio Gómez López. Cf. *Diario Militar, supra*, folios 360, 364, 367, 368, 371, 372, 374, 377, 391, 396, 397, 398 and 404.

have been found belong. In this regard, the corresponding authority must exhume them promptly, so that they can be examined by a competent professional.<sup>220</sup> The forced disappearance continues to be executed until the remains have been identified.<sup>221</sup>

208. Furthermore, this Court has found that, in cases of forced disappearance, based on the multiple and complex nature of this grave human rights violation, its perpetration involves the specific violation of the right to juridical personality, because the consequence of the State's refusal to acknowledge the deprivation of liberty or the whereabouts of the person is, in conjunction with the other elements of the disappearance, the "removal from the protection of the law" or the violation of the personal and legal security of the individual, which directly precludes the recognition of juridical personality.<sup>222</sup>

209. In this regard, the Court has considered that the intrinsic content of the right to recognition of juridical personality is, precisely, that the individual is recognized, anywhere, as a subject of rights and obligations, and that he or she may enjoy the fundamental civil rights, which entails the capacity to be the possessor of rights (capacity and enjoyment) and of obligations. The violation of that recognition supposes that the possibility of being the possessor of civil and fundamental rights and obligations is categorically denied.<sup>223</sup> Above and beyond the fact that the disappeared person is unable to continue enjoying and exercising other and, eventually, all the rights that he or she also possesses, the disappearance seeks not only one of the most serious forms of removing a person from the whole sphere of the legal system, but also denies his or her existence and leaves the individual in a kind of limbo or situation of legal uncertainty in relation to society and to the State.<sup>224</sup>

210. Thus, the Court considers that the 26 disappeared victims were placed in a situation of legal uncertainty that has prevented them from being the possessors of all their rights and exercising them effectively, which entails a violation of their right to recognition of juridical personality and, therefore, of Article 3 of the American Convention. In addition, the Court emphasizes that the fact that a disappeared person cannot exercise all the rights that he or she possesses does not mean that the forced disappearance, as a multiple and complex violation, involves the violation of all those rights that the disappeared person is unable to exercise,<sup>225</sup> as argued by the representatives in relation to the right to indigenous identity of Juan Pablo and María Quirina Armira López (*supra* para. 189).

211. Also, as a result of the State's actions described in this chapter, the Court considers that the State failed to comply with its obligation not to perpetrate or tolerate the forced disappearance of persons under any circumstances, as established in Article I of the American Convention on Forced Disappearance.

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<sup>220</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 82, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 113.

<sup>221</sup> Cf. *Case of Tiu Tojin v. Guatemala*, *supra*, para. 84, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 113.

<sup>222</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, paras. 90 a 101, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 118.

<sup>223</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*, *supra*, para. 179, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 119.

<sup>224</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 90, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 119.

<sup>225</sup> Cf. *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 190.

212. Regarding the alleged violation of the rights of the child in relation to the siblings Juan Pablo and María Quirina Armira López, the Court observes that these victims were 13 and 16 years of age, respectively, at the start of their disappearance (*supra* para. 189). Based on the State's full acknowledgement of this violation (*supra* para. 119), the Court considers that the State violated its obligation to adopt special measures of protection under Article 19 of the Convention with regard to these two victims.

213. The Inter-American Court emphasizes the seriousness of the facts *sub judice* that occurred starting in 1983, and that took place in the context of a systematic practice by the State of forced disappearances, verified in the Court's case law (*supra* para. 57). The Court has also established that, at the time, forced disappearances were part of a policy of attacks against individuals identified as internal enemies under the National Security Doctrine. Various State security forces participated in this policy, including the Police and the Army (*supra* paras. 55 and 56). Also, the Court cannot help but note that the existence of official documents, such as the *Diario Militar*, reveal the organization and planning behind the forced disappearances, as well as the coordination that existed between the senior political and/or military authorities. In this regard, the report of the Peace Secretariat, taking into account the information found in the Historical Archive of the National Police, indicated that the captures were planned with information previously collected by different State agencies. Moreover, according to the expert witness Katharine Doyle, the *Diario Militar* mentions "dozens of Guatemalan military and police units" and shows the coordination that existed between nearly all the known intelligence and police units that existed in Guatemala at the time of the facts.<sup>226</sup>

214. Additionally, the planning and coordination that existed is exemplified in the cases of Sergio Saúl Linares Morales and Amancio Samuel Villatoro, the two victims whose bodies were found in a grave at a former military detachment, and who were captured on different dates in Guatemala City and subsequently executed together with three other individuals who are not victims in this case. The five bodies were found in a grave in the military detachment (*supra* para. 183). In this regard, expert witness Vásquez Vicente explained that the recovery of the bodies in a former military base "reveals not only that the National Police were involved in the disappearances, but that they worked with the Guatemalan Army."<sup>227</sup> In addition, the planning of the attacks is also revealed in these two cases because both men were executed on the same day, according to the entry that appears in the *Diario Militar*, and buried in the same grave, despite being captured on different dates. Thus, the Court considers it appropriate to emphasize that 15 victims in this case were executed on the same day as at least one other victim, according to the data recorded in the *Diario Militar*.<sup>228</sup> Also it must be stressed that at least 12 of the victims in this case were captured in broad daylight, and at least five of them on a city street,<sup>229</sup> which reveals the

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<sup>226</sup> Cf. Peace Secretariat, *supra*, p. 145, and expert opinion of Katharine Doyle before the Inter-American Commission on Human Rights during the public hearing on October 12, 2007, annex 2 to the merits report, available at <http://www.oas.org/es/IACHR/audiencias/Hearings.aspx?Lang=es&Session=13>.

<sup>227</sup> Cf. Testimony given by Manuel Giovanni Vásquez Vicente before the Inter-American Court at the public hearing in this case.

<sup>228</sup> The 15 victims who were executed on the same day as at least one other victim recorded in the *Diario Militar* were: Orencio Sosa Calderón, Octavio René Guzmán Castañeda and Álvaro Zacarías Calvo Pérez were executed on February 7, 1984; Oscar Eduardo Barillas Barrientos and José Porfirio Hernández Bonilla, were both executed on January 21, 1984; Amancio Samuel Villatoro, Sergio Saúl Linares Morales and Zoilo Canales Salazar were executed on March 29, 1984; Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez and Alfonso Alvarado Palencia were executed on March 6, 1984; Crescencio Gómez López and Otto René Estrada Illescas were executed on August 1, 1984; Félix Estrada Mejía and Sergio Leonel Alvarado Arévalo were executed on June 5, 1984.

<sup>229</sup> The 12 victims detained in broad daylight were: Sergio Leonel Alvarado Arévalo, Alfonso Alvarado Palencia, Juan Pablo Armira López, Oscar Eduardo Barillas Barrientos, Víctor Manuel Calderón Díaz, Álvaro Zacarías

impunity with which their captors acted. Based on the above, the Court emphasizes that the disappearances of the 26 victims did not constitute isolated events, but were part of a systematic State plan of forced disappearances against members of the civilian population who it considered “internal enemies.”

215. Regarding the Commission’s conclusion and the representatives’ request to consider the facts of this case as crimes against humanity, the Court recalls that its mandate is to apply the American Convention and other treaties that grant it jurisdiction. However, the Court underlines that the Inter-American Convention on Forced Disappearance establishes “that the systematic practice of forced disappearance constitutes a crime against humanity.” (*supra* para. 192). It is not incumbent on this Court to determine individual responsibilities,<sup>230</sup> but rather to examine facts submitted to its consideration in exercise of its contentious competence and in keeping with the evidence presented by the parties.<sup>231</sup> Nevertheless, in its analysis of the merits of cases of gross violations of human rights, the Court has taken into account that such violations can also be characterized or classified as crimes against humanity,<sup>232</sup> in order to specify clearly the scope of the State’s responsibility under the Convention in the specific case, as well as the legal consequences.<sup>233</sup> In the instant case, it should also be emphasized that the CEH concluded that, during the internal armed conflict, forced disappearances were “perpetrated systematically in different regions and affected a large part of the population, constituting a crime against humanity.”<sup>234</sup>

216. Furthermore, the representatives also alleged the violation of Article II of the Inter-American Convention on Forced Disappearance. The Court has established that Article II of this Convention does not, in itself, constitute an obligation, but rather it is a definition of forced disappearance; therefore, as the State observed, the Court considers that it is not appropriate to declare non-compliance in this case.<sup>235</sup>

217. Based on the foregoing, the Court concludes that the State is responsible for the violation of the rights to personal liberty, to personal integrity, to life, and to recognition of juridical personality protected in Articles 7, 5(1) and 5(2), 4(1) and 3, owing to the failure of the State to comply with its obligation to respect these rights, established in Article 1(1), all of the American Convention, and in relation to Articles I(a) and XI of the Inter-American Convention on Forced Disappearance as of February 25, 2000, to the detriment of José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil,

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Calvo Pérez, Otto René Estrada Illescas, Luz Haydée Méndez Calderón, Joaquín Rodas Andrade, Orencio Sosa Calderón, Rubén Amílcar Farfán and Félix Estrada Mejía. The five victims disappeared on the street were: Álvaro Zacarías Calvo Pérez, Otto René Estrada Illescas, Joaquín Rodas Andrade, Orencio Sosa Calderón and Rubén Amílcar Farfán.

<sup>230</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 134, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216*, para. 105.

<sup>231</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs. Judgment of July 10, 2007. Series C No. 167*, para. 87, and *Case of Vera Vera v. Ecuador. Preliminary objection, merits, reparations and costs. Judgment of May 19, 2011, Series C No. 226*, para. 93.

<sup>232</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154*, paras. 94 to 96, 98 and 99, and *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 42.

<sup>233</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 42.

<sup>234</sup> Cf. CEH, *supra*, volume II, p. 412, para. 2058. The expert witness Alejandro Valencia Villa echoed this opinion. Cf. Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13301.

<sup>235</sup> Cf. *Case of Chitay Nech et al. v. Guatemala, supra*, para. 120.

Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López y Luis Rolando Peñate Lima, and also in relation to Article 19 of the Convention to the detriment of Juan Pablo Armira López and María Quirina Armira. The assessment of the obligation to ensure those rights by a diligent and effective investigation of what happened is made in Chapter VIII-2 of this Judgment.

## ***II. Regarding the freedoms of association and of expression of the 26 disappeared victims***

218. Both the Commission and the representatives indicated that the victims were disappeared “as a result of their presumed ideas or the exercise of their right to freedom of association,” which is revealed in the *Diario Militar*. They also indicated that the facts of this case occurred in a context where “freedom [...] of expression and association were severely restricted.” For its part, the State acknowledged the alleged violation of Article 16 of the Convention, to the detriment of the disappeared victims. Consequently, there is no dispute with regard to the violation of freedom of association.<sup>236</sup> To the contrary, the State did not acknowledge the alleged violation of Article 13<sup>237</sup> of the Convention; therefore, the Court does not have competence to rule in this regard (*supra* paras. 31 and 32).

219. The Court has recognized that when the purpose of the violation of the rights to life, and to personal integrity or personal liberty is to prevent the legitimate exercise of another right protected by the Convention, such as the freedoms of association<sup>238</sup> and of expression,<sup>239</sup> this constitutes an autonomous violation of this right protected by the American Convention. With regard to freedom of association, this Court has indicated that Article 16(1) of the American Convention establishes that those who are under the jurisdiction of the States Parties have the right and the freedom to associate freely with other persons, without any interference from the public authorities that might limit or impair the exercise of this right. In other words, this is the right to associate with others in order to achieve a lawful common objective without pressure or interference that could alter or interfere with this objective.<sup>240</sup> In addition to these negative obligations, the Inter-American Court has observed that freedom of association also gives rise to positive obligations to prevent attacks against this freedom, to protect those who exercise it, and to investigate violations of it.”<sup>241</sup>

220. In the instant case, the State has acknowledged that the 26 disappeared victims faced “both legal and political restrictions of this right owing to their political participation in student groups, labor unions, or because they were leaders of social movements” (*supra*

<sup>236</sup> Article 16(1) of the American Convention establishes that: “[e]veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

<sup>237</sup> Article 13(1) of the American Convention establishes that “[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

<sup>238</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, paras. 66 to 79; *Case of Cantoral Huamani and García Santa Cruz v. Peru, supra*, paras. 146 and 147; *Case of Kawas Fernández v. Honduras, supra*, para. 150, and *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 172.

<sup>239</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, paras. 176 and 177.

<sup>240</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 156, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 167.

<sup>241</sup> Cf. *Case of Huilca Tecse v. Peru, supra*, para. 76, and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 100.

para. 17(b)(5)). Thus, the Court noted that, as indicated by the State, the victims in this case belonged to student organizations, labor unions, or social movements, which were some of the organizations considered “internal enemies” during the internal armed conflict in Guatemala (*supra* para. 54). In particular, there is evidence in the case file that, for this reason, at least six victims had been persecuted, harassed or threatened before their disappearance.<sup>242</sup> This circumstance reveals that some victims were justifiably fearful of exercising freely their right of association and, consequently, at least 13 of them took steps to protect themselves.<sup>243</sup>

221. The Court notes that, as part of the State’s counterinsurgency policy, forced disappearances were intended to disrupt movements or organizations identified by the State as favorable to the “insurgency” and to instill fear in the population.<sup>244</sup> In this regard, the Army’s Manual on Counterinsurgency War indicated that it was necessary to destroy the local political and administrative organization of the insurgency, and this “is not a question of pursuing common criminals, but rather individuals who are ideologically committed, but who are not participating in terrorist acts or combat operations”; the destruction was “carried out by the capture and physical elimination of its active agents.”<sup>245</sup> This policy is

<sup>242</sup> With regard to Álvaro Zacarías Calvo Pérez. *Cf.* Testimony given by Ana Dolores Monroy Peralta on November 2, 2004 (file of annexes to the merits report, tome I, annex 39, folios 602 and 603). Regarding Víctor Manuel Calderón Díaz. *Cf.* affidavit made by Zonia Odilia Ortega on February 14, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C25, folios 12994 to 12996), and affidavit made by Lourdes Melissa Calderón Ortega on February 16, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C26, folio 13006). Regarding Amancio Samuel Villatoro. *Cf.* Testimony given by Néstor Amílcar Villatoro Bran before the Public Prosecution Service on August 18, 1999 (file of annexes to the merits report, tome II, annex 49, folio 666). Regarding the family of Juan Pablo and María Quirina Armira López. *Cf.* Affidavit made by María Froilana Armina López on March 31, 2012 (file of documents received during the public hearing, folios 3052, 13053 and 13057). Regarding Crescencio Gómez López. *Cf.* Affidavit made by Fredy Anelson Gómez Moreira on August 1, 2006 (file of annexes to the merits report, tome III, annex 150, folio 1136).

<sup>243</sup> José Miguel Gudiel Álvarez moved to Guatemala City. *Cf.* Affidavit made by Florentín Gudiel Ramos on October 11, 2004 (file of annexes to the merits report, tome I, annex 14, folio 417). José Porfirio Hernández Bonilla went into hiding in Jalapa. *Cf.* Affidavit made by Reyna de Jesús Escobar Rodríguez and Marilyn Carolina Hernández Escobar on March 2, 2005 (file of annexes to the merits report, tome I, annex 37, folio 593). Álvaro Zacarías Calvo Pérez moved house. *Cf.* Testimony of Ana Dolores Monroy Peralta, the authenticity of which was notarized on March 29, 2008 (file of annexes to the merits report, tome II, annex 40, folio 606); Víctor Manuel Calderón Díaz moved to Guatemala City. *Cf.* Affidavit made by Zonia Odilia Ortega on February 14, 2011 (file of annexes to the pleadings and motions brief, tome VIII, annex C25, folios 12996 a 12997). Amancio Samuel Villatoro moved house for a time and changed his routine constantly. *Cf.* Affidavit made by María del Rosario Bran de Villatoro on December 2, 2004 (file of annexes to the merits report, tome II, annex 47, folio 654), and affidavit made by Sergio Saúl Villatoro Bran, Norma Carolina Villatoro Bran and Samuel Lisandro Villatoro Bran on December 21, 2004 (file of annexes to the merits report, tome II, annex 48, folio 658). The family of Juan Pablo and María Quirina Armira López moved to Guatemala City, changed their last name and ceased wearing their typical dress. *Cf.* Affidavit made by María Froilana Armina López on March 31, 2012 (file of documents received during the public hearing, folios 13052, 13053 and 13057), and affidavit made by Eduarda López Pinol, María Froilana Armina López and María Lidia Marina Armira López on July 28, 2005 (file of annexes to the merits report, tome II, annex 101, 949). Otto René Estrada Illescas moved house and Julio Alberto Estrada Illescas left the country and moved house. *Cf.* Affidavit made by Beatriz María Velásquez Díaz on January 22, 2005 (file of annexes to the merits report, tome II, annex 104, folio 962) Rubén Amílcar Farfán slept in different places every two or three weeks. *Cf.* Affidavit made by Aura Elena Farfán on February 7, 2005 (file of annexes to the merits report, tome II, annex 113, folio 1003). Zoilo Canales Salazar and Moisés Canales Godoy moved constantly and used assumed names. *Cf.* Statement made by Yordin Eduardo Herrera Urizar on April 23, 2011, notarized on February 6, 2012 (file of annexes to the pleadings and motions brief, tome VII, annex C21, folio 12968), and affidavit made by Elsa Noemí Urizar Sagastume on March 21, 2007 (file of annexes to the merits report, tome III, annex 143, folio 1118). Crescencio Gómez López had to abandon his place of work, where he was a union leader. *Cf.* Affidavit made by Fredy Anelson Gómez Moreira on August 1, 2006 (file of annexes to the merits report, tome III, annex 150, folio 1136).

<sup>244</sup> *Cf.* CEH, *supra*, volume II, pp. 412 and 413, para. 2060, and *Case of Molina Theissen v. Guatemala. Merits*, *supra*, para. 40.1.

<sup>245</sup> *Cf.* Summary of the Manual on Counterinsurgency War of the Guatemalan Army – March 1978 (file of proceedings before the Commission, Annexes, tome I, folios 3747 and 3753) and Peace Secretariat, *supra*, p. XI.

reflected in the *Diario Militar*, where “information [was] recorded on leaders of social organizations and members of different guerrilla organizations,” which had been obtained previously and used to plan counterinsurgency operations.<sup>246</sup> The specific common factor of the entries in the *Diario Militar* with regard to the 26 disappeared victims was their presumed membership in or relationship with a group considered to be in opposition and/or insurgent by the State’s security forces. Therefore, the Court concludes that the forced disappearances of the 26 victims were motivated by their presumed participation in a group characterized as “in opposition and/or insurgent.”

222. In addition, the Court underscores that it is very probable that the forced disappearances of the 26 victims in this case had a threatening and intimidating effect on the other members of the social groups and organizations to which they belonged, which was accentuated by the context of impunity surrounding the case (*supra* paras. 265 to 267). Based on the foregoing, the Court concludes that the State violated the right to freedom of association recognized in Article 16(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the 26 disappeared victims identified in paragraph 217 *supra*, because their disappearance was intended to restrict the exercise of their right to freedom of association.

## VIII-2

### **OBLIGATION TO INVESTIGATE THE FORCED DISAPPEARANCES AND THE ALLEGED DETENTIONS, TORTURE AND PRESUMED EXECUTIONS**

223. In this chapter, the Court will summarize the position of the Inter-American Commission and the arguments of the parties, and will then to rule on: (i) the alleged violations of Articles 8(1)<sup>247</sup> and 25(1)<sup>248</sup> of the American Convention, in relation to Articles 1 and 2<sup>249</sup> of this treaty, Article I of the Inter-American Convention on Forced Disappearances, and Articles 1,<sup>250</sup> 6<sup>251</sup> and 8<sup>252</sup> of the Inter-American Convention against

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<sup>246</sup> Cf. Peace Secretariat, *supra*, pp. 145 a 147 (file of annexes to the merits report, tome I, annex 9, F. 175 a 177). In this regard, the Court underscores that Rubén Amilcar Farfán appears in the Historical Archive of the National Police on an undated list of trade unionists. Cf. Historical Archive of the National Police, GT PN 30 S002, 11905 (file of annexes to the pleadings and motions brief, tome VI, annex D13, folio 11497).

<sup>247</sup> Article 8(1) of the Convention establishes that: “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>248</sup> Article 25(1) of the Convention establishes that: “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

<sup>249</sup> Article 2 of the American Convention establishes that: “[w]here 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.”

<sup>250</sup> Article 1 of the Inter-American Convention against Torture establishes that: “[t]he States Parties undertake to prevent and punish torture in accordance with the terms of [the said] Convention.”

<sup>251</sup> Article 6 of the Inter-American Convention against Torture establishes that: “[i]n accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.”

<sup>252</sup> Article 8 of the Inter-American Convention against Torture establishes that: “[t]he States parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall

Torture, to the detriment of the next of kin of the 26 disappeared victims and of Rudy Gustavo Figueroa Muñoz, as well as the alleged violations of the obligation to guarantee the rights recognized in Articles 3, 4, 5 and 7 of the American Convention to the detriment of the 26 disappeared victims and Rudy Gustavo Figueroa Muñoz, and (ii) the alleged failure to investigate other presumed violations perpetrated against some family members of the disappeared victims, including Wendy Santizo Méndez.

224. The Court recalls that, based on its competence *ratione temporis*, it can only rule on the facts relating to the investigations that occurred after March 9, 1987 (*supra* paras. 30 and 31). The facts that occurred before that date will only be taken into account as background information in the case, and this Court does not have competence to determine legal consequences in relation to the alleged international responsibility.

### ***I. Obligation to investigate the forced disappearances of the 26 disappeared victims and the death of Rudy Gustavo Figueroa Muñoz***

#### **A. Position of the Inter-American Commission and arguments of the parties**

225. The Commission indicated that “impunity subsists” in this case. It noted that, “even when the families of the disappeared victims in this case took the risk of formally reporting the incidents, the judicial authorities lacked the will or the real ability to perform their duty.” It stated that Decree No. 8-86 “contributed to the impunity” of the facts, and thus this norm violated Article 2 of the Convention until its repeal in December 1997. Regarding the investigations opened following the appearance of the *Diario Militar*, it indicated that the process has been “plagued by formalities and characterized by the refusal of the judicial authorities to diligently follow logical lines of investigation [deriving from the *Diario Militar* itself], thus condemning the process to the ineffectiveness that has existed to date.” The Commission stressed that the Public Prosecution Service, only “exceptionally” had requested military archives or received the statement of a former member of the Armed Forces, and had not inspected military premises. It also observed “a clear lack of collaboration by the Ministry of Defense.” In addition, the Commission underlined that the State had not conducted an investigation within a reasonable time. Lastly, and in particular with regard to the investigation of the death of Rudy Gustavo Figueroa Muñoz, the Commission considered that the State had not made a serious and real effort to investigate it, either at the time it occurred, or following the publication of the *Diario Militar*.

226. The representatives indicated that the alleged violations in this case “have remained in absolute impunity.” First, they pointed out that, when the victims were detained, the situation in the country ensured the ineffectiveness of the remedy of *habeas corpus* and prevented effective access to the remedy; while the authorities did not undertake any investigative measures to determine the identity of those responsible or the whereabouts of the victims prior to 1999. Second, they argued that, from 1986 to 1997, the amnesty laws made it impossible to investigate and prosecute those responsible. Third, they indicated that the criminal investigation opened in 1999 has been flawed, owing to: (i) lack of procedural activity for prolonged periods; (ii) failure to construct hypotheses taking into account the available evidence; (iii) serious omissions in following up on logical lines of investigation, and (iv) lack of collaboration of the authorities, particularly the Ministry of Defense. Fourth,

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have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.”

they argued that the investigation has not been completed within a reasonable time. They indicated that these situations constituted a violation of the obligation to investigate the forced disappearances that arises from the positive obligations in relation to the rights recognized in Articles 3, 4, 5 and 7 of the American Convention, as well as the rights to due process of law and to judicial protection recognized in Articles 8 and 25 of the Convention. Furthermore, in relation to the investigation into what happened to Rudy Gustavo Figueroa Muñoz, the representatives indicated that the investigation “reveals an absolute lack of interest in individualizing those responsible,” bearing in mind that “the first measure in the criminal investigation into his death” was taken in 2001.

227. The State accepted complete responsibility for the violation of Articles 8 and 25 of the Convention to the detriment of the 26 disappeared victims and their next of kin, considering that it “has not adopted the pertinent measures to clarify the facts of this case and that, even though some internal measures have been taken, [...] access to the administration of justice has not been guaranteed and, in particular, a simple and prompt recourse has not been granted to achieve the expected results. Furthermore, the State provided information on certain measures taken by the Public Prosecution Service “to promote the investigation of this case” and “to reinforce the investigation plan” in the Special Prosecution Unit. However, it did not comment specifically on the alleged violation of the obligation to guarantee the rights recognized in Articles 3, 4, 5 and 7 of the Convention, by an effective investigation. Lastly, as already established, the State partially acknowledged its responsibility for the lack of an investigation into the death of Rudy Gustavo Figueroa Muñoz (*supra* para. 17(c)(2)).

## **B. General considerations of the Court**

228. The Court recalls that, in this case there is no dispute regarding the State's international responsibility for the absence of an effective investigation and for the violation of judicial guarantees and the access to an effective remedy of the disappeared victims and their next of kin, as well as with regard to the failure to investigate the death of Rudy Gustavo Figueroa Muñoz as of March 9, 1987 (*supra* paras. 23 and 27).

229. The Court recalls that, owing to the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.<sup>253</sup> In addition, the Court has indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or of their next of kin that everything necessary will be done to discover the truth of what happened and to punish those eventually found responsible.<sup>254</sup>

230. The obligation to investigate human rights violations is one of the positive measures that States must adopt in order to guarantee the rights recognized in the Convention.<sup>255</sup> Since its first judgment, this Court has emphasized the importance of the State obligation to investigate and to punish human rights violations,<sup>256</sup> an obligation that acquires particular

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<sup>253</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 242.

<sup>254</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 242.

<sup>255</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, paras. 166 and 167, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 243.

<sup>256</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 166, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 243.

significance given the seriousness of the crimes committed and the nature of the rights affected.<sup>257</sup> For this reason, in this case, which concerns a systematic practice of forced disappearance that took place in a context of serious human rights violations, the obligation to investigate cannot be ignored or conditioned by any kind of domestic legal laws or provisions.<sup>258</sup>

231. In this regard, it is pertinent to recall that the systematic practice of forced disappearance entails the disregard of the obligation to organize the State apparatus to ensure the rights recognized in the Convention, and this produces the conditions of impunity that lead to the repetition of this type of act.<sup>259</sup> Hence, the importance that the State take all necessary measures to investigate and, as appropriate, punish those responsible; to establish the truth of what happened; to discover the whereabouts of the victims and to advise the next of kin, and also to provide fair and adequate reparation as appropriate.<sup>260</sup>

232. The Court recalls that, since the prohibition of forced disappearance is a norm of *jus cogens*, the correlative obligation to investigate and to prosecute and punish, as appropriate, those responsible, becomes particularly strong and important, owing to the gravity of the crimes committed and the nature of the rights harmed<sup>261</sup> (*supra* para. 192).

233. In addition, the Court considers it pertinent to point out that the obligation to investigate, prosecute and punish, as appropriate, those responsible for human rights violations is derived not only from the American Convention, but also, in certain circumstances and depending on the nature of the facts, from other inter-American instruments that establish the obligation of the States Parties to investigate the conducts prohibited by those treaties. Regarding the facts of this case, the Court observes that, under the Inter-American Convention against Torture, the States have the obligation to investigate any act that could constitute torture or other cruel, inhuman or degrading treatment that occurs in its jurisdiction. These provisions specify and complement the State's obligations to respect and ensure the rights established in the American Convention, as well as the "international *corpus juris* for the protection of personal integrity."<sup>262</sup>

234. Furthermore, Article I(b) of the Inter-American Convention on Forced Disappearance imposes on States the obligation "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." Therefore, according to this Court's case law, in the case of a forced disappearance, the State's obligation to open an investigation *ex officio* is also derived from that instrument for the States that are parties to it.<sup>263</sup>

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<sup>257</sup> Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 157, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 244.

<sup>258</sup> Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 127, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 190.

<sup>259</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 89, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 126.

<sup>260</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 89, *Case of Contreras et al. v. El Salvador*, *supra*, para. 126.

<sup>261</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, paras. 84, 128 and 131, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 227.

<sup>262</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, paras. 276, 377, 378 and 379, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 222.

<sup>263</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 223.

235. The Court notes that these specific State obligations derived from the said specialized conventions, are required of the State as of the date of the deposit of the instruments that ratify each one (*supra* para. 30), even if they are not in force when the forced disappearance and other violations alleged in this case initiated.<sup>264</sup>

236. Regarding the investigation of the facts in this case, the Court considers it pertinent to recall that, at the start of the execution of the disappearances, some next of kin of the victims filed applications for *habeas corpus* or denounced the incidents publicly or before different State authorities. These remedies and complaints were filed and processed independently and autonomously, as they were being filed by the victims' next of kin. In 1999, with the appearance of the *Diario Militar*, the Public Prosecution Service began the investigations into the disappearances recorded in this document, after the next of kin and the PDH had filed complaints. However, the complaints were distributed among the different prosecutors of the Metropolitan Prosecution Office. At some point before June 2001, a unit was created in the Prosecution Office called the *Diario Militar* Coordinator which took charge of the investigations until 2005, when the file of the instant case was forwarded to the then recently created Special Prosecution Unit (*supra* paras. 165 to 174).

237. In this section, as indicated by the Commission and the representatives, and taking into account the State's acknowledgement of responsibility, the Court will examine the State's obligation to conduct an investigation *ex officio*, with due diligence and within a reasonable time, into the forced disappearance and death of Rudy Gustavo Figueroa Muñoz. It will also make a general analysis of whether the State's actions in this regard have guaranteed the access to justice of the disappeared victims and their next of kin.

## **1. Background: measures taken before 1987**

238. In this case, it has been shown that, prior to 1987, the next of kin of 13 victims filed formal complaints before the National Police or the Ministry of the Interior regarding the disappearance of their family members on the day of, or in the days following, their detention.<sup>265</sup> In addition, the next of kin of 14 victims filed applications for *habeas corpus* in their favor on numerous occasions in some cases.<sup>266</sup> In addition, the next of kin of nine victims publicly denounced the disappearance of their family members in the media or directly to the then Head of State, and other civil society, international or ecclesiastical agencies and organizations.<sup>267</sup> Of the victims in this case, in only 11 cases no formal

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<sup>264</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 137, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 246.

<sup>265</sup> The victims whose next of kin denounced the facts to the National Police or the Ministry of the Interior were: Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, Álvaro Zacarías Calvo Pérez, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade and Alfonso Alvarado Palencia (*supra* paras. 76, 79, 88, 94, 97, 104, 108, 117, 124, 135, 139, 146 and 150).

<sup>266</sup> Applications for *habeas corpus* were filed in favor of: Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, Octavio René Guzmán Castañeda, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade and Alfonso Alvarado Palencia (*supra* paras. 76, 77, 80, 85, 94, 97, 104, 109, 117, 124, 127, 135, 140, 141, 147 and 150).

<sup>267</sup> The next of kin of Orencio Sosa Calderón, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Otto René Estrada Illescas, Sergio Leonel Alvarado Arévalo and Rubén Amílcar Farfán met with the Head of State (*supra* paras. 76, 105, 108, 129, 137 and 142). The next of kin of Joaquín Rodas Andrade met with the wife of the Head of State and, then, there is evidence that the Head of State at the time ordered the investigation of the case (*supra* para. 146). In addition, the next of kin of Orencio Sosa Calderón, Álvaro Zacarías Calvo Pérez, Carlos Guillermo Ramírez Gálvez, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo and Alfonso Alvarado Palencia

complaints were filed until 1999, when the *Diario Militar* appeared and, in most of those cases, the next of kin stated that they had not filed a formal complaint at the beginning of the disappearance for fear of reprisals.<sup>268</sup> Nevertheless, the Court observes that, the testimony of the next of kin, in at least two of these 11 cases, reveals that they undertook searches or made public complaints, from which it is reasonable to infer that the State could have been aware of the respective disappearances. These are the cases of Crescencio Gómez López and Luis Rolando Peñate Lima, whose next of kin searched for them in different institutions, such as the National Police, the Army, the G-2, and detention centers (*supra* paras. 160 and 162), even though they did not file a formal complaint “out of fear.”

239. Therefore, the Court finds that the State has been aware of the disappearances of at least 17 of the disappeared victims in this case since 1983, 1984 and 1985 and, on this basis, it should have opened an investigation *ex officio* to determine their whereabouts, to clarify what occurred, and, as appropriate, to identify, prosecute and punish those responsible. Even though, based on its competence *ratione temporis*, the Court cannot derive legal consequences from the actions of the State prior to March 1987, it is essential to point out that the presumed omissions conditioned or limited the subsequent investigations into the facts.

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

240. In addition to the facts that occurred before the acceptance of the Court's contentious jurisdiction, the Court underscores that, in 1988, the PDH concluded, with regard to the cases of four victims, that they had been disappeared as a result of the action or the acquiescence of State agents<sup>269</sup> (*supra* paras. 100, 110, 136 and 151**Error! Reference source not found.**). Furthermore, in its final report, the CEH included the cases of eight victims of this case<sup>270</sup> although it concluded, with regard to only three of them (one of whom coincides with those indicated by the PDH), that they had been subjected to forced disappearances (*supra* paras. 106, 128 and 133). Therefore, the Court observes that, even before the appearance of the *Diario Militar*, official declarations existed that considered that what had happened to five victims had been committed by State agents or with their acquiescence and constituted forced disappearances, without this prompting an investigation *ex officio* of these events by the pertinent authorities. These declarations made the State aware of the disappearance of an additional victim to those the State was already aware of prior to its acceptance of jurisdiction (*supra* para. 239).

241. The Court recalls that, whenever there are reasonable grounds to suspect that an individual has been subjected to forced disappearance, an investigation must be opened *ex*

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denounced the facts to the media and to non-governmental organizations (*supra* paras. 76, 89, 105, 137, 142 and 150).

<sup>268</sup> In particular, no formal complaints were filed as regards: José Miguel Gudiel Álvarez, José Porfirio Hernández Bonilla, Víctor Manuel Calderón Díaz, Juan Pablo Armira López and María Quirina Armira López, Zoilo Canales Salazar and Moisés Canales Godoy, Félix Estrada Mejía, Julio Alberto Estrada Illescas, Crescencio Gómez López and Luis Rolando Peñate Lima (*supra* paras. 73, 83, 91, 121, 132, 137, 157 and 159).

<sup>269</sup> In particular, in the cases of Manuel Ismael Salanic Chiguil, Sergio Saúl Linares Morales, Alfonso Alvarado Palencia and Rubén Amílcar Farfán it concluded that there had been a “refusal of the authorities to provide any information or explanation on the whereabouts of [the victims]” and that the disappearance “could not have occurred without the intervention of the authorities or paramilitary groups.”

<sup>270</sup> In particular, those of José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Manuel Ismael Salanic Chiguil, Sergio Saúl Linares Morales, Otto René Estrada Illescas, Rubén Amílcar Farfán, Joaquín Rodas Andrade and Alfonso Alvarado Palencia.

*officio*, without delay, and in a serious, impartial and effective manner.<sup>271</sup> This Court has indicated that it is essential that the prosecution and judicial authorities take prompt and immediate action, ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she could be deprived of liberty.<sup>272</sup> This obligation is independent of whether a complaint has been filed because, in cases of forced disappearance, international law and the general obligation to ensure rights impose the obligation to investigate the case *ex officio*;<sup>273</sup> consequently, this does not depend on the procedural initiative of the victim or of his or her next of kin, or on the submission of probative elements by private individuals.<sup>274</sup> In any case, any State authority, public official, or private individual who has received information of acts aimed at the forced disappearance of persons, must report them immediately.<sup>275</sup>

242. The Court calls attention to the fact that the investigations of these events by the Public Prosecution Service did not begin until after the complaints filed by the next of kin of the disappeared victims (through FAMDEGUA and GAM) and the PDH, following the appearance of the *Diario Militar* in 1999 (*supra* para. 165). Consequently, the Court considers that, even when confronted with the formal filing of judicial remedies or complaints or official declarations, the State did not act in a manner consistent with its obligation to open an immediate investigation *ex officio* into the forced disappearances of José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Crescencio Gómez López and Luis Rolando Peñate Lima, of which it was fully aware prior to the investigation opened at the request of the next of kin in 1999.

243. On previous occasions,<sup>276</sup> the Court has ruled on the impunity that has characterized the human rights violations committed during the armed conflict in Guatemala. Thus, the Court stresses that this situation is particularly evident in the instant case, in which the State was advised of 18 forced disappearances separately and independently, and they were also processed in this way; however, in none of them were serious, diligent or exhaustive measures taken at the beginning of the disappearances or in subsequent years. All of these investigations were at the same level of uncertainty and paralysis when the *Diario Militar* appeared. In this regard, the Court underscores that the prosecutor responsible for the investigations indicated expressly in his testimony that the investigation of the events in this case was “initiate[d] with greater diligence or with increased [...] momentum, following the appearance of the [...] *Diario Militar*, [because] in reality, the

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<sup>271</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 65, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 223.

<sup>272</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 134, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 218.

<sup>273</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 65, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 223.

<sup>274</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 248.

<sup>275</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 65, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 223.

<sup>276</sup> See, for example: *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173; *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and costs*. Judgment of November 19, 2003. Series C No. 116, para. 95; *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 134; *Case of Chitay Nech et al. v. Guatemala*, *supra*, paras. 174 to 177, 199, 201, 209 and 226; and *Case of the Río Negro Massacres v. Guatemala*, *supra*, paras. 196, 216, 230, 236 and 241.

applications for *habeas corpus* that were filed had not resulted in an objective investigation or an investigation *ex officio*."

### **3. Lack of due diligence in the investigations by the Public Prosecution Service**

244. The Court recalls that, in cases of forced disappearance, the investigation will have certain specific connotations that arise from the very nature and complexity of the phenomenon under investigation; in other words, the investigation must also include taking all necessary measures to determine the fate or destiny of the victim and to discover his or her whereabouts.<sup>277</sup> Taking into account the State's acknowledgment of responsibility, the Court will only refer to the main shortcomings and omissions in the investigation initiated in 1999, in order to determine the diligence of the authorities responsible for the said investigation.<sup>278</sup>

#### *a) Measures designed principally to obtain information on the victims*

245. The Court notes that, from 1999 to date, the investigation has concentrated on two major groups of measures: requests for information on the victims and, in some cases, on their next of kin, from different State, civil or private entities and agencies; and the summons of the victims' next of kin and, in some case, reception of their statements. In the case file of the investigation provided to the Court (up until 2008), as well as in the report prepared by the Public Prosecution Service, very few investigative measures do not belong to these two groups of activities. Thus, this Court has verified three main periods of requests for information on the victims, which comprise most of the measures revealed in the case file (1999 and 2000; 2002 to 2004, and 2006 and 2007), where the different prosecuting agencies that handled the investigations initially, or subsequent the *Diario Militar* Coordinator or the current Special Prosecution Unit, requested information on the victims from different State, civil society or private agencies, institutions or organizations (*supra* paras. 166, 171 and 176).<sup>279</sup>

246. According to the report on the investigation presented to the Court by the Public Prosecution Service, all of this information "is necessary in order to profile the victims," with which a "general matrix of all the persons mentioned in the *Diario Militar*" has been created, together with file cards with the data of each victim. The Court understands the need to gather information on the victims in order to clarify the events and to conduct a diligent investigation, but it does not find it justifiable or reasonable that, in the almost 13 years of investigations by the Public Prosecution Service, these requests for information have been the central focus of the measures taken by the different prosecution authorities responsible

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<sup>277</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 80, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 224.

<sup>278</sup> The Court points out that it will base its consideration on the said investigation on the judicial case file up to 2008, which was provided by the State during the proceedings before the Inter-American Commission and on the Report prepared by the Public Prosecution Service dated May 22, 2012, on the said investigation and presented to the Court as helpful evidence (*supra* para. 11 and 15).

<sup>279</sup> In particular, the case file up until 2008 reveals requests for information on the victims addressed, among others, to the immigration authorities, such as the General Immigration Directorate, the Migratory Control Division of the Public Prosecution Service and some foreign Governments; to civil registry offices, such as the Civil Registry Office, the Supreme Electoral Tribunal, the Citizens' Registry, and the Neighborhood Registry; to transportation authorities, such as the Ministry of Communications, Transport and Public Works, and the General Directorate of Transportation; to trade union and human rights organizations; to the Ombudsman's Office, to the Tax Administration Superintendence; to the Universidad de San Carlos and student and professional associations; to the National Civil Police and the Ministry of the Interior, the FAFG, the National Compensation Program, the Director General of the Penitentiary System, and the Head of the Historical Archive of the National Police.

for investigating the facts of the instant case. The Court recalls that due diligence in an investigation demands that it be conducted in order to prove the facts with reliable evidence and to identify those responsible and, eventually, to punish them.<sup>280</sup> Additionally, the Court takes note of the testimony of the prosecutor in charge of the investigation during the hearing held in this case, that the requests for information on the victims had been made, partly, "to determine [...] whether [the victims] were really disappeared," despite the existence of the *Diario Militar*, which proved the said disappearances.

*b) Delay in unifying the investigation*

247. Furthermore, it is inexplicable why the Public Prosecution Service decided to distribute the 183 persons recorded in the *Diario Militar*, "individually," between the "35 Prosecution Agencies of the Metropolitan Prosecution Service that existed at the time." The complaint based on these cases was filed following the appearance of the *Diario Militar* (*supra* para. 166) and this document clearly reveals facts that are related, presumably committed under a chain of command, with a coordinated and common planning and execution. The effective investigation of these facts required and requires establishing and analyzing the common and concurring elements that would facilitate the overall comprehension of the operations described in the *Diario Militar*. The Court observes that the Commission and the representatives alleged that the investigations were not unified for the first six years (from 1999 to 2005), until they were referred to the Special Prosecution Unit. However, the Court notes that, from the report of the Public Prosecutor Service, as well as the copy of the court record up to 2008 provided to the Court, "the unification of all the complaints in one prosecution agency that was called the *Diario Militar* Coordinator" was carried out at some moment prior to June 2001, the date at which this office began to take measures. Despite this, the Court also considers that the distribution of the cases on an individual basis among the various prosecution agencies for almost two years unnecessarily delayed the progress of the investigations, duplicated efforts, and was not a logical investigative measure to deal with a complaint based on a document such as the *Diario Militar*, which reveals, by its mere existence, operations conducted systematically as part of the counterinsurgency actions carried out at the time of the armed conflict.

*c) Lack of collaboration of the Ministry of Defense*

248. The Court also stresses the lack of collaboration with the investigation of other State authorities, principally the Ministry of Defense. In this regard, it observes that, on different occasions, the Public Prosecution Service requested information from the Ministry of Defense and, in most cases, this institution refused to prove the information. The Court observes that the judicial case file available to the Court (up until 2008) reveals at least nine requests for information sent to the Ministry of Defense (six in 1999, two in 2006, and one in 2007).<sup>281</sup> Regarding seven of these requests, the Ministry of Defense refused to

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<sup>280</sup> Cf. *Case of the Barrios Family v. Venezuela*, *supra*, para. 292.

<sup>281</sup> Requests for information made by the Public Prosecution Service to the Ministry of Defense: (1) on June 8, 1999, in the context of the investigation concerning Orencio Sosa Calderón (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6510); (2) on July 12, 1999, in the context of the investigation concerning José Porfirio Hernández Bonilla (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6759); (3) on May 31, 1999, in the context of the investigation concerning Octavio René Guzmán Castañeda (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6791); (4) on June 15, 1999, in the context of the investigation concerning Carlos Guillermo Ramírez Gálvez (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7115); (5) on June 2, 1999, in the context of the investigation concerning Félix Estrada Mejía and Lesbia Lucrecia García Escobar; on June 10, 1999, according to the document with the response (file of annexes to the merits report, tome III, annex 175, folio 1219), and (6) on June 2, 1999, in the context of the investigation concerning Zoilo Canales Salazar (file of annexes presented by the State with its brief of October 17, 2008, tome V, folio 8239). In addition, there are two

present the information requested by the Public Prosecution Service. Regarding the requests made in 1999, the Ministry of Defense justified its refusal based on the supposed failure to comply with the relevant procedural regulation,<sup>282</sup> or the alleged lack of clarity of the Public Prosecution Service's request. In the only refusal in which the Ministry of Defense explained what constituted the alleged failure to comply with the Code of Criminal Procedure, it stated, *inter alia*, that the request made by the Public Prosecution Service did not indicate the "name of the members of the Army who had been accused of committing a crime, or identify the proceedings in which they were being investigated" (*supra* para. 167). The Court underlines that this was the response of the Ministry of Defense to a request for information in which it was asked precisely for the names of the heads and deputy heads of the Intelligence Department of the Presidential Staff, the heads of the Civil Self-defense Patrols, and the commanders of the Military Zones of the Republic between 1983 and 1985. Moreover, in response to the requests made after 2006, the Ministry of Defense justified its refusal to provide the information requested based on the absence of a court order. However, the Court takes note of the statements made by State witness Manuel Giovanni Vásquez during the hearing, that court orders had been requested, even though "domestic law does not require this," and that "when a court order has been obtained, they say they do not have the information." The Court considers the lack of collaboration by the Ministry of Defense in this case is particularly serious, bearing in mind that, according to the studies of the *Diario Militar* carried out by experts, and even the Peace Secretariat of Guatemala, the authorship of this document can be attributed to the Army (*supra* para. 59).

249. The Court emphasizes that the Special Prosecution Unit responsible for the investigation has itself attributed the lack of progress in the investigation to the lack of collaboration from the Ministry of Defense.<sup>283</sup> Also the prosecutor in charge of the investigation, presented by the State as a witness during the public hearing, testified that "unfortunately, progress [in the investigation] has been minimal because the Ministry of Defense has not provided the necessary information, [...] to establish command structures or chains of command of members of the armed forces or agents of State security, in relation to specific responsibility." The report of the Public Prosecution Service indicated that, in response to some of the refusals to provide information, the Service requested the respective court orders; however, the Court was not provided with information on the results of these measures.

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requests for information from 2006: (7) on October 17, 2006, regarding, in particular the investigation into what happened to Sergio Saúl Linares Morales (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7207), and (8) on September 22, 2006, regarding in particular the investigation into what happened to Sergio Leonel Alvarado Arévalo (file of annexes presented by the State with its brief of October 17, 2008, tome IV, folio 8045). Lastly, there is (9) a request dated February 20, 2007, regarding in particular the investigation into what happened to Oscar Eduardo Barillas Barrientos (file of annexes to the merits report, tome III, annex 168, folio 1198).

<sup>282</sup> Article 245 of the Code of Criminal Procedure was the only norm cited expressly by the Ministry of Defense in relation to this reason for the refusal. This norm establishes that: "The courts and the Public Prosecution Service may require reports on data that appears in records kept in accordance with the law. The reports shall be requested indicating the proceedings in which they are required, the name of the accused, the place where the report must be delivered, the time frame for its presentation, and the consequences established for non-compliance with the obligation to provide information. Cf. Decree-Law No. 51-92 – Code of Criminal Procedure (file of annexes to the pleadings and motions brief, tome I, annex A10, folios 9472 to 9605).

<sup>283</sup> In this regard, the report presented to the Court indicated that "[t]o request arrest warrants it is necessary to establish the hierarchical division within the Guatemalan Army and within the National Police and define where the general orders emanated from and who elaborated them, [and this] is being processed, [...] owing to the refusal of the Ministry of Defense to provide information." Cf. Report of the Special Prosecution Unit (merits file, tome IV, folio 1843).

250. The Court also emphasizes that, before the criminal investigation by the Public Prosecution Service began, the Ministry of Defense also refused to provide information to the Commission for Historical Clarification (*infra* para. 296).

251. Based on all the foregoing considerations, the Court concludes that, in this case, the military authorities have not provided, duly and promptly, pertinent information to elucidate the facts. The Court emphasizes that State authorities are obliged to collaborate in the collection of evidence in order to achieve the objectives of an investigation, and to abstain from actions that obstruct the progress of the investigative proceedings.<sup>284</sup> Likewise, it is essential that the entities responsible for the investigations are provided, both formally and substantively, with the appropriate and necessary powers and guarantees to access documentation and information that is pertinent for the investigation of the facts denounced and to obtain indications or evidence of the whereabouts of the victims.<sup>285</sup> Furthermore, it is fundamental that the authorities in charge of the investigations can have unrestricted access to the documentation in the hands of the State.<sup>286</sup>

252. The Court finds that the constant refusals of information by the Ministry of Defense have impeded the identification of the individuals who took part in the planning and execution of the operations recorded in the *Diario Militar*, as well as eventually obtaining information on these individuals in order to clarify the facts and discover the whereabouts of the victims. In this regard, the Court recalls that the obligation to investigate, prosecute and punish, as appropriate, those responsible is an obligation that corresponds to the State as a whole, and this means that all the State authorities must cooperate, support and assist, within their sphere of competence, the proper investigation of the facts, in keeping with the obligations derived from Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument.<sup>287</sup>

*d) Failure to use the probative elements in the case file*

253. The Court observes that, in the investigation of this case, a considerable volume of probative elements have emerged that provide information on the facts and, regarding which, there is no evidence that the appropriate follow-up was conducted or that logical and specific measures of investigation were taken. In particular, the Court emphasizes that the *Diario Militar*, which the State itself has acknowledged as an official and authentic document, attributes responsibility for the forced disappearances recorded therein to State agents, mentions military and police units involved in the violations,<sup>288</sup> and reveals operational strategies of the military forces during the armed conflict that are consistent with the conclusions of the CEH. Despite the evident lack of collaboration by the Ministry of Defense (*supra* paras. 248 to 252), the Court observes that no inspection or verification measures have been conducted, or requests made for information on the military and police units mentioned in the *Diario Militar* during the more than 13 years that have passed since its appearance and the filing of the complaint before the Public Prosecution Service.

<sup>284</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 257.

<sup>285</sup> Cf. *Case of Tiu Tojín v. Guatemala*, *supra*, para. 77, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 257.

<sup>286</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 135, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 171.

<sup>287</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 210.

<sup>288</sup> As indicated by the experts and the studies carried out on the *Diario Militar*, this document contains references to different police and military units. Cf. Expert opinion provided by Katharine Doyle before the Inter-American Court at the public hearing in this case.

254. In addition, the Historical Archive of the National Police has contributed specific and objective data to the investigation concerning the forced disappearances of the victims recorded in the *Diario Militar* that have been brought to the attention of the Public Prosecution Service. For example, the Court observes that, the documents found in the Historical Archive of the National Police have revealed, *inter alia*, information on two individuals potentially involved in the capture of Luz Haydée Méndez Calderón (*supra* para. 112). However, there is no evidence that any measure was taken as a result of this information. The Court takes note of what was indicated by the prosecutor during the hearing and in the report of the Public Prosecution Service to the effect that the information in the Historical Archive of the National Police is being examined, but notes that the first part of this information was provided to the Public Prosecution Service more than three years ago.<sup>289</sup>

255. The Court also observes that the next of kin of several of the disappeared victims also witnessed the capture of their loved ones, and have provided information in this regard to the case file.<sup>290</sup> Similarly, it notes that the National Police provided information on the identity of senior officials of this institution at the time the disappearances started, and that the statement of the then Director of the National Police has been received (*supra* para. 179). However, the evidence submitted to the Court does not reveal whether any measure or action was taken with regard to this information, even though it relates to objective evidence contained in the case file that could help elucidate the facts.

256. The Court considers that the failure to follow up on and to consider all these elements, and others in the case file, constitute serious omissions in the investigation. In particular, it concludes that the absence of a joint and interrelated study of the *Diario Militar*, the Historical Archive of the National Police, and the statements of the victims' families, among other matters, have led to the absence of significant progress in the investigation, which has resulted in its ineffectiveness and the consequent failure to identify and punish those who, in different ways, may have participated in the said violations. The Court emphasizes that the abundant documentary evidence (the *Diario Militar* and Historical Archive of the National Police) in the case file has appeared by accident or through unofficial channels, and thus it has not been the result of a serious and diligent investigation. Nevertheless, and even given this type of evidence, the competent authorities have continued not to adopt the necessary measures to take advantage of the information contained in this evidence or to follow up on the indications that emerge from it. The Court considered that it has been proved that the lack of collaboration of the Ministry of Defense has seriously obstructed the progress of the investigations. In addition, it notes that, according to recent information forwarded by Public Prosecution Service, an investigation line and strategy that is consistent with the existence of the *Diario Militar* and the information contained in it is finally being adopted, and some investigative activity by the

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<sup>289</sup> In May 2009, la Peace Secretariat forwarded the Public Prosecution Service a publication "*La autenticidad del Diario Militar, a la luz de los documentos históricos of the National Police*," together with the documents of the Historical Archive of the National Police related to the cases of the *Diario Militar*. Cf. Bulletin 04-09 of the Peace Secretariat of July 2009 (file of annexes to the pleadings and motions brief, tome II, annex A17, folio 10144). Also, according to the representatives, in June 2010, other documents found in the Historical Archive of the National Police up until that time on the cases recorded in the *Diario Militar* had been handed over to the Public Prosecution Service. However, the Court was not provided with any evidence in this regard. Cf. Pleadings and motions brief, tome II, folio 558.

<sup>290</sup> For example, Manuel Ismael Salanic Chiguil's father stated that some of the armed men who took part in his son's detention wore BROE uniform; while Wendy Santizo Méndez, Luz Haydée Méndez Calderón's daughter, has testified on the location of the National Police station where her mother was taken initially (*supra* paras. 95 and 114). In this regard, no information has been provided to the Court from which activities to follow up on this information can be inferred..

corresponding authorities can be observed. However, the Court notes that more than 13 years have passed since the discovery of the said document and five years since the State acknowledged its authenticity without, to date, the Public Prosecution Service having exhausted all the necessary measures in order to advance in identifying the possible perpetrators of the facts and, as appropriate, indicting them in the proceedings, following up on the information contained in the case file.

*e) Omissions in the investigation into the death of Rudy Gustavo Figueroa Muñoz*

257. Regarding the investigation into the death of Rudy Gustavo Figueroa, the Court observes that no measures were taken until June 2001 and that those taken do not reveal that any progress has been made in clarifying the facts and identifying those responsible (*supra* para. 172). Although the next of kin of Mr. Figueroa Muñoz did not report his death officially, the Court observes that, following the appearance Mr. Figueroa's body in 1984, it can be presumed that the State was aware of the facts,<sup>291</sup> and therefore it had the obligation to open a serious and effective investigation into this death as of that moment, even though this Court is only able to require this as of March 9, 1987. The other considerations concerning the investigation opened in 1999 into the facts documented in the *Diario Militar* (*supra* paras. 244 to 256) are also applicable to the case of Mr. Figueroa Muñoz, because what happened in his case is included in that investigation. However, the Court emphasizes that, in this particular case, not even the minimum measures required in the investigation of a violent death have been taken,<sup>292</sup> even though the mortal remains appeared in 1984.

*f) Investigation of facts additional to the forced disappearances*

258. The Court also observes that the representatives argued the failure to investigate alleged acts of torture or illegal detention suffered by some of the next of kin of the disappeared victims during or after the capture of their loved ones.<sup>293</sup> In this regard, the Court points out that it has insufficient evidence to determine whether the Public Prosecution Service was informed of these facts; consequently, it does not consider it appropriate to declare a violation in this regard. Nevertheless, the Court recalls that the State has the obligation to investigate and to punish such practices, in accordance with the American Convention and also, in this case, in light of the Inter-American Convention against Torture. Accordingly, it must open *ex officio* and without delay, serious, impartial, and effective investigations into all the facts of which it is aware, especially those that it

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<sup>291</sup> The Court recalls that the body of Rudy Gustavo Figueroa Muñoz appeared two months after his disappearance with "injuries [caused by a] sharp instrument" near his home (*supra* para. 164).

<sup>292</sup> According to the Inter-American Court's case law, the State authorities that conduct an investigation of this type must try, at least, *inter alia*: (a) to identify the victim; (b) to recover and preserve the probative material related to the death, in order to assist any potential criminal investigation into those responsible; (c) identify possible witnesses and obtain their statements in relation to the death investigated; (d) determine the cause, means, place and time of death, as well as any pattern or practice that might have caused the death, and (e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary to conduct a thorough inspection of the scene of the crime, ensure that rigorous autopsies and tests are performed on the human remains, by competent professionals, using appropriate procedures. *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 239, footnote 274.

<sup>293</sup> According to their testimony, Yordin Eduardo Herrera Urizar and Blanca Rosa Ortega (next of kin of Zoilo Canales Salazar and Moisés Canales Godoy), were detained for several days following the capture of Zoilo Canales Salazar. In addition, Esteban Eliseo Salanic Chiguil had presumably been subjected to torture by the security agents who detained his brother, Manuel Salanic Chiguil, at the time of his capture. The Court observes that the presumed torture committed against Esteban Eliseo Salanic Chiguil was described by the CEH in its final report.

learns about in the context of investigating the facts of this case, and not merely those relating to the forced disappearances of victims.

*g) Conclusion concerning due diligence*

259. The Court recalls that, with regard to diligence in the investigations in cases of forced disappearance, it has stressed that the prompt and immediate action of the prosecution and judicial authorities is essential, ordering opportune and necessary measures to determine the whereabouts of the victim or the place where he or she may be deprived of liberty.<sup>294</sup> The legal rights involved in the investigation make it essential to redouble efforts in relation to the measures that must be taken in order to comply with its purpose, because the passage of time has a direct and proportionate relationship to the limitation to – and, in some case, the impossibility of – obtaining evidence and/or testimony, making it difficult and even useless or ineffective to implement probative measures to clarify the facts being investigated, to identify possible the possible authors and participants, and to determine eventual criminal responsibilities.<sup>295</sup> The investigation must be carried out by all available legal means and designed to determine the truth, and to pursue, capture, prosecute and, eventually, punish all the masterminds and perpetrators of the facts, especially when State agents are involved.<sup>296</sup>

260. In this case, the Court concludes that the State has not conducted an investigation into the facts of this case with due diligence, because: most of the measures were aimed at obtaining information about the victims; there was an unwarranted delay in unifying the investigation; there was a lack of collaboration from the Ministry of Defense that has obstructed the progress of the investigations, and there have been serious omissions with regard to the use of the evidence in the case file. In addition, the Court finds that the State has not taken the minimum measures that are required by its obligation to investigate what happened to Rudy Gustavo Figueroa Muñoz.

#### **4. Reasonable time**

261. In addition, for the investigation to be conducted in a serious, impartial manner, and as an inherent legal obligation, the right of access to justice requires that the facts under investigation are effectively determined within a reasonable time.<sup>297</sup> This Court has indicated that the “reasonable time” referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the proceedings that are underway until the final judgment is handed down.<sup>298</sup> The Court considers that, in principle, a prolonged delay, as in this case, is, in itself, a violation of judicial guarantees.<sup>299</sup>

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<sup>294</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 134, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 218.

<sup>295</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 150, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 218.

<sup>296</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits*. Judgment of January 31, 2006. Series C No. 140, para. 143, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 204.

<sup>297</sup> Cf. *Case of Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 14, and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 196.

<sup>298</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 229.

<sup>299</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 145, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 229.

262. The Court has usually considered the following elements to determine the reasonableness of the time: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings. However, in this case, the Court has verified that, from the date of the acceptance of the Court's jurisdiction until today, 25 years and 8 months have elapsed,<sup>300</sup> as well as 13 years and 6 months since the appearance of the *Diario Militar* (*supra* para. 59), during which the investigation of the facts of this case has not advanced beyond the initial phase of the investigation before the Public Prosecution Service. The Court emphasizes that, initially, the State failed to comply with its obligation to open the corresponding investigations *ex officio*; while, during a second stage, the conduct of the authorities in charge of the investigation by the Public Prosecution Service has lacked due diligence in the implementation of these investigations (*supra* paras. 240 to 260). The Court also stresses that the case file of the investigation before the Public Prosecution Service<sup>301</sup> reveals several periods of procedural inactivity. Consequently, the Court considers that it is unnecessary to analyze the above-mentioned criteria, because it is evident that the time that has passed is far in excess of the time that could be considered reasonable for the State to investigate the facts of this case, especially when it is considered that the time required to individualize and identify those responsible and the processing of the different stages of the criminal proceedings until a final judgment is obtained must be added to this. This absence of investigation for such a long period constitutes a flagrant denial of justice and a violation of the right of access to justice of the victims.

#### **5. Alleged violation of the obligation to adopt domestic legal provisions**

263. The Court observes that both the Commission and the representatives alleged the violation of Article 2 of the American Convention, because, *inter alia*, the situation of "generalized impunity" in this case is due in part to the dissuasive effect of the National Reconciliation Act on the investigation of crimes committed during the internal armed conflict, as well as to the "structural weaknesses of the Guatemalan administration of justice that affect this case." The State acknowledged its "total" responsibility for the alleged violation of Article 2 of the Convention (*supra* para. 17(b)(4)), without specifying the reasons why it made this acknowledgement

264. In particular, regarding the 1996 National Reconciliation Law, the Court notes that this law has not been applied to the facts of this case, which was expressly indicated by the representatives and the Commission. The Court finds that it is not incumbent on it to make a ruling on or an analysis of this law, because the purpose of the Court's contentious competence is not to review domestic legislation in the abstract.<sup>302</sup> In addition, with regard to considering that the impunity in this case constitutes a violation of Article 2 of the Convention, the Court finds that it has not been provided with the elements required to verify that the obstacles to the elucidation of the facts in this case constitute a failure to comply with the State's general obligation established in the said Article 2.

265. Nevertheless, the Court finds that, more than 29 years after the first disappearances in this case occurred, the facts are clearly framed in a systematic pattern of denial of justice

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<sup>300</sup> To date, from 27 years and 9 months to 29 years have elapsed since the disappearances in this case began.

<sup>301</sup> The Court recalls that, owing to the State's request for confidentiality, the updated file of the investigation by the Public Prosecution Service is not part of the body of evidence in this case (*supra* para. 11). Consequently, the analysis of the State's obligations is made based on the copy of the case file up until 2008, which was forwarded to the Inter-American Commission.

<sup>302</sup> Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 50, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 172.

and impunity.<sup>303</sup> The Court underscores that it has already indicated that its case law on the merits of cases and on monitoring compliance with judgment “reveals that Guatemala has a serious problem with regard to the impunity that reigns in the country, specifically in relation to the systematic violations of human rights that occurred during the armed conflict.”<sup>304</sup>

## 6. Conclusion

266. The Court takes note of the contextual background in which the initial disappearances of the victims in this case occurred. However, the Court considers that it is particularly serious that the investigation before the Public Prosecution Service has not progressed beyond its initial phase following the appearance of the *Diario Militar* and the Historical Archive of the National Police. Thus, the Court emphasizes that the failure of the Ministry of Defense to collaborate with the investigation conducted by the Public Prosecution Service has been one of the main obstacles to obtaining justice in this case (*supra* paras. 248 to 252). The Court takes note of certain measures taken by the State, such as the creation of the Commission on the Declassification of Military Archives and the adoption of the Law on Access to Information, but notes that this has been insufficient to ensure progress in the clarification of the facts of this case.

267. Based on all the above, the Court concludes that the State has failed to comply with its obligation to open an investigation *ex officio* and by all legal means available into the forced disappearance of the 18 victims indicated in paragraph 242 *supra*. In addition, the Court concludes that the investigation conducted by the Public Prosecution Service as of 1999, has not been diligent or effective in order to clarify the facts, identify and, eventually, punish those responsible or to determine the whereabouts of all the disappeared victims; moreover, it has not respected the guarantee of reasonable time. Consequently, the State has violated its obligation to ensure the rights established in Articles 7, 5(1), 5(2), 4(1) and 3 of the Convention by an effective investigation of the forced disappearance and the death of Rudy Gustavo Figueroa Muñoz, in relation to Articles 1(1) of the Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Rudy Gustavo Figueroa Muñoz and, in conjunction with Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the 26 disappeared victims identified in Chapter VIII-1 *supra*. The Court also concludes that, owing to the absence of an effective investigation into the facts, and the prosecution and punishment of those responsible, the State has violated the rights to judicial guarantees and judicial protection, established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, as well as Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of the next of kin of Rudy Gustavo Figueroa Muñoz, and also in relation to Article I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of the next of kin of the disappeared victims identified in the Annex to this Judgment on the victims.

## 7. Access to information and the right to know the truth

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<sup>303</sup> Impunity has been defined by the Inter-American Court as “the total absence of investigation, pursuit, capture, prosecution and sentencing of those responsible for the violations of the rights protected by the American Convention.” *Cf. Case of the “White Van” (Paniagua Morales et al.) v. Guatemala, supra*, para. 173, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 209, footnote 295.

<sup>304</sup> *Case of Bámaca Velásquez v. Guatemala*. Monitoring compliance with judgment. Order of the Court of January 27, 2009, twenty-fifth considering paragraph; *Case of Molina Theissen v. Guatemala*. Monitoring compliance with judgment. Order of the Court of November 16, 2009, sixteenth considering paragraph. The Court referred to the situation of impunity that reigned in the cases of: *Myrna Mack Chang, Tiu Tojin, Carpio Nicolle et al., Bámaca Velásquez, Molina Theissen, and the “Street Children” (Villagrán Morales et al.)*, all against Guatemala. See also: *Case of the Río Negro Massacres v. Guatemala, supra*, para. 236.

268. The Commission and the representatives indicated that, in this case, the State had violated the right of access to information, presumably established in Articles 13 and 23<sup>305</sup> of the Convention, to the detriment of the next of kin of the disappeared victims and of the next of kin Rudy Gustavo Figueroa Muñoz, owing, *inter alia*, to: (i) the refusal of the military authorities to provide information to the CEH; (ii) the concealment of information by the State, and (iii) the refusal of the Ministry of Defense to provide information to the Public Prosecution Service in the context of the criminal investigation in this case. Based on these facts, the representatives also argued that they constitute a violation of the “autonomous right to the truth” of the next of kin of the disappeared persons, established in Articles 8, 13 and 25 of the Convention. The State accepted fully the violation of Article 23 and partially the violation of Article 13 of the Convention, based on the right of access to information on the grounds that “the next of kin have not had information on the whereabouts of the victims,” but the State “ha[d] taken some measures to ensure access to information.” In addition, the State contested the alleged violation of the right to know the truth of the next of kin, considering that “it is not contained, as such, in the [American Convention]” (*supra* para. 17).

269. Regarding the alleged violation of the right of access to information, the Court observes that, unlike other cases heard by this Court,<sup>306</sup> in the instant case, this alleged violation is not related to a specific request for information address by the presumed victims to the State authorities in order to obtain this information. The Commission and the representatives are asking the Court to consider that the refusal of the Ministry of Defense to provide information, following the requests for information by extrajudicial and judicial bodies responsible for clarifying the facts, also constitutes a violation of the right of access to information of the next of kin of the victims of the said acts. In this regard, the Court considers that this failure of the Ministry of Defense to collaborate with the CEH and the authorities responsible for the investigation has been an obstacle to the elucidation of the facts of this case and it has been assessed as such in this judgment, when ruling on the investigations into the forced disappearances and death of Rudy Gustavo Figueroa Muñoz as well as the consequent violations of Articles 8(1) and 25(1) of the American Convention (*supra* paras. 248 to 252) and in the analysis of the right to personal integrity of the next of kin (*infra* paras. 295 to 302). Therefore, the Court considers that it is not incumbent on it to make an independent analysis of the said refusals of information in order to determine whether Article 13 or, if applicable, Article 23 of the Convention, has been violated to the detriment of the next of kin of the disappeared victims and of the next of kin of Rudy Gustavo Figueroa Muñoz.

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<sup>305</sup> Article 23 of the American Convention establishes that: “1. Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters, and (c) to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”

<sup>306</sup> In the *Case of Claude Reyes et al. v. Chile*, the violation of the right of Access to information was related to the refusal of a request for information made to the Foreign Investment Committee; while in the *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, the Court was required to rule on the violation of the right of Access to information in the context of “a civil action against the Federal State” where “the Union [was asked] to provide information on the burial of the next of kin, so that death certificates could be issued, the remains could be transferred, and for a copy of the official report of the War Ministry of January 5, 1975 on the military operations to combat the guerrilla fighters in Araguaia (*Guerrilha do Araguaia*).” Cf. *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, paras. 57.13, 99 and 103, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 188.

270. The Court will also rule on the alleged violation of the right to know the truth of the next of kin of the disappeared victims and of Rudy Gustavo Figueroa Muñoz in Chapter VIII-3 *infra*.

## ***II. Obligation to investigate the alleged detention and torture of Wendy and Igor Santizo Méndez***

### **A. Position of the Inter-American Commission and arguments of the parties**

271. The Commission considered that the State had failed to comply with its obligation to ensure the rights to personal liberty and to protection of the honor of Wendy Santizo Méndez by conducting a serious and effective investigation into the alleged torture and detention suffered by this victim, which it should have initiated *ex officio* following the complaint concerning the facts. The Commission also indicated that the absence of such an investigation also violated Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this treaty, and Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Wendy Santizo Méndez and her next of kin. The representatives indicated that the State “ha[d] failed to comply with its obligation to provide victimological care [to Wendy Santizo Méndez] and to investigate these events seriously and effectively.” Thus, they noted that the State had the obligation to investigate these facts as of the time it accepted the Court’s jurisdiction; consequently, by failing to do so, it had violated Article 19 of the Convention. In addition, the Court recalls that the State expressed its partial acknowledgement of the violations indicated by the Commission with regard to Wendy Santizo Méndez, in relation to the events that occurred after Guatemala’s acceptance of the Court’s jurisdiction (*supra* para. 17(c) and 26).

### **B. Considerations of the Court**

272. The Court recalls that, in this case, the alleged detention and rape of Wendy Santizo Méndez do not form part of the facts submitted to the Court (*supra* paras. 3 and 25). Therefore, the Court cannot rule on the substantive rights established in Articles 5, 7 and 11<sup>307</sup> of the American Convention. Consequently, this chapter will examine the failure to investigate the alleged detention, rape and torture of Wendy Santizo Méndez, as well as the alleged detention and torture of Igor Santizo Méndez, as of March 9, 1987.

273. In previous cases, the Court has recognized the necessary relationship between the general obligation of protection indicated in Article 1(1) of the Convention and the specific rights protected by this instrument.<sup>308</sup> Given that this obligation of guarantee is linked to specific rights, it can be fulfilled in different ways, depending on the right that the State has the obligation to guarantee and the particular characteristics of the case.<sup>309</sup> In this regard, the Court considers it necessary to take into account that the alleged facts that should be investigated include a presumed rape, allegedly committed by a State agent against a nine-

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<sup>307</sup> Article 11 of the American Convention establishes that: “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.”

<sup>308</sup> Cf. *Case of Vargas Areco v. Paraguay*, *supra*, para. 73, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 111.

<sup>309</sup> Cf. *Case of Vargas Areco v. Paraguay*, *supra*, para. 73, and *Case of Garibaldi v. Brazil*, *supra*, para. 111.

year old girl. Thus, the Court has established that, in certain situations, rape can also constitute a form of torture of the victim.<sup>310</sup>

274. Under Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Articles 5(1) and 5(2) of the American Convention entails the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment.<sup>311</sup> This duty to investigate is reinforced by the provisions of Articles 1, 6 and 8 of the Convention against Torture, which obliges the States to "take effective measures to prevent and punish torture within their jurisdiction" and "to prevent and punish other cruel, inhuman or degrading treatment." Furthermore, according to the provisions of Article 8 of this Convention, States Parties shall ensure:

[I]f there is an accusation or well-grounded reason to believe that an act of torture has been committed within its jurisdiction, [...] that its respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceeding.<sup>312</sup>

275. Meanwhile, Article 7(b) of the Convention of Belém do Pará<sup>313</sup> obliges the States Parties to use due diligence to prevent, punish and eradicate violence against women. In keeping with this, the Court has established in its case law that the provisions of Article 7(b) of the Convention of Belém do Pará stipulate and complement the State's obligations with regard to compliance with the rights established in the American Convention,<sup>314</sup> such as the obligation to ensure the right recognized in Article 5 of the American Convention. In these cases, the State authorities should initiate *ex officio* and without delay, a serious, impartial and effective investigation as soon as they are informed of acts that constitute violence against women,<sup>315</sup> including rape. This obligation to investigate must take into account the duty of society to reject violence against women and the State's obligations to eradicate it and to ensure that victims have confidence in the State institutions that are there to protect them.<sup>316</sup>

276. The Court has also specified that, even though Article 11 of the American Convention is entitled "Right to Privacy" [Note: Protection of Honor and Dignity, in the original Spanish version], its content includes, *inter alia*, the protection of privacy.<sup>317</sup> Among other protected

<sup>310</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, para. 128, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 132.

<sup>311</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 147, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 243.

<sup>312</sup> Since January 29, 1987, the date on which the said Inter-American Convention against Torture entered into force for Guatemala, under its Article 22, the State is required to comply with the obligations contained in this treaty.

<sup>313</sup> Article 7(b) of the Convention of Belem do Pará establishes that: "[t]he 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; [...]."

<sup>314</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 346, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 243.

<sup>315</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 378, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 252.

<sup>316</sup> Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 193, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 177.

<sup>317</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 193, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 166.

areas, this concept of private life includes sexual life.<sup>318</sup> This Court considers that the failure to investigate a complaint of rape, in the terms described in the preceding paragraphs, entails a violation of the obligation to guarantee personal integrity and the protection of sexual life, included in Article 11 of the Convention.

277. With regard to Article 7(1) of the Convention, the Court has held that the State must prevent any impairment of the liberty of the individual by the actions of State agents and private third parties, and investigate and punish acts that violate this right.<sup>319</sup>

278. In order to determine whether, in this case, the procedural obligation to protect the rights to personal integrity, personal liberty and privacy by a serious investigation into the facts has been complied with fully, the measures taken by the State after it was aware of the facts must be examined, as well as the internal procedures for elucidating the facts that occurred and identifying those responsible for the alleged violations committed against the victim. Thus, the Court clarifies that the Inter-American Convention against Torture gives rise to two presumptions that activate the State obligation to investigate: on the one hand, when a complaint is filed and, on the other hand, when there are grounds to believe that an act of torture has been committed within the sphere of the State's jurisdiction.<sup>320</sup> The Court observes that, on June 11, 1999, Wendy Santizo Méndez testified before the Public Prosecution Service during the investigation into the forced disappearance of her mother about the alleged rape and detention of which she was presumably the victim.<sup>321</sup> In view of the lack of information showing that the State was or could have been aware of the possible occurrence of the said events before that date, the Court will analyze the measures taken by the State as of that moment when, moreover, the Convention of Belém do Pará and the Inter-American Convention against Torture were in force for Guatemala.

279. First, the Court emphasizes that, based on the preceding considerations, the State's obligation to open an investigation into the facts *ex officio* began upon being informed of the alleged violations against Wendy Santizo Méndez. However, according to the testimony of the agent of the Special Prosecution Unit, Manuel Giovanni Vásquez Vicente, the investigation of the alleged violation "is included in the *Diario Militar* investigation package; [but no criminal investigation has been opened] regarding the specific violation."<sup>322</sup> The Court has indicated that certain lines of investigation, which avoid the analysis of the systematic patterns in the context of which the violations of human rights occur, may result in the ineffectiveness of the investigations.<sup>323</sup> Thus, the Court observes that the inclusion of the alleged torture and detention of Wendy Santizo Méndez within the *Diario Militar* investigation could have a positive result on the effectiveness of the investigation. However, the Court considers that, since the alleged torture and detention of Wendy Santizo Méndez could constitute autonomous offenses, the State is obliged to take specific measures to investigate them, irrespective of the general measures that it may take within the investigation of the cases included in the *Diario Militar*.

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<sup>318</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 129, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 166.

<sup>319</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 247.

<sup>320</sup> Cf. *Case of Vélez Loor v. Panama*, *supra*, para. 240.

<sup>321</sup> Cf. Testimony given by Wendy Santizo Méndez before the Public Prosecution Service on June 11, 1999 (file of annexes to the merits report, tome II, annex 98, folios 934 to 937).

<sup>322</sup> Cf. Testimony given by Manuel Giovanni Vásquez Vicente before the Inter-American Court at the public hearing in this case.

<sup>323</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, paras. 156, 158 and 164, and *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 366.

280. Thus, the Court observes that Mrs. Santizo Méndez has offered specific information on the events that presumably occurred at the time of her mother's capture, and there is information in the case file on the said facts, which was not followed-up on appropriately in the investigation conducted by the Public Prosecution Service. In this regard, the Court underlines that, in her statements of 2004 and 2012 (before the Commission and the Court), Wendy Santizo Méndez provided specific information on a police station where she was allegedly detained, together with her brother and her mother.<sup>324</sup> In addition, the Court recalls that, in the Historical Archive of the National Police, information was found on two individuals possibly involved in the detention of Luz Haydée Méndez Calderón (*supra* para. 112). However, the Court notes that, according to the evidence submitted to it, there is no evidence of any special measures taken in relation to the alleged torture, detention and rape of Wendy Santizo Méndez despite this information.<sup>325</sup> The only measures relating to Mrs. Santizo Méndez that appear in the case file consist of a summons issued in 2003,<sup>326</sup> without evidence that she was in fact interviewed, and a 2008 request for information made to the General Immigration Directorate on her migratory movements.<sup>327</sup>

281. The Court observes that more than 13 years have passed since the State became aware of the facts that presumably occurred to Wendy Santizo Méndez and, despite this, it has not taken specific measures to investigate the alleged violations. In this regard, the Court stresses that the alleged violations could constitute serious violations of the personal integrity and sexual life of Wendy Santizo Méndez and, therefore, could even constitute torture. For this reason, the Court finds that the State failed to comply with its obligation to investigate – and, thus, its obligation to ensure – the rights established in Articles 5(1), 5(2), 7(1) and 11(2) of the American Convention, in relation to Article 1(1) thereof, Article 7(b) of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Wendy Santizo Méndez. Consequently, the Court does not consider it necessary to make an additional ruling on the alleged violation of Articles 8 and 25 of the American Convention to the detriment of Wendy Santizo Méndez, based on these facts. In addition, the Court observes that Wendy Santizo Méndez was over 18 years of age when the State was informed of the alleged violations against her; therefore the Court considers that it is not appropriate to analyze the lack of investigation of the said facts based on the protection that, as a child, the State should have ensured her when the alleged acts of torture took place. Furthermore, the Court considers that it is inappropriate to declare the alleged violation of Articles 8 and 25 of the American Convention to the detriment of the next of kin of Wendy Santizo Méndez for the same facts, because the said victim has exercised her rights and still has the possibility of obtaining justice for herself.

282. In addition, based on the arguments of the representatives, the Court emphasizes that, in the testimony given by Wendy Santizo Méndez before the Public Prosecution Service on June 11, 1999, she recounted that her brother, Igor Santizo Méndez, had been arrested and was allegedly subjected, *inter alia*, to simulated executions. As described in the case of Wendy Santizo Méndez, the investigation of these facts is part of the overall investigation of the *Diario Militar*, within which the State has not taken specific measures to clarify them

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<sup>324</sup> Cf. Affidavit made by Wendy Santizo Méndez on November 3, 2004 (file of annexes to the merits report, tome II, annex 94, folios 920 to 923), and testimony given by Wendy Santizo Méndez before the Inter-American Court at the public hearing in this case.

<sup>325</sup> Cf. Report of the Special Prosecution Unit (merits file, tome IV, folios 1840 to 1843).

<sup>326</sup> Cf. Writ of summons to the National Police of April 2003 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folio 7381).

<sup>327</sup> Cf. Request for information sent by the Unit for Special Cases and Human Rights Violations of the Office of the Human Rights Prosecutor of the Public Prosecution Service of Guatemala to the General Immigration Directorate on April 3, 2008 (file of annexes to the merits report, tome III, annex 253, folio 1374).

(*supra* paras. 279 and 280). Consequently, the Court finds that the State has violated its obligation to investigate – and, thus, its obligation to ensure – the rights established in Articles 5(1), 5(2) and 7(1) of the American Convention, in relation to Article 1(1) thereof and to Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Igor Santizo Méndez.

### VIII-3

#### ALLEGED VIOLATIONS TO THE DETRIMENT OF THE NEXT OF KIN OF RUDY GUSTAVO FIGUEROA MUÑOZ AND OF THE 26 DISAPPEARED VICTIMS

283. The Court has stated repeatedly that the next of kin of the victims of human rights violations may, in turn, be victims.<sup>328</sup> Thus, in this chapter, the Court will address the alleged violations to the detriment of the next of kin of the 26 victims of forced disappearance and the next of kin of Rudy Gustavo Figueroa Muñoz. To this end, the Court will divide its analysis based on the alleged violations to their detriment, as follows: (a) right to personal integrity; (b) right to know the truth; (c) right to freedom of movement and residence;<sup>329</sup> (d) protection of the family<sup>330</sup> and rights of the child, and (e) rights to freedom of thought and expression, and to freedom of association.

#### ***A) Regarding the right to personal integrity***

284. The Commission and the representatives considered that the State had violated the right to personal integrity of the victims' next of kin owing to "the refusal of the State authorities [...] to open an effective investigation" into the facts. They also indicated that "many of them were subjected to harassment and threats because of the measures they took to discover the fate of their loved ones." The representatives added numerous other specific circumstances that, in their opinion, "aggravated the impact of this violation on the next of kin." For its part, the State expressed its "total acceptance" of the violation of the personal integrity of the next of kin of the 26 disappeared victims. However, it did not refer to the next of kin of Rudy Gustavo Figueroa Muñoz or of Wendy Santizo Méndez (*supra* para. 17)

285. The Court observes that, in this case, the State has acknowledged its international responsibility for the violation of the right to personal integrity of all the next of kin of the disappeared victims indicated by the Commission and the representatives, including those who were not yet born when the forced disappearances started.

286. The Court has considered that, in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victim's next of kin is a direct result of this phenomenon, which causes them severe suffering owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the victim's whereabouts or to conduct an effective investigation in order to clarify what happened.<sup>331</sup> This suffering gives

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<sup>328</sup> Cf. *Case of Vargas Areco v. Paraguay*, *supra*, para. 83, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 197.

<sup>329</sup> Article 22(1) of the American Convention establishes that "[e]very 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."

<sup>330</sup> Article 17(1) of the American Convention establishes that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

<sup>331</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114 and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 270.

rise to the presumption of harm to the mental and moral integrity of the next of kin.<sup>332</sup> In previous cases, the Court has established that this presumption is established *juris tantum* with regard to mothers and fathers, daughters and sons, and spouses and permanent companions, provided that it accords with the particular circumstances of the case.<sup>333</sup> The Court considers that, in the context of a forced disappearance, this presumption is also applicable to the sisters and brothers of the disappeared victims, unless the contrary is revealed by the specific circumstances of the case. Thus, and taking into account the acknowledgment of responsibility made by the State, the Court presumes the violation of the right to personal integrity of the next of kin of the 26 disappeared victims.

287. In addition, the Court notes that two of the children of those who disappeared were not yet born when their fathers were disappeared.<sup>334</sup> In this regard, as it has in other cases<sup>335</sup> and taking into consideration the terms of the State's acknowledgement of responsibility, the Court considers that they also suffered a violation of their mental and moral integrity, because the fact that they had to live in an environment of suffering and uncertainty owing to the failure to determine the whereabouts of the disappeared victims prejudiced the integrity of the children who were born and lived in this situation.

288. The testimonial statements, as well as the reports on the psychosocial impact on the families of the disappeared victims, together with other documents in the case file, reveal that, in this case, the personal integrity of the next of kin was affected in one way or another, by one or several of the following circumstances:<sup>336</sup> (i) they have been involved in

<sup>332</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 270.

<sup>333</sup> Cf. *Case of Blake v. Guatemala. Merits*, *supra*, para. 114, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 270.

<sup>334</sup> According to the information provided to the Court, the children who were not yet born at the time of the disappearance of their fathers are: Sergio Alfonso Linares Figueroa, son of Sergio Saúl Linares Morales and Luis Moisés Peñate Munguía, son of Luis Rolando Peñate Lima. Cf. Certified copy of the entry of the neighborhood identity card of Sergio Alfonso Linares Figueroa of July 27, 2006 (file of annexes presented by the State with its brief of October 17, 2008, tome III, folios 7293 and 7294), and Affidavit made by Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía on August 2, 2006 (file of annexes to the merits report, tome III, annex 151, folios 1139 and 1141).

<sup>335</sup> Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 122.

<sup>336</sup> Cf. Expert opinion of Carlos Martín Beristain on the psychosocial impacts and possible measures of reparation for the victims in the case of the *Diario Militar*, Guatemala (file of documents received during the public hearing, folios 13250 to 13285), and Reports of psychosocial impact on the following families: Gudiel Álvarez, Sosa Calderón, Barillas Barrientos, Hernández Bonilla, Calvo Pérez, Calderón Díaz, Villatoro, Alvarado Palencia, Salanic Chiguil, Ramírez Gálvez, Linares Morales, Canales Salazar and Canales Godoy, Méndez Calderón, Armira López, Rodas Andrade, García Escobar, Estrada Mejía, Estrada Illescas, Farfán, Alvarado Arévalo, and Peñate Lima (file of annexes to the pleadings and motions brief, Annexes B1 to B4 and B6 to B22, folios 12260 to 12290 and 12297 to 12417). See also, *inter alia*: affidavit made by Florentín Gudiel Ramos on October 11, 2004 (file of annexes to the merits report, tome I, annex 14, folio 417); testimony of Makrina Gudiel Álvarez filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome I, annex 16, folio 420); testimony of Laurenta Marina Sosa Calderón filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 22, folio 495); affidavits of Bertha Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos and Edgar Leonel Barillas Barrientos of November 22, 2004 (file of annexes to the merits report, tome II, annex 30, folio 567); testimony of Juan Francisco Barillas Barrientos filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 14, folio 573); testimony of Reyna de Jesús Escobar Rodríguez filmed and authenticated on March 28, 2008 (file of annexes to the merits report, tome II, annex 38, folio 595); testimony of Ana Monroy Peralta filmed and authenticated on March 29, 2008 (file of annexes to the merits report, tome II, annex 40, folio 605); affidavit made by Sonia Guisela Calderón Revolorio on November 30, 2004 (file of annexes to the merits report, tome II, annex 40, folio 641); affidavit made by María del Rosario Bran de Villatoro on December 2, 2004 (file of annexes to the merits report, tome II, annex 47, folio 652); testimony of Sergio Raúl Villatoro Bran filmed and authenticated on March 28, 2008 (file of annexes to the merits report, tome II, annex 50, folio 671); affidavit made by María Ofelia Salanic Chiguil on February 9, 2005 (file of annexes to the merits report, tome II, annex 53, folio 688), and affidavit made by Manuel Ismael Salanic Tuc on April 18, 2012 (file of annexes received during the public hearing, folio 13033); affidavit made by Jorge Alberto Ramírez Gálvez on February 4, 2005 (file of annexes

different activities such as the search for justice or information on their whereabouts; (ii) the disappearance of their loved ones has caused personal, physical and emotional repercussions; (iii) in some cases, they were subjected to extortion, being offered their disappeared relatives or information on them in exchange for money; (iv) the facts have affected their social relationships, and caused a breakdown in the family dynamics, as well as a change in the allocation of roles within the family; (v) the harm they have suffered has been increased by the impunity in which the facts of the case remain; (vi) the failure to clarify what happened to their loved ones has kept alive their hope of finding them, or else the failure to discover and identify their remains has prevented them from giving them a decent burial according to their beliefs, altering their mourning process and perpetuating the suffering and uncertainty. Consequently, the Court finds that it has been proved that, as a direct result of the forced disappearance, the next of kin of the disappeared victims have undergone profound suffering and anguish to the detriment of their mental and moral integrity. Furthermore, owing to the effects on the next of kin and taking into account the State's acknowledgement of responsibility, the Court finds that the preceding considerations extend to the nieces and nephews and grandchildren of the disappeared victims who were indicated as presumed victims by the Commission and the representatives.<sup>337</sup>

289. The Court also observes that, according to expert witness Carlos Martín Beristain, the next of kin of the disappeared persons have suffered certain additional circumstances that have increased the harm to their mental integrity, such as: the social isolation and stigmatization associated with having a disappeared family member in the context of the facts,<sup>338</sup> and also the "renewed traumatic impact" resulting from the appearance of the

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to the merits report, tome II, annex 64, folio 782); affidavit made by Hugo Leonel Ramírez Gálvez on January 28, 2005 (file of annexes to the merits report, tome II, annex 65, folio 785); affidavit made by Nataliza Gálvez Soberanis on December 14, 2004 (file of annexes to the merits report, tome II, annex 65, folio 821); affidavit made by Mirtala Elizabeth Linares Morales on October 9, 2007 (file of annexes to the merits report, tome II, annex 65, folio 848); affidavit made by Wendy Santizo Méndez on November 3, 2004 (file of annexes to the merits report, tome II, annex 94, folios 920 to 923); Testimony given by Wendy Santizo Méndez before the Inter-American Court at the public hearing in this case; affidavits of Eduarda López Pinol, María Froilana Armira López and María Lidia Armira López of July 28, 2005 (file of annexes to the merits report, tome II, annex 101, folio 947); Testimony given by Efraín García before the Inter-American Court at the public hearing in this case; affidavit made by Beatriz María Velásquez Díaz on January 22, 2005 (file of annexes to the merits report, tome II, annex 104, folio 960); affidavit made by Paulo René Estrada Velásquez on December 20, 2004 (file of annexes to the merits report, tome II, annex 106, folio 970); testimony of Aura Elena Farfán filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 114, folio 1006); affidavits of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo of November 2, 2004 (file of annexes to the merits report, tome II, annex 124, folio 1059); testimony given by Josefa Elizabeth Andrade Reyes de Rodas (file of annexes to the merits report, tome II, annex 135, folio 1070 bis); affidavit made by Carla Fabiola Alvarado Sánchez on March 1, 2012 (file of annexes received during the public hearing, folios 13017 to 13032); testimony given by Yordin Eduardo Herrera Urizar on August 25, 2006 (file of annexes to the merits report, tome II, annex 143, folio 1114), and testimony of Salomón Estrada Mejía filmed and authenticated on March 27, 2008 (file of annexes to the merits report, tome II, annex 145, folio 1124).

<sup>337</sup> The following are grandchildren of the disappeared victims: Rubén Ilich Mendoza Santizo, grandson of Luz Haydée Méndez Calderón, and Katherine Andrea and Diana Guisela Hernández Calderón, granddaughters of Víctor Manuel Calderón Díaz. Cf. Psychosocial impact reports on the Calderón Díaz, and Méndez Calderón and Santizo Méndez families (file of annexes to the pleadings and motions brief, tome IV, Annexes B7 and B14, folios 12307 and 12357), and Testimony given by Wendy Santizo Méndez before the Inter-American Court at the public hearing in this case. Also Aura Elena Suchini Farfán, Manuel Antonio Mendoza Farfán, and Mario Alfredo Mendoza Farfán are niece and nephews of Rubén Amílcar Farfán. Cf. Psychosocial impact report on the Farfán family (file of annexes to the pleadings and motions brief, tome IV, annex B20, folio 12398), and testimony of Aura Elena Farfán filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 114, folio 1006).

<sup>338</sup> Cf. Expert opinion of Carlos Martín Beristain on the psychosocial impacts and possible measures of reparation for the victims in the case of the *Diario Militar*, Guatemala (file of documents received during the public hearing, folio 13257). See also: Psychosocial impact reports on the following families: Sosa Calderón, Barillas Barrientos, Hernández Bonilla, Calderón Díaz, Alvarado Palencia, Ramírez Gálvez, Canales Salazar and Canales Godoy, Rodas Andrade and Alvarado Arévalo (file of annexes to the pleadings and motions brief, Annexes B2, B3, B4, B7, B9, B11, B13, B16, B21, folios 12272, 12282, 12290, 12311, 12327, 12341, 12354, 12375 and 12407).

*Diario Militar*.<sup>339</sup> In addition, the Court observes that some of the next of kin of the disappeared victims, such as those of Luz Haydée Méndez Calderón, Carlos Guillermo Ramírez Gálvez and Manuel Ismael Salanic Chiguil, witnessed acts of torture perpetrated against their loved ones.<sup>340</sup>

290. Regarding the next of kin of Wendy Santizo Méndez and Rudy Gustavo Figueroa Muñoz, the Court recalls that the alleged acts of torture and extrajudicial execution are not part of the facts of this case; hence, the Court only has competence to assess the consequence that the failure to investigate the facts that occurred to the said victims had for their next of kin (*supra* paras. 3 and 25). Regarding the next of kin of Rudy Gustavo Figueroa Muñoz, the Court recalls that it has considered that the right to mental and moral integrity of some of the next of kin has been violated because of the additional sorrow and anguish they have suffered owing to the acts or omissions of the State authorities in relation to the facts,<sup>341</sup> and taking into account, among other matters, the measures taken to obtain justice and the existence of close family ties.<sup>342</sup> The Court observes that the violation of the personal integrity of the next of kin of Rudy Gustavo Figueroa Muñoz is verified because the failure to investigate what happened and the lack of results in the proceedings have had a significant impact on the family resulting in discouragement and frustration.<sup>343</sup> In addition, the Court notes that the next of kin of Wendy Santizo Méndez are the same as those who were identified as the next of kin of the disappeared victim, Luz Haydée Méndez Calderón; consequently, it does not find it necessary to make a further ruling in this regard.

291. Based on the foregoing, the Court considers that it has been proved that the existing circumstances have caused the victims' next of kin to feel sadness, frustration, helplessness, insecurity and anguish. Accordingly, the Court finds that the State has violated the right to personal integrity established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the

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<sup>339</sup> Cf. Expert opinion of Carlos Martín Beristain on the psychosocial impacts and possible measures of reparation for the victims in the case of the *Diario Militar*, Guatemala (file of documents received during the public hearing, folios 13273 to 13276). See also: Psychosocial impact reports on the following families: Gudiel Álvarez, Sosa Calderón, Barillas Barrientos, Hernández Bonilla, Calvo Pérez, Calderón Díaz, Villatoro, Alvarado Palencia, Salanic Chiguil, Ramírez Gálvez, Linares Morales, Canales Salazar and Canales Godoy, Méndez Calderón, Armira López, Rodas Andrade, García Escobar, Estrada Mejía, Estrada Illescas, Farfán, Alvarado Arévalo, and Peñate Lima (file of annexes to the pleadings and motions brief, Annexes B1 a B4 and B6 a B22, folios 12263, 1274, 12282, 12289, 12299, 12310, 12319, 12327, 12335, 12343, 12349, 12355, 12363, 12372, 12379, 12384, 12390, 12395, 12402, 12410, and 12415).

<sup>340</sup> Cf. Affidavit made by Wendy Santizo Méndez on November 2, 2004 (file of annexes to the merits report, tome II, annex 94, folios 920 to 923); Testimony given by Wendy Santizo Méndez before the Inter-American Court at the public hearing in this case; affidavit made by Jorge Alberto Ramírez Gálvez on February 4, 2005 (file of annexes to the merits report, tome II, annex 64, folio 782); affidavit made by Hugo Leonel Ramírez Gálvez on January 28, 2005 (file of annexes to the merits report, tome II, annex 65, folio 785); affidavit made by María Ofelia Salanic Chiguil on February 9, 2005 (file of annexes to the merits report, tome II, annex 53, folio 688), and affidavit made by Manuel Ismael Salanic Tuc on April 18, 2012 (file of annexes received during the public hearing, folio 13033).

<sup>341</sup> Cf. *Case of Blake v. Guatemala. Merits*, *supra*, para. 114, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 197.

<sup>342</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*, *supra*, para. 163, and *Case of Furlan and family members v. Argentina*, *supra*, para. 249.

<sup>343</sup> Cf. Report on psychosocial impact on the Figueroa Muñoz family (file of annexes to the pleadings and motions brief, annex B5, folio 12291); testimony of Mercedes Muñoz Rodas de Figueroa filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 152, folio 1143), and affidavit made by Rudy Alberto Figueroa Maldonado on August 22, 2006 (file of annexes to the merits report, tome II, annex 153, folio 1151).

disappeared victims and of Rudy Gustavo Figueroa Muñoz, identified in the Annex to this Judgment.

292. In addition, regarding the alleged threats suffered by the next of kin of the victims, the Court recalls that it only has competence to examine those events that occurred after the acceptance of the Court's jurisdiction. Thus, the Court observes that the evidence provided by the parties reveals that the next of kin of Alfonso Alvarado Palencia received a threatening telephone call in 2004, indicating "if what happened to your son and to your grandson is not enough ...."<sup>344</sup> This Court has held that the mere threat of a conduct prohibited by Article 5 of the Convention, when it is sufficiently real and imminent, may in itself violate the right to personal integrity;<sup>345</sup> consequently, it considers that the said threat suffered by the next of kin of Alfonso Alvarado Palencia constitutes an additional violation of their right to personal integrity.

293. Regarding the other next of kin of the victims, the Court notes that no information was provided to the case file to prove that the threats and harassment that were included in the factual framework occurred after Guatemala's recognition of the Court's jurisdiction. However, the Court underscores the observation of the CEH that, following the detention of the victims of forced disappearance, threats, harassment and extortion were used against the next of kin to spread terror and to prevent any measure designed to search for justice or for the whereabouts of their loved ones.<sup>346</sup> Although, owing to its temporal competence, the Court is unable to rule, it takes note of the total acknowledgement of responsibility made by the State in this regard.

### ***B) Regarding the right to know the truth***

294. In addition, in this case, the representatives argued that the right to the truth of the victims' next of kin was violated and, in their opinion, this is included in Articles 8, 13 and 25 of the American Convention.

295. In this regard, the Court observes that some of the alleged violations of the right to know the truth occurred during the transition process that followed the signature of the Peace Accords that ended the internal armed conflict (*supra* para. 58). In particular, one of the facts alleged by the representatives refers to the concealment of information about severe human rights violations from the Historical Clarification Commission. The Peace Accords "recognize[d] the right [...] of every society to know the truth."<sup>347</sup> Accordingly, the

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<sup>344</sup> Cf. Affidavit made by Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez on August 11, 2006 (file of annexes to the merits report, tome III, annex 141, folio 1107), and testimony of Jesús Palencia Juárez de Alvarado authenticated on March 26, 2008 (file of annexes to the merits report, tome III, annex 140, folio 1100).

<sup>345</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 165, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 176.

<sup>346</sup> Cf. CEH, *supra*, volume II, pp. 412, 414 and 455, paras. 2060, 2063 and 2170.

<sup>347</sup> In particular, the Agreement on the bases for the incorporation of the Guatemalan National Revolutionary Union to legality, signed in Madrid, Spain, on December 12, 1996, stipulates: "Right to the truth 18. The inalienable right of every society to know the truth is recognized; therefore, the National Reconciliation Act shall charge the Commission for the Historical Clarification of the human rights violations and the acts of violence that have caused suffering to the Guatemalan people, with the design of mechanisms that make it possible to know and recognize the historical truth about the period of the internal armed conflict, in order to prevent the repetition of such events. The Law shall establish the obligation of every State body or entity to provide the Commission with any support that it may require to perform its task, according to the goals specified in the corresponding Agreement." Also, the Firm and Lasting Peace Accord signed in Guatemala on December 29, 1996, establishes: "I. Concepts [...] 4. The people of Guatemala have the right to know the whole truth about the human rights violations and the acts of violence that occurred in the context of the internal armed conflict. The objective and impartial clarification of what happened will contribute to strengthening the national reconciliation process and the democratization of the country." The latter agreement "culminate[d] the historical process of negotiation to seek

CEH was established in order "[t]o clarify [...] the human rights violations and the acts of violence that have caused suffering to the Guatemalan people," and which were related to the armed conflict.<sup>348</sup> In addition, under the National Reconciliation Act of December 27, 1996, "the Historical Clarification Commission [...] was charged with designing the mechanisms for making it possible to know and recognize the historical truth about the period of internal armed conflict in order to prevent a repetition of such events." To this end, it was established that "the State bodies or entities must provide the Commission with any support it may require."<sup>349</sup>

296. Despite this mandate and the provisions for collaboration, the Court observes that, in its report, the CEH itself "characterized the collaboration provided by the National Army as unreliable and unsatisfactory." It indicated that "[w]hile the Commission was carrying out its work, the Executive – through various agencies, including the National Army and the Private Secretariat of the President of the Republic – gave different reasons for not handing over the documents required by the CEH. Initially, it indicated that the documents were subject to constitutional confidentiality; subsequently, [...] it indicated that the documents requested never existed or had been lost or destroyed. However, the Commission ha[d] proved that some of the documents whose existence ha[d] repeatedly been denied by the Executive did exist and were archived on the premises of the National Army."<sup>350</sup> Regarding the latter, the Court underlines that the Ministry of Defense denied to the CEH the existence of documents<sup>351</sup> such as the *Diario Militar*, which appeared through unofficial channels three months after the said Commission had published its final report (*supra* para. 59).

297. According to the Historical Clarification Commission, this lack of information had an adverse impact on compliance with its mandate, and explained why it was unable, *inter alia*, to determine the precise chain of command in relation to the forced disappearances committed during the conflict (*supra* para. 58). Furthermore, the Court takes note of the testimony of expert witness Valencia Villa, who worked with the CEH, when she indicated that, if the said Commission "had been able to access all the military documents requested, it is certain that [...] many undecided cases would have been clarified."<sup>352</sup>

298. Bearing in mind that the specific facts of this case took place in the context of a non-international armed conflict, the elucidation of the truth of what happened acquires particular relevance. The Court considers it pertinent to reiterate, as it has in other cases, that States may establish truth commissions that contribute to constructing and preserving the historical memory, clarifying facts, and determining institutional, social and political

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peace by political means." In addition, it integrated the other agreements signed within the framework of the peace negotiations, which "come into official and full force on signature of [the said] Agreement."

<sup>348</sup> This Commission was established by the Agreement on the establishment of the Commission for the Historical Clarification of the Human Rights Violations and the Acts of Violence that have caused suffering to the Guatemalan population, signed in Oslo, on June 23, 1994, establishing the element indicated *supra* as one of the main objectives of its mandate.

<sup>349</sup> Cf. Decree No. 145-1996 – Law of National Reconciliation, December 27, 1996, art. 10 (file of annexes to the pleadings and motions brief, tome IV, annex A55, folio 10486).

<sup>350</sup> Cf. CEH, *supra*, para. 93. p. 50.

<sup>351</sup> The CEH requested and was not given, *inter alia*, information on: "[r]eports and logs of daily operations prior to 1988" of the Army, and "[t]he situation assessments, operational plans, orders of operations, operation reports and daily operations of the Staff of the President between 1960 and 1996, as well as a general list of the operations conducted in their area of responsibility and the reports on them." Cf. CEH Communication to the President of the Republic of March 24, 1998, p. 158-166.

<sup>352</sup> Affidavit made by expert witness Alejandro Valencia Villa, *supra*, folio 13291.

responsibilities in certain historical periods of a society.<sup>353</sup> Even though these commissions do not replace the State's obligation to establish the truth through judicial proceedings,<sup>354</sup> the Court has established that they involve determinations of the truth that complement each other, because each has its own meaning and scope, as well as particular potentials and constraints that depend on the context in which they arise and the specific cases and circumstances they analyze.<sup>355</sup>

299. Owing to the particular circumstances of the instant case, it is necessary to make a specific ruling on the right to know the truth of the next of kin of the victims recorded in the *Diario Militar*. The United Nations has recognized the importance of determining the truth about gross violations of human rights for the consolidation of peace and reconciliation processes.<sup>356</sup> This is supported by international humanitarian law, according to which family members have the right to know the truth about the fate of the disappeared victims, including the victims of forced disappearance, and this is applicable to both international and non-international armed conflicts.<sup>357</sup>

300. The Court emphasizes that, in the Peace Accords, the CEH was established as a mechanism for the determination of the historical truth, and it should be understood that this is complementary to what is established in the respective judicial proceedings (*supra* paras. 295 and 296). In light of the contents of paragraphs 296 and 297 *supra*, the Court observes that several of the next of kin in this case were not allowed to know the historical truth of what happened to their loved ones by this medium, owing to the refusal of the State authorities to hand over information. In addition, it also stresses that, the appearance of the *Diario Militar* in 1999 and the Historical Archive of the National Police in 2005, both by unofficial channels (*supra* paras. 59 and 63), revealed that the State had withheld information from the CEH with regard to the facts of the instant case. This, together with the impunity that persists in this case (which was analyzed in Chapter VIII-2 *supra* of this

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<sup>353</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 298.

<sup>354</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 298.

<sup>355</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador, supra*, para. 128.

<sup>356</sup> Cf. United Nations, General Assembly, Resolution on missing persons in Cyprus of 9 December 1975, 3450 (XXX), Preamble; Resolution on the situation of human rights in El Salvador of 20 December 1993, A/RES/48/149, Preamble and para. 4; Resolution on the situation of human rights in Haiti of 29 February 2000, A/RES/54/187, para. 8; Resolution on the United Nations Verification Mission in Guatemala of 28 January 2003, A/RES/57/161, para. 17; Resolution on assistance for humanitarian relief, rehabilitation and development for Timor-Leste of 13 February 2003, A/RES/57/105, para. 12; Resolution on the promotion and protection of all human, civil, political, economic, social and cultural rights including the right to development of 19 September 2008, A/HRC/9/L.23, Preamble; Resolution proclaiming 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims of 23 June 2010, A/HRC/RES/14/7, Preamble; Resolution on the Right to the Truth of 12 October 2009, A/HRC/RES/12/12, para. 1; Resolution on Forensic Genetics and Human Rights of 6 October 2010, A/HRC/RES/15/5, Preamble; Resolution on the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of 26 September 2011, A/HRC/18/L.22, Preamble, and Resolution on the Right to the Truth of 24 September 2012, para.1.

<sup>357</sup> Rule 117 of Customary International Humanitarian Law, applicable to both international and non-international armed conflicts establishes: "[e]ach party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate." International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 477. See also, Office of the High Commissioner for Human Rights, Resolution of the Commission on Human Rights 2002/60, Missing Persons, fifty-fifth session, 25 April 2002, paras. 2-4; General Assembly of the United Nations, Resolution 3220 (XXIX), Assistance and Cooperation in account for persons who are missing or dead in armed conflicts, twenty-ninth session, 6 November 1974, para. 2.

Judgment), allows this Court to conclude that the next of kin have been prevented from knowing the truth through either judicial or extrajudicial channels.

301. The Court has considered that the next of kin of victims of gross violations of human rights and society have the right to know the truth; hence, they must be informed of what has happened.<sup>358</sup> In addition, particularly in cases of forced disappearance, the Court has established that the right to know the truth is part of the "right of the victims' next of kin to know their fate and, if applicable, the location of their remains."<sup>359</sup> The Court has indicated that the denial of the truth about the whereabouts of a victim of forced disappearance results in a form of cruel and inhuman treatment for the closest family members,<sup>360</sup> and therefore the violation of the right to personal integrity can be linked to a violation of their right to know the truth.<sup>361</sup>

302. Based on the foregoing, the Court concludes that, by preventing the family members from knowing the historical truth through the extrajudicial mechanism established by the State itself in the Peace Accords and the National Reconciliation Act, added to the impunity that persists in this case, the State violated the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention, to the detriment of the next of kin of Rudy Gustavo Figueroa Muñoz and of the disappeared victims.

### ***C) Regarding the right to freedom of movement and residence***

303. The Commission considered that the right to freedom of movement and residence had been violated to the detriment of 12 victims,<sup>362</sup> because "[i]n many cases [the displacements] were the direct result of the forced disappearances and the other manifestations of violence" and, in others, "they were the indirect result of the forced disappearances, owing to the loss of the family's financial support." The representatives agreed with the Commission and added another 14 people as victims of this alleged violation.<sup>363</sup> The State contested this alleged violation, because "at no time had it prohibited the families from requesting asylum in another country owing to the persecution suffered" and it considered that the arguments of the Commission and the representatives referred to violations included in the rights established in Articles 5 and 17 of the American Convention, the violations of which had been accepted by the State.

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<sup>358</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 76 and 77, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 298.

<sup>359</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 181, and *Case of Gelman v. Uruguay*, *supra*, para. 243.

<sup>360</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Merits*. Judgment of January 26, 2000. Series C No. 64, para. 114, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 270.

<sup>361</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 113.

<sup>362</sup> The Commission indicated the following as victims: Makrina Gudiel Álvarez, María Agripina Álvarez, Florentín Gudiel Ramos, José Francisco Gudiel Álvarez, Yolanda Gudiel Álvarez, Beatriz Gudiel Álvarez, Florentín Gudiel Álvarez, María Consuelo Pérez Arenales, Sergio Raúl Villatoro Bran, Wendy Santizo Méndez, María Regina Sánchez Morales and Fredy Anelson Gómez Moreira.

<sup>363</sup> The representatives added as victims: Zonia Odilia Ortega Revolorio, Víctor Manuel Calderón Ortega, Lourdes Melissa Calderón Ortega, Sandra Regina de la Candelaria Figueroa Carrillo, Sergio Alfonso Linares Figueroa, Igor Santizo Méndez, Iris Carolina Sosa Pérez, Iván Orencio Sosa Pérez, Merlín Consuelo Sosa Pérez, Linda Gardenia Sosa Pérez, María del Rosario Bran, Néstor Amílcar Villatoro Bran, Samuel Lisandro Villatoro Bran and Norma Carolina Villatoro. The Court notes that, in their final written arguments, they added a further eight individuals as victims of the alleged violation of Article 22. However, the Court notes that this request is time-barred.

304. The Court has established that the right to freedom of movement and residence, protected in Article 22(1) of the American Convention, is an essential condition for the free development of the individual,<sup>364</sup> and protects, *inter alia*, the right not to be forcibly displaced within a State Party and not to have to leave forcibly the territory of the State in which that individual lawfully resides.<sup>365</sup> This right can be violated formally or by *de facto* restrictions, if the State has not established the conditions and provided the means that allow it to be exercised;<sup>366</sup> for example, when a person is a victim of threats or harassment and the State does not provide the necessary guarantees for that person to move and reside freely within the territory in question.<sup>367</sup> The Court has also indicated that the failure to conduct an effective investigation of violent acts can foster or perpetuate exile or forced displacement.<sup>368</sup>

305. Moreover, concurring with the international community, this Court reaffirms that the obligation of the State of origin to guarantee the protection of the rights of displaced persons entails not only the duty to take preventive measures but also to provide the necessary conditions to facilitate a safe, decent and voluntary return to their usual place of residence or voluntary resettlement in another part of the country. To this end, their full participation in the planning and management of their return or reinsertion must be guaranteed.<sup>369</sup>

306. The Court recalls the limitation to its temporal competence that exists in this case, regarding which it has been established in previous cases that, when the forced displacement occurs prior to the acceptance of the jurisdiction of the Court, the Court's competence to analyze a possible violation Article 22 is restricted to the analysis of the existence of an impossibility of return.<sup>370</sup> Consequently, the Court will examine the cases of displacement that occurred after the acceptance of the Court's jurisdiction on March 9, 1987, or that continued at that date and in which there is evidence of an impossibility of return that can be attributed to the State (*supra* para. 30).

307. Regarding the displacement of the next of kin that took place after March 9, 1987, the Court observes that the case file does not show a direct or immediate causal nexus between these displacements and the forced disappearance of their family members or a potential risk to their rights to life or to personal integrity that can be attributed to the State. The Court observes that these displacements correspond to next of kin who testified that they left Guatemala for other reasons.<sup>371</sup>

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<sup>364</sup> 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 the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 186.

<sup>365</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 188, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 186.

<sup>366</sup> 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 the Río Negro Massacres v. Guatemala, supra*, para. 175.

<sup>367</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 139, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 175.

<sup>368</sup> Cf. *Case of the Moiwana Community v. Suriname, supra*, paras. 119 and 120, and *Case of Vélez Restrepo and family members v. Colombia, supra*, para. 220.

<sup>369</sup> Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 188.

<sup>370</sup> Cf. *Case of the Moiwana Community v. Suriname, supra*, para. 43, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 178.

<sup>371</sup> The following were in this situation: María del Rosario Bran, María Regina Sánchez Morales, Fredy Anelson Gómez Moreira, Víctor Manuel Calderón Ortega and Lourdes Melissa Calderón Ortega. Cf. affidavit made by María del Rosario Bran de Villatoro on December 2, 2004 (file of annexes to the merits report, tome II, annex 47, folio

308. Regarding the alleged displacements that continued after March 9, 1987, the Court observes that only in the case of the family of José Miguel Gudiel Álvarez was it proved that the next of kin were unable to return after that date. Thus, the Court notes that the security forces considered this family to be “subversive,” and therefore they were forced to move within Guatemala, to Mexico and, in the case of Makrina Gudiel Álvarez, subsequently to the United States from 1983 to 1987 approximately.<sup>372</sup> According to the testimony of the next of kin, they were forced to remain out of Guatemala until 1997 when they “returned to Guatemala owing to the signature of the peace [agreements].” However, even then, José Miguel’s two brothers “took the decision not to return to Guatemala, [... because] they had no assurance that the peace agreements would be complied with.”<sup>373</sup> The Court notes that neither the Commission nor the representatives alleged the violation of Article 22 to the detriment of one of José Miguel’s sisters, Ana Patricia Gudiel Álvarez. Nevertheless, based on the *iura novit curia* principle the Court finds it pertinent to rule on her impossibility of returning together with that of the rest of her family. Consequently, the Court considers that Guatemala failed to comply with its obligation to provide the necessary conditions to facilitate a voluntary, dignified and safe return for Florentín Gudiel Ramos, Mary Agrippina Álvarez and her children Makrina, Beatriz, José Francisco, Florentín and Ana Patricia Gudiel Álvarez to Guatemala after March 9, 1987. Regarding the other victims of forced displacement alleged by the Commission and the representatives, the Court observes that no evidence was provided to prove their impossibility of returning to their country of origin or their habitual residence for reasons that can be attributed to the State.

#### ***D) Regarding the rights of the family and the rights of the child***

309. The Commission held that the forced disappearance “also had the goal, in some cases, of destroying the family structure of the victims,” by affecting its composition and functioning owing, *inter alia*, to the separation of the family members and the abandonment of their homes. The representatives stressed that, during the armed conflict, there was a State policy aimed not only at intimidating the victim, but also his or her family, because the facts “had the effect of breaking up [the] immediate family.” For its part, the State expressed its “total acceptance” of the violation of the right to protection of the family with regard to the family members of the disappeared victims and, partially, as of March 1987, with regard to Rudy Gustavo Figueroa Muñoz.

310. In addition, the representatives considered that the disappearances had a special and particularly serious impact, which has been sustained over time, and that constituted a violation of Article 19 in relation to Article 1(1) of the Convention, in relation to those family

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655); Affidavit made by Carla Fabiola Alvarado Sánchez on March 31, 2012 (file of documents received during the public hearing, folio 13021); affidavit made by Fredy Anelson Gómez Moreira August 1, 2006 (file of annexes to the merits report, tome III, annex 150, folio 1137), and affidavit of Sonia Guisela Calderón Revolorio of November 30, 2004 (file of annexes to the merits report, tome II, annex 44, folio 641).

<sup>372</sup> Cf. Psychosocial impact report on the Gudiel-Álvarez family (file of annexes to the pleadings and motions brief, tome VII, annex B1, folios 12261); testimony of Makrina Gudiel Álvarez filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 15, folio 421), and affidavit made by Florentín Gudiel Ramos on October 13, 2004 (file of annexes to the merits report, tome I, annex 14, folio 418).

<sup>373</sup> Cf. Affidavit made by Florentín Gudiel Ramos on October 13, 2004 (file of annexes to the merits report, tome I, annex 14, folio 418), and testimony of Makrina Gudiel Álvarez, filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 15, folio 421). The Court notes that “at the time of the disappearance [of José Miguel Gudiel Álvarez, his sister Yolanda Gudiel Álvarez] was already living with her own family in Escuintla,” and in around 1989 she still live in Guatemala, without any evidence in the case file that she had displaced for reasons that could be attributed to the State. Cf. Psychosocial impact report on the Gudiel-Álvarez family (file of annexes to the pleadings and motions brief, tome VII, annex B1, folio 12261), and testimony of Makrina Gudiel Álvarez filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 15, folio 421).

members who were children when the Court's jurisdiction entered into force.<sup>374</sup> In this regard, the State expressed its "total opposition" because this allegation is included within the State's acceptance of the violation of Articles 5 and 17 of the Convention.

311. Regarding the alleged violation of the rights of the family and the rights of the child, the Court considers that the arguments put forward by the representatives refer to effects that, in substance, were examined by the Court when it analyzed the violation of the right to personal integrity of the next of kin of the victims in this case (*supra* para. 288); therefore it does not find it necessary to make an additional ruling in this regard.

312. Despite the foregoing, the Court noted that Marlyn Carolina, Juan Carlos and José Geovany Hernández Escobar, children of José Porfirio Hernández, were separated from their mother, Reyna de Jesús Escobar Rodríguez, as a result of her fears; in April 1984, she "had to hide as a form of protection" and moved to Guatemala City. In around 1988, Marlyn Carolina went to live with her mother, while José Geovany went in 1990 and Juan Carlos remained with his grandmother. This situation resulted in harm to the enjoyment of the coexistence of the members of this family.<sup>375</sup> In this regard, the Court recalls, as it has in other cases, that the child has a right to live with his or her family, which is called on to meet his or her material, affective and psychological needs.<sup>376</sup> The Court has also indicated that the protection of the family, established in Article 17 of the Convention, involves the right of everyone to receive protection against arbitrary or unlawful interferences in the family,<sup>377</sup> and one of the most serious forms of State interference is the one that results in separating the family.<sup>378</sup> Thus, the Court considers that the said family separation violated, in particular, the rights of the child of the Hernández Escobar siblings to live with their family and, consequently, have their material, affective, and psychological needs satisfied. Consequently, the Court concludes that the State is responsible for the violation of the rights of the family established in Article 17 of the Convention, in relation to Article 1(1) thereof, to the detriment of Reyna de Jesús Escobar Rodríguez, Marlyn Carolina, Juan Carlos and José Geovany Hernández Escobar, as well as in relation to the rights of the child, established in Article 19 of the American Convention, to the detriment of the last three.

### ***E) Regarding the right to freedom of association and expression***

313. The Commission considered that, at the time of the facts, "no guarantees existed to freely denounce" serious human rights violations, or for the next of kin to "be able to gather together, free from threats and harassment, in the associations they formed in order to search for their family members." The representatives added that the failure to investigate the disappearances left the family members vulnerable to threats and acts of violence,

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<sup>374</sup> In their pleadings and motions brief, the representatives alleged the violations of Article 19 off the Convention to the detriment of the next of kin who were minors "at the time of the facts." However, in their final arguments brief, they modified the allegation to those who were minors at the time the Court's jurisdiction was recognized

<sup>375</sup> Cf. Psychosocial impact report on the Hernández Bonilla family—Case of José Porfirio Hernández Bonilla (Case of No. 41 of the *Diario Militar*) (file of annexes to the pleadings and motions brief, tome VII, annex B4, folios 12286 and 12287); testimony of Reyna de Jesús Escobar Rodríguez, notarized on March 28, 2008 (file of annexes to the merits report, tome I, annex 38, folio 596), and copy of the birth certificate of Marlyn Carolina Hernández Escobar (file of annexes presented by the State with its brief of October 17, 2008, tome II, folio 6784).

<sup>376</sup> Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 27, para. 71, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 145.

<sup>377</sup> Cf. *Juridical Status and Human Rights of the Child*, *supra*, para. 71, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 145.

<sup>378</sup> Cf. *Juridical Status and Human Rights of the Child*, *supra*, paras. 71 and 72, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 116.

impairing their freedom of expression and association," causing repercussions in Guatemalan society. For its part, the State recognized the alleged violation of Article 16 of the American Convention, to the detriment of the next of kin of the disappeared victims, and also to the detriment of the next of kin of Rudy Gustavo Figueroa, for facts subsequent to March 9, 1987. The State did not refer to the alleged violation of the freedom of expression of the victims' next of kin.

314. The Court takes note of the acknowledgment of responsibility made by the State (*supra* para. 17(b)(5)). In this regard, the Court observes that, as a result of the forced disappearance of their loved ones, at least 15 family members of the victims in this case joined the *Grupo de Apoyo Mutuo* (GAM), in search of justice and in the defense of human rights.<sup>379</sup> Consequently, in conjunction with the preceding considerations on freedom of association (*supra* para. 219.), the alleged existence of the violation of this right of the next of kin of the victims in this case must be analyzed in the context of the relationship between the exercise of this right and the work of promoting and defending human rights. In this regard, this Court has established that States have the obligation to provide the necessary means for human rights defenders to carry out their activities freely; to protect them when they are threatened in order to prevent attempts on their life and integrity; to refrain from imposing obstacles that hamper the realization of their work, and to investigate violations committed against them seriously and effectively in order to combat impunity.<sup>380</sup>

315. With regard to this case, the Court has verified that, during the internal armed conflict in Guatemala, the concept of "internal enemy" against whom the State's counterinsurgency actions were addressed, included "those who for any reason were not in favor of the established regime" (*supra* para. 54). Thus, the organizations that sought justice also began to be considered as "internal enemies" and, consequently, their members were subjected to intimidating acts, threats and human rights violations. In this regard, the CEH indicated that "[o]wing to the dissenting nature of these organizations, the Army and those in power responded with intimidating actions that included public accusations of

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<sup>379</sup> Cf. CEH, *supra*, volume IV, p. 229, paras. 4510 and 4512. According to the information provided to the Court, the following persons were members of the GAM: Bertha Fely Barrientos Morales, Juan Francisco Barillas Barrientos, Edgar Leonel Barillas Barrientos, Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Carlos Alberto Ramírez Pereira, Wilfrida Raquel Morales Cruz, Mirtala Elizabeth Linares Morales, Ruth Crisanta Linares Morales, Marcia Méndez Calderón, Efraín García Escobar, Beatriz María Velásquez Díaz, Aura Elena Farfán Ruiz, Jesús Palencia Juárez and Salomón Estrada Mejía. Cf. Affidavit made by Bertha Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos and Edgar Leonel Barillas Barrientos on November 22, 2004 (file of annexes to the merits report, tome I, annex 30, folio 570); testimony of Juan Francisco Barillas Barrientos, filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome I, annex 31, folio 573); Psychosocial impact report on the Barillas Barrientos family—Case of Óscar Eduardo Barillas Barrientos (Case of No. 30 of the *Diario Militar*) (file of annexes to the pleadings and motions brief, tome VII, annex B3, folio 12280); Affidavit made by Manuel Ismael Salanic Tuc on April 18, 2012 (file of documents received during the public hearing, folios 13037, 13038 and 13040); affidavit made by Natalia Gálvez Soberanis on December 14, 2004 (file of annexes to the merits report, tome II, annex 76, folio 822); testimony of Natalia Gálvez Soberanis, authenticated on March 29, 2008, (file of annexes submitted to the Commission by the petitioners, folio 5084); affidavit made by Ruth Crisanta Linares Morales on November 30, 2004 (file of annexes to the merits report, tome II, annex 80, folio 834); Psychosocial impact report on the Méndez Calderón family—Cases of Luz Haydée Méndez Calderón / Wendy Santizo Méndez (Case of No. 83 of the *Diario Militar*) (file of annexes to the pleadings and motions brief, tome VII, annex B14, folio 12366); testimony given by Efraín García before the Inter-American Court at the public hearing in this case; affidavit made by Beatriz María Velásquez Díaz on January 22, 2005 (file of annexes to the merits report, tome II, annex 104, folio 964); testimony of Aura Elena Farfán, filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 114, folio 1006); testimony of Jesús Palencia Juárez de Alvarado, authenticated on March 26, 2008 (file of annexes to the merits report, tome III, annex 140, folio 1100), and Psychosocial impact report on the Estrada Mejía family—Case of Félix Estrada Mejía (Case of No. 131 of the *Diario Militar*) (file of annexes to the pleadings and motions brief, tome VII, annex B18, folio 12389).

<sup>380</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 77, and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 100.

membership in the guerrilla or, in extreme cases, the murder and the disappearance of their members.”<sup>381</sup> According to the CEH, the GAM was one of the organizations most affected.<sup>382</sup>

316. The Court emphasizes that, according to expert witness Doyle, the *Diario Militar* provides evidence of the persecution of which the GAM members were victims; “based on State intelligence, they became targets, as part of the internal enemies.”<sup>383</sup> In this regard, the Guatemalan Peace Secretariat has indicated that the third section of the *Diario Militar* which contains the “*Apoyo Mutua*” document constitutes a list of the people “whose family members belonged to the *Grupo de Apoyo Mutua* at that time.”<sup>384</sup> Also, the fourth section of the *Diario Militar* includes the GAM in a list entitled “List of ‘Front’ Organizations in the service of the subversion.”<sup>385</sup> In addition, in 1985 the Head of State at the time declared on television that “the GAM was being manipulated by the subversion” and, therefore, “measures would be taken to counter it and, henceforth, further protests would not be tolerated.”<sup>386</sup> In the *Third Report on the Situation of Human Rights in Guatemala*, the Inter-American Commission underscored that “immediately after these declarations, the GAM began to be severely harassed” and it was reported that, in the following months, two GAM leaders were murdered and also the family members of one of them.<sup>387</sup> All these facts constitute relevant background information in relation to the situation of the GAM in 1984 and 1985.

317. However, the Court emphasizes that, according to the CEH, between 1989 and 1993, the situation of danger and harassment against GAM members continued. In particular, the report of the CEH recounted that, over this period, three GAM activists were kidnapped or disappeared, and five more kidnapped and murdered. Also, in 1989, among other attacks, a bomb exploded in front of the GAM offices and, on October 27 and 29, 1993, the offices were raided.<sup>388</sup> Consequently, it is clear that the situation of danger and harassment to which the GAM members were subjected continued after the recognition of the Court’s jurisdiction until at least 1993. The intimidating or threatening effect that this context could have on the next of kin of the disappeared who were members of the GAM is clear to the Court, and represented a *de facto* restriction of the right to freedom of association. In

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<sup>381</sup> CEH, *supra*, volume IV, pp. 229, para. 4511.

<sup>382</sup> Cf. CEH, *supra*, volume IV, pp. 229 and 236, paras. 4512 and 4528.

<sup>383</sup> Expert opinion provided by Katharine Temple Doyle before the Inter-American Court at the public hearing in this case.

<sup>384</sup> The list includes 10 persons, of whom six are victims in this case: Manuel Ismael Salanic Chiguil, Alfonso Alvarado Palencia, Sergio Leonel Alvarado Arévalo, Otto René Estrada Illescas, Rubén Amílcar Farfán and Carlos Guillermo Ramírez Gálvez. Cf. *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 339); Peace Secretariat, *supra*, p. 39. The Court notes that, according to the testimony of Sergio Leonel Alvarado Arévalo’s siblings, their mother was a member of the GAM. However, she was not included as a presumed victim in this case; hence this Court is unable to rule in this regard. Cf. Affidavit made by Luis Rodolfo Alvarado Arévalo on April 18, 2005 (file of annexes to the merits report, tome II, annex 123, folio 1057) and affidavit of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo of November 2, 2004 (file of annexes to the merits report, tome II, annex 124, folio 1060).

<sup>385</sup> *Diario Militar* (file of annexes to the merits report, tome I, annex 11, folio 346).

<sup>386</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, Doc. 16, October 3, 1985, Chapter II, para. 92, annex 5 to the merits report, available at: <http://www.CIDH.org/countryrep/Guatemala85sp/indice.htm>. Also, according to the CEH, on February 2, 1985, the Head of State at the time “accused the members of the GAM of being managed by subversives and threatened to take reprisals. When a journalist asked him against whom these would be taken, he answered: “*you will know them when you see them*,” *La Palabra*, March 22, 1985, p. 15”. CEH, *supra*, volume IV, p. 236, note 553.

<sup>387</sup> Cf. IACHR, *Third Report on the Situation of Human Rights in Guatemala*, 1985, *supra*, Chapter II, paras. 93, 95 and 96.

<sup>388</sup> Cf. CEH, *supra*, volume IV, pp. 99 and 237, paras. 4122 and 4532.

addition, the Court observes that there is evidence that Ana Dolores Monroy Peralta and Francisca Florinda Maldonado Jeréz decided not to participate in organizations such as the GAM because they feared belonging to this type of organization. The Court considers that this proves that their right to freedom of association was also affected.<sup>389</sup>

318. Based on the above, the Court declares that the State has violated the right to freedom of association established in Article 16(1) of the American Convention, in relation to the obligation to respect and ensure rights established in Article 1(1) of this instrument, to the detriment of Bertha Fely Barrientos Morales, Juan Francisco Barillas Barrientos, Edgar Leonel Barillas Barrientos, Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Carlos Alberto Ramírez Pereira, Wilfrida Raquel Morales Cruz, Mirtala Elizabeth Linares Morales, Ruth Crisanta Linares Morales, Marcia Méndez Calderón, Efraín García, Beatriz María Velásquez Díaz, Aura Elena Farfán, Jesús Palencia Juárez, Salomón Estrada Mejía, Ana Dolores Monroy Peralta and Francisca Florinda Maldonado Jeréz. Regarding the other next of kin of the disappeared victims, the Court notes that neither the Commission nor the representatives presented probative elements to prove that they belonged or had wanted to belong to an association; therefore, the Court does not have any evidence on which to rule on the alleged violation of their freedom of association.<sup>390</sup>

319. Lastly, regarding the alleged violation of freedom of expression to the detriment of the next of kin, the Court notes that the two freedoms (of association and of expression) are intrinsically related rights. Indeed, the European Court has recognized that the protection of freedom of thought and expression is one of the purposes of freedom of association.<sup>391</sup> Nevertheless, the Court considers that each of the rights contained in the Convention has its own sphere, meaning and scope.<sup>392</sup> In the Court's opinion the violation of the right to freedom of association may result in the impairment of freedom of expression. However, in order to constitute a violation of the right to freedom of expression it would be necessary to prove that this was affected above and beyond the impairment intrinsic to the declared violation of the right to freedom of association, which has not happened in the instant case. In addition, the Court observes that the Commission and the representatives alleged the said violation based on the presumed absence of guarantees to denounce human rights violations owing to the alleged threats and harassment that these persons had suffered. In its consistent case law, the Court has reaffirmed the protection of freedom of expression with regard to opinions or information on matters in which society has a

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<sup>389</sup> Cf. Testimony of Ana Dolores Monroy Peralta, authenticated on March 29, 2008 (file of annexes to the merits report, tome II, annex 40, folio 606), and testimony of Mercedes Muñoz Rodas de Figueroa, filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome III, annex 152, folio 1142). The Court underscores that it can be inferred from the testimony of Rudy Alberto Figueroa Maldonado that his mother, Francisca Florinda Maldonado Jeréz, was not a member of GAM or any other organization based on fear, which has not been contested by the State. Cf. Testimony of Rudy Alberto Figueroa Maldonado, authenticated on March 28, 2008, (file of annexes submitted to the Commission by the petitioners, folio 5095). Furthermore, the Court notes that no evidence was provided to support the representatives' allegation that the next of kin of Sergio Leonel Alvarado Arévalo and Víctor Manuel Calderón Díaz had not joined "political or solidarity groups" out of fear.

<sup>390</sup> The Court notes that a 1984 report of a human rights organization mentions, in general, that the family of Octavio René Guzmán Castañeda had belonged to the GAM. However, the Court considers that this did not provide sufficient information as regards which member of the family had belonged to that organization, so that it does not have the evidence to determine against whom the violation would have been committed. Cf. Parliamentary Human Rights Group, *Bitter and Cruel... An Interim report of the Parliamentary Human Rights Group, following a mission to Guatemala in October 1984*, 1984, p. 33 (file of annexes to the merits report, tome II, annex 90, folio 904).

<sup>391</sup> Cf. ECHR, *Young, James and Webster v. United Kingdom*, 13 August, § 57, Series A no. 44; *Sigurður A. Sigurjónsson v. Iceland*, 30 June 1993, § 37, Series A no. 264; *Chassagnou and Others v. France* [Grand Chamber], nos. 25088/94, 28331/95 and 28443/95, § 103, ECHR 1999-III; *Refah Partisi (the Welfare Party) and Others v. Turkey* [Grand Chamber], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 88, ECHR 2003-II, and *Vörður Ólafsson v. Iceland* no. 20161/06, § 46, ECHR 2010.

<sup>392</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia*, *supra*, para. 171.

legitimate interest to be informed or to know what influences the functioning of the State or what affects general interests or rights, or with regard to opinions and information that have significant consequences for society.<sup>393</sup> The Court considers that the public denunciations of the forced disappearances of the 26 disappeared victims and the failure to investigate these, as well as the failure to investigate the alleged extrajudicial execution of Rudy Gustavo Figueroa Muñoz, are matters of public interest. However, the Court finds that insufficient evidence was provided to determine that an autonomous violation of the right to freedom of expression was committed to the detriment of the next of kin in relation to this aspect.

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

320. Based on the provisions of Article 63(1) of the American Convention,<sup>394</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation,<sup>395</sup> and that this provision reflects a customary norm that is one of the fundamental principles of contemporary international law on State responsibility.<sup>396</sup>

321. The reparation of the damage caused by a violation of an international obligation requires, wherever possible, full restitution (*restitutio in integrum*), which consists in the reinstatement of the situation that existed before the violation. If this is not possible, as in most cases involving human rights violations, the Court will determine measures to guarantee respect for the violated rights and to repair the consequences of the violations.<sup>397</sup> Thus, the Court has considered the need to grant different measures of reparation in order to redress the damage caused fully; accordingly, in addition to pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition are especially relevant to the damage caused.<sup>398</sup>

322. This Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe this concurrence in order to rule appropriately and in accordance with the law.<sup>399</sup>

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<sup>393</sup> Cf. *Case of Ricardo Canese v. Paraguay*, *supra*, para. 98, and *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs*. Judgment of November 29, 2011. Series C No. 238, para. 61.

<sup>394</sup> Article 63(1) of the American Convention establishes that: “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

<sup>395</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7 para. 25, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 302.

<sup>396</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 302.

<sup>397</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 26, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 248.

<sup>398</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 226, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 305.

<sup>399</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 110, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 304.

323. Taking into account the violations declared in the preceding chapters, the Court will proceed to analyze the claims presented by the Commission and the representatives, and also the arguments of the State, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,<sup>400</sup> in order to establish the measures to repair the damage caused to the victims.

324. Before determining the measures of reparation, the Court points out that, in its brief with final arguments, the State referred for the first time to the National Compensation Program and asked that the award of compensation be made "based on the amounts and criteria used by this program," and also raised some specific objections to the requests for costs and expenses of the representatives. The Court considers that these arguments are not admissible because they are time-barred; therefore, the Court will not take them into account when examining the measures of reparation requested.

#### **A) Injured Party**

325. The Court reiterates that, under Article 63(1) of the Convention, the injured party is considered to be the person declared a victim of the violation of any right recognized therein. Consequently, the Court considers "injured party" to be those persons identified in the Annex on victims of this Judgment and, as victims of the violations declared in Chapters VIII-1, VIII-2 and VIII-3, they will be considered beneficiaries of the reparations ordered by the Court.

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

##### **B.1) Obligation to investigate the facts, and to identify, prosecute and punish, as appropriate, the perpetrators and masterminds**

326. The Commission asked the Court to order the State "to take immediately the appropriate steps to reopen the investigation [...] and to bring it to an effective conclusion within a reasonable time." The representatives endorsed the Commission's request, and emphasized that all the obstacles that maintain impunity in this case should be removed. For its part, the State undertook "to continue expediting the criminal investigation in this case and to follow up on the measures taken in this sphere"; to this end, it has taken certain actions, such as the criminalization of forced disappearance.

327. The Court appreciates the State's undertaking to expedite the criminal investigation in this case. Nevertheless, taking into account the conclusions of Chapter VIII-2 of this Judgment, the Court establishes that the State must remove all the *de facto* and *de jure* obstacles that maintain impunity in this case,<sup>401</sup> and initiate, continue, expedite, re-open, lead and conclude all the necessary investigations to determine and to punish, as appropriate, those responsible for the forced disappearances of the victims of the instant case, as well as for the death of Rudy Gustavo Figueroa Muñoz and the alleged detention and torture suffered by Wendy and Igor Santizo Méndez. This obligation must be met within a reasonable time in order to establish the truth of the facts, taking into account that more

<sup>400</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 to 27, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 303.

<sup>401</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 277, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 319.

than 29 years have passed since the first of the forced disappearances that are the subject of this case occurred. In particular, the State must ensure that the following criteria are observed:<sup>402</sup>

a) The pertinent investigation or investigations into the facts of this case must be undertaken ensuring that all investigations and proceedings are carried out taking into consideration the complexity of the facts and the context of systematic human rights violations in which they occurred, with due diligence, avoiding omissions when examining and assessing the evidence, and following an investigative logic consequent with the existence of the *Diario Militar*;

b) Given that gross violations of human rights are involved, the State must refrain from recurring to the application of amnesty laws or arguing prescription, the non-retroactivity of criminal law, *res judicata*, or the principle of *non bis in idem*, or any similar mechanism that excludes responsibility, in order to exempt itself from the obligation to investigate and to prosecute those responsible;<sup>403</sup>

c) It must ensure that: (i) the competent authorities conduct the corresponding investigations *ex officio* and that, for this purpose, they have available and use all the necessary logistic and scientific resources to collect and process the evidence and, in particular, have the authority to obtain full access to the pertinent documentation and information to investigate the facts denounced and to take promptly those measures and inquiries essential to clarify what happened to the disappeared persons in this case, to Rudy Gustavo Figueroa Muñoz, and to Wendy and Igor Santizo Méndez, and (ii) the authorities refrain from taking measures that obstruct the investigative process;

d) It must determine the identity of the presumed perpetrators and masterminds of the violations referred to in this Judgment;

e) It must ensure that all State authorities collaborate with the investigation of the facts of this case, providing full access to the information requested by the authorities in charge of the investigation, as well as collaborating, as pertinent, in the collection of the evidence required to investigate the facts denounced, to elucidate what happened, and to determine the whereabouts of the disappeared victims, so that the authorities responsible for the investigation into the violations in this case may conduct it with due diligence. Furthermore, the State authorities must refrain from taking measures that prevent access to the information contained in State archives or agencies concerning the facts of this case;

f) It must open disciplinary, administrative or criminal proceedings, in accordance with its domestic law, against the possible State authorities who obstructed or obstruct the due investigation of the facts, as well as those responsible for the different procedural irregularities that contributed to prolong the impunity of the facts, and

g) It must ensure that the different organs of the system of justice involved in the case have the necessary human and material resources to perform their tasks

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<sup>402</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 181 and *Case of the Río Negro Massacres v. Guatemala*, para. 257.

<sup>403</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, para. 41, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 319.

adequately, independently and impartially, and that those who participate in the investigation, including the victims or their representatives, witnesses, and agents of justice, have appropriate guarantees for their safety.

328. In keeping with its consistent case law,<sup>404</sup> the Court considers that the State must ensure full access and legal standing to the victims or their the next of kin at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention. In addition, the results of the corresponding proceedings must be published so that Guatemalan society may know the facts that are the subject of this case, as well as those responsible for them.<sup>405</sup>

329. The investigation of the facts is a legal obligation of the State; consequently each procedural act it undertakes must reflect the undertaking made by Guatemala in order to eliminate the impunity of the facts, an obligation of guarantee that results from Article 1(1) of the American Convention. In addition, the State must “organize the whole government apparatus and, in general, all the structures through which public power is exercised, in such a way that they are able to ensure legally the free and full exercise of human rights.”<sup>406</sup>

330. In addition, this Court has established in its case law that when a State is a party to international treaties such as the American Convention on Human Rights, the Inter-American Convention on Forced Disappearances, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará, these treaties are binding on all of its organs, including the Judiciary, whose members must ensure that the effects of the provisions of the said treaties are not impaired by the application of laws or interpretations contrary to their object and purpose. Judges and organs related to the administration of justice at any level are obliged to exercise *ex officio* control of “conformity” between domestic law and the human rights treaties to which the State is a party; evidently, within their respective spheres of competences and in keeping with the corresponding procedural regulations. In this task, the judges and organs related to the administration of justice, such as the Public Prosecution Service, must take into account not only the American Convention and other inter-American instruments, but also the Inter-American Court’s interpretation of them.<sup>407</sup>

## **B.2) Determination of the whereabouts of the disappeared victims**

331. The Commission asked the Court to order the State to take the relevant steps to search for the disappeared victims and, once their mortal remains have been identified, to return them to their next of kin and to cover the burial costs. The representatives endorsed the Commission’s request with regard to the 24 victims who remain missing. In addition, in order to reinforce the process of searching for and locating the victims, they requested the creation of a “National Search Commission for victims of forced disappearance during the internal armed conflict.” For its part, the State undertook to promote the search for the mortal remains of the victims of disappearances, which would be carried out in coordination

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<sup>404</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 319.

<sup>405</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*, *supra*, para. 118 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 313.

<sup>406</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para.166, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 144.

<sup>407</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 124, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 318.

with the Forensic Science Institute, as well as with the FAFG, as appropriate. Regarding the creation of the said "National Search Commission," it indicated that a bill exists and has received two "favorable opinions" in the Congress of the Republic.

332. The Court notes that the next of kin of the victims indicated that the remains of the disappeared persons must be found and returned to them so that they can be certain about what happened, honor the remains in accordance with their beliefs, and close the mourning process. Thus, expert witness Beristain stressed that the most important request of the next of kin relates to knowing the truth of what happened and the final fate of their loved ones, and finding their remains.<sup>408</sup>

333. In this case, it has been established that the whereabouts of 24 of the disappeared victims remain unknown. The Court underscores that more than 29 years have passed since the first forced disappearance in this case; consequently, it is reasonable for the next of kin to hope that their whereabouts will be determined. This constitutes a form of reparation and, therefore, gives rise to the corresponding obligation of the State to satisfy it.<sup>409</sup> For the next of kin, it is extremely important to receive the bodies of the persons who were forcibly disappeared, because it allows them to bury the remains according to their beliefs, as well as to give closure to the mourning process they have been experiencing throughout all these years.<sup>410</sup> In addition, the Court emphasizes that the remains of a deceased person and the place where they are found may provide valuable information on what happened and about the perpetrators of the violations or the institution to which they belonged,<sup>411</sup> particularly when State officials are involved.<sup>412</sup>

334. The Court assesses positively the undertaking made by Guatemala regarding the search for the disappeared victims. In this regard, the State must conduct a genuine search, as soon as possible, using the appropriate judicial and administrative channels, in which it makes every effort to locate the 24 victims whose whereabouts remain unknown. The search must be conducted in a systematic and rigorous manner, with the adequate and appropriate human, technical and scientific resources, and, if necessary, the cooperation of other States must be requested. The next of kin must be informed of these measures and, where possible, their presence procured.<sup>413</sup> If any of the victims are found dead, the mortal remains must be returned to their next of kin, after genetic verification of relationship, as soon as possible, and at no cost to them. In addition, the State must cover the funeral expenses, where applicable, in agreement with the next of kin.<sup>414</sup>

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<sup>408</sup> Expert witness Beristain indicated that "[t]he most important request of the next of kin relates to [...] knowing the final fate of their family members and finding their remains" and, to this end, "they have participated in different search procedures in the past." Cf. Affidavit provided by expert witness Carlos Martín Beristain on April 13, 2012 (file of documents received at the public hearing, folios 13283 and 13284).

<sup>409</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 331.

<sup>410</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 245 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 331.

<sup>411</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 245 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 331.

<sup>412</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 266.

<sup>413</sup> Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 191, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 290.

<sup>414</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 185, and *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 270.

335. Regarding the creation of the said “National Search Commission,” the Court takes note of and appreciates the relevant progress made by the State.<sup>415</sup> In this regard, the Court urges the State to continue taking all the necessary legislative, administrative or other measures to ensure the creation of this Commission. The Court considers that an entity of this kind will make a positive contribution to the search for and identification of the victims in this case and, in general, of the victims of forced disappearances in Guatemala.

336. The Court recalls that, in the cases of *Molina Theissen v. Guatemala*<sup>416</sup> and the *Río Negro Massacres v. Guatemala*,<sup>417</sup> it ordered the State to create and implement a genetic information database to safeguard the information, on the one hand, of the osseous remains that were found and exhumed and, on the other, of the next of kin of the persons who were presumably executed or disappeared during the acts perpetrated in the context of the armed conflict. Consequently, the Court does not find it necessary to order this measure of reparation again. However, the Court urges the State, in compliance with that measure, to establish mechanisms for cooperating and exchanging information with the different agencies and organizations that have collected this type of data in Guatemala, so as not to duplicate efforts in the creation and implementation of the said measure.

**C) Other measures of integral reparation: rehabilitation and satisfaction, and guarantees of non-repetition**

**C.1) Rehabilitation: psychological or psychiatric assistance to the victims**

337. The Commission asked that measures of rehabilitation be ordered for “physical and psychological treatment” for the victim “Wendy Santizo Méndez and [for] the next of kin of the other victims in this case,” as part of their integral reparation. The representatives asked that the State be ordered to provide “medical, psychological and/or psychiatric treatment to the next of kin of the victims,” by means of a “medical insurance policy,” because “Guatemala does not have the appropriate public mental health care programs or psychiatric and/or psychological services for the special requirements” in this case. In addition, they asked that “the necessary financial resources [be provided] to the family members who [...] reside outside Guatemala.” In this regard, the State indicated that it has a national health care system for the entire population, composed of different hospitals and centers, and therefore indicated its “willingness to take the necessary measures with these public entities for the victims’ next of kin to receive the medical attention requested for as long as necessary.”

338. First, the Court appreciates the commitment made by Guatemala in relation to the public health care system. Nevertheless, it considers it pertinent to point out that the usual social services that the State provides to the individual should not be confused with the reparations to which the victims of human rights violations have a right, based on the specific damage arising from the violation.<sup>418</sup>

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<sup>415</sup> In this regard, the State emphasized that “the Finance and Currency Committee and, recently, the Legislation and Constitutional Issues Committee of the Congress of the Republic, had issued favorable opinions on Bill 3590, which is intended to create the Commission to Search for Persons Victims of Enforced Disappearance and other Forms of Disappearance.”

<sup>416</sup> Cf. *Case of Molina Theissen v. Guatemala. Reparations and costs*. Judgment of July 3, 2004. Series C No. 108, eighth operative paragraph.

<sup>417</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, third operative paragraph.

<sup>418</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 529, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 350.

339. In this regard, as it has in other cases,<sup>419</sup> the Court finds it necessary to establish a measure of reparation to provide adequate treatment for the psychological or psychiatric problems suffered by the victims as a result of the violations established in this Judgment (*supra* paras. 288, 289 and 290). Therefore, having verified the violations and the damage suffered by the victims, and in order to contribute to their reparation, the Court considers it opportune to establish the State's obligation to provide, free of charge and through its specialized health care institutions, immediate, adequate and effective psychological or psychiatric treatment to the victims who request it, following their informed consent, and including the provision, free of charge, of the medication and examinations they may eventually require, taking into consideration the ailments of each of them. If the State does not have the personnel or the institutions that are able to provide the required level of care, it must have recourse to specialized private or civil society institutions. Moreover, the respective treatment must be provided, insofar as possible, in the centers nearest to their places of residence<sup>420</sup> in Guatemala for as long as necessary. When providing the psychological or psychiatric treatment, the specific circumstances and needs of each victim must also be considered, so that they are provided with family and individual treatment, as agreed with each of them and following an individual assessment.<sup>421</sup> The said psychological or psychiatric treatment should include simple and differentiated registration and updating procedures under the corresponding health care system, and the State officials responsible for providing it must be aware of its role as a measure of reparation. The victims who request this measure of reparation, or their legal representatives, must inform the State of their intention to receive psychological or psychiatric treatment within one year of notification of this Judgment.

340. In addition, the Court observes that some of the victims' next of kin do not reside in Guatemala. However, the Court does not have accurate and updated information in this regard; thus, the representatives are granted six months at the most from notification of this Judgment to specify which of the victims is in this situation. The Court also finds it pertinent to determine that, in the event that these persons request psychological or psychiatric treatment, under the terms of the preceding paragraph, the State must grant them, once only, the sum of US\$7,500.00 (seven thousand five hundred United States dollars), for the expenses of psychological or psychiatric treatment, as well as for any medicines and related expenses, so that they may receive this attention in the place where they reside.<sup>422</sup>

## **C.2) Satisfaction: Publication and dissemination of the Judgment**

341. The representatives asked the Court to order Guatemala to publish, as soon as possible, a synthesis of the Judgment, agreed by themselves and the State, which should include a summary of the facts, the operative paragraphs and a description of the life of the victims in this case. In addition, they asked that it be published in various media: in newspapers and on the websites of different State entities, and on television and the radio.

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<sup>419</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 51(d) and (e), eighth operative paragraph, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 352.

<sup>420</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 353.

<sup>421</sup> Cf. *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278 and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 353.

<sup>422</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, supra*, para. 269.

In this regard, the State indicated its willingness to make certain publications of the Judgment and to “arrange” for it to be posted on the websites of the pertinent institutions.

342. As it has in other cases,<sup>423</sup> the Court establishes 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; (b) the official summary of this Judgment prepared by the Court, once, in a newspaper with widespread national circulation, and (c) this Judgment, in its entirety, available for one year on an official website.

### **C.3) Measures to commemorate and honor the victims**

343. In general, the Commission referred to the adoption of measures that, as part of the integral reparation, should be granted to the victims and their next of kin. For this reason, it considered that the Court should order the State to organize “acts of symbolic importance that contribute to [their] satisfaction and rehabilitation, and to ensure the non-repetition of the facts.”

#### *C.3.a) Production of a documentary on the facts and the context of the Diario Militar*

344. In particular, the representatives asked for the production of “a documentary that describes and recounts the resistance and courage of the Guatemalan people represented by the *Diario Militar*, as well as the struggle of the families to seek the truth and justice.” The documentary should be funded by the State under the direction of “a person proposed by the next of kin of the victims, and it should be disseminated by means of 1,000 DVDs to be handed over to the victims’ next of kin for distribution.” The State “expresse[d] its willingness to comply with the preparation of the documentary requested” by the representatives.

345. Given the circumstances of this case and the context in which it was framed, the Court considers that the recovery of the memory and dignity of the victims in this case is of the utmost importance. In this regard, the Court finds it pertinent to order the production of a documentary on the facts of this case, because such initiatives are significant for both the preservation of the memory and the satisfaction of the victims, and for the recovery and re-establishment of the historical memory in a democratic society.<sup>424</sup> Furthermore, the Court appreciates the State’s commitment to comply with the representatives’ request.

346. Consequently, the Court considers it appropriate that the State make an audio-visual documentary on the facts and victims of this case, the context in which the facts took place, and the search for justice of the families; its content must be agreed previously with the victims and their representatives. The State must be responsible for all the expenses arising from the production, showing and distribution of this video. The documentary must be shown on a State television channel with national coverage, once, and the next of kin and the representatives must be given due notice. Furthermore, the State must provide the representatives with 40 copies of the video, so that they may distribute it widely among the victims, their representatives, other civil society organizations, and the main universities of the country for promotion purposes. The State has two years as of notification of this Judgment to produce this documentary, and to show and distribute it.

<sup>423</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, *supra*, para. 79 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 361.

<sup>424</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 356 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 365.

### *C.3.b) Construction of a National Remembrance Park*

347. The representatives asked the Court to order the State to grant “sufficient and prompt resources so that, in memory of the victims, a remembrance park can be established in Guatemala” symbolizing the human rights culture and the fight against impunity, as well as representing a special place to remember the loved ones. They asked that the said park should “include a museum, a library, a media library, an area for temporary exhibitions, an auditorium, an educational center [...] and that it also contain the National Unified Register of Persons Disappeared during the internal armed conflict,” and that, in it, be placed “gardens with the busts of the victims in this case and a plaque with all the names of the persons disappeared during the internal armed conflict.” For its part, the State “expresse[d] its willingness to take the necessary steps with the corresponding institutions for the construction of a museum on the victims of the internal armed conflict.”

348. The Court appreciates the State’s willingness to implement this measure of reparation, which is aimed at recovering the memory of the victims in this case, and takes note of the State’s offer in this regard.

349. Nevertheless, the Court considers that the State should proceed to establish a park or plaza to honor the memory of the victims of this case, which serves their next of kin as a place for remembering their loved ones. The selection of the place where this park will be located and its design should be agreed on by the State and the next of kin of the victims, taking into account their expectations and needs. Guatemala must place a plaque with the names of the victims in this case who are recorded in the *Diario Militar* in this place, with the explicit mention that its existence is due to the State’s compliance with the reparation ordered by the Inter-American Court. Guatemala has two years to design and construct the park or plaza that meets the said purposes.

## **C.4) Guarantee of non-repetition**

### *C.4.a) Access to public information*

350. The Commission asked the Court to order the State “to guarantee the unrestricted and immediate access of the judicial authorities, and through them, of the victims and their legal representatives, to all the information in the hands of the State that could help clarify the human rights violations committed in this case,” as well as “to ensure full implementation of the Law on Access to Public Information.” The representatives agreed with the Commission and added that the State should be ordered to ensure the “release of all the military and intelligence records related to the armed conflict, physical searches of the military archives, retrieval of privately-held documents, and preservation of the documentation found.” They also asked that these measures be carried out by “independent and impartial experts provided with the necessary resources and the support of the most senior State officials, including the Ministry of Defense.” And, in the event that the documentation has been destroyed, the relevant investigations should be conducted to try and reconstruct it. The State did not present any observations on this measure of reparation.

351. The Court recalls that, as part of the obligation to investigate, the State must adopt the necessary measures to guarantee that the authorities in charge of the investigation have all of the necessary information to investigate the events that were denounced, to clarify what happened, and to determine the whereabouts of the victims (*supra* para. 327(e)). In this regard, the Court finds that it is not appropriate to establish an additional

measure of reparation in this regard, without prejudice to the fact that the State must continue implementing the searches, the systematization and publication of all the information on the persons named in the *Diario Militar*, as well as the information related to human rights violations that occurred during the internal armed conflict and ensure access to this.

#### *C.4.b) Training on human rights for State authorities*

352. The Commission asked the Court to order the State “to implement training courses on human rights for State authorities responsible for carrying out intelligence, defense, and security functions,” which “should make special mention of the inter-American standards on human rights; the obligation of all the authorities to collaborate fully with investigations into human rights violations, and the scope and importance of the right of access to information. The representatives and the State did not refer to this measure.

353. The Court has verified the impunity surrounding the facts of this case (*supra* para. 265), which is why it is important to strengthen the institutional capacity of the State by training judges, prosecutors and members of the Armed Forces in order to prevent the repetition of facts like those analyzed in this case.<sup>425</sup> In this regard, the Court recalls that, in the Judgment handed down in the case of *Myrna Mack Chang v. Guatemala*, the State was ordered “to include education on human rights and on international humanitarian law in its training programs for the members of its Armed Forces, Police, and security agencies.”<sup>426</sup> Also, in the Judgment delivered in the case of the *Las Dos Erres Massacre v. Guatemala*, the State was ordered to “implement training courses on human rights for different State authorities.”<sup>427</sup>

354. Consequently, in view of the measures ordered in the Judgments mentioned *supra*, that, taken as a whole, relate to the implementation of a training program for prosecutors, judges and members of the Armed Forces, and that have general effects that go beyond the specific cases, the Court does not consider it pertinent to order such measures of reparation again. The Court will continue to monitor the implementation of those measures during the stage of monitoring compliance with the respective judgments.

#### **C.5) Other measures requested**

355. The representatives asked that Guatemala be ordered to implement the necessary and urgent measures for the adequate physical safekeeping, legal protection and sustainability of the Historical Archive of the National Police,<sup>428</sup> given “the importance of the content of the documentation it contains.” For its part, the State expressed its “willingness to promote and take the necessary steps before the corresponding institutions, to ensure the physical safekeeping, legal protection, and financial sustainability” of the

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<sup>425</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs, supra*, para. 127, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 369.

<sup>426</sup> Cf. *Case of Myrna Mack Chang v. Guatemala, supra*, para. 282, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 291.

<sup>427</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, twelfth operative paragraph.

<sup>428</sup> Specifically, the representatives asked that Guatemala be ordered “to implement the necessary and urgent measures for the appropriate physical safekeeping of the documents that compose the Historical Archive of the National Police, by adapting facilities where they are to comply with national and international standards for the preservation of historical documents. That it also be ordered, [to provide] it with the necessary legal protection by declaring it to be part of the national and cultural heritage of the Nation, ensuring access by anyone, [and] to provide permanent security to prevent possible willful destruction of this documentary collection.”

Historical Archive of the National Police. In addition, it indicated measures it had been implementing to “strengthen it and provide it with institutional security.”<sup>429</sup> In this regard, the Court appreciates the willingness of the State to take the necessary measures to ensure the physical safekeeping, legal protection and sustainability of the Historical Archive of the National Police, and takes note of the undertakings made by the State and the measures it is taking to this end.

356. The Commission asked the Court to order the State “to strengthen the institutions of the criminal justice system, including by increasing their respective budgets.” The representatives and the State did not refer to this request by the Commission. In this regard, the Court notes that the Commission did not indicate the specific measures required by this reparation request and finds that it is responded to, for the purposes of this case, in the criteria established in relation to the obligation to investigate (*supra* para. 327).

#### ***D) Compensation***

##### **D.1) Pecuniary damage**

357. In its case law, the Court has developed the concept of pecuniary damage and the circumstances in it must be compensated.<sup>430</sup> This Court has established that pecuniary damage contemplates “the loss or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a monetary nature that have a causal nexus to the facts of the case.”<sup>431</sup>

358. In general, the Commission asked the Court to order the State “to grant integral reparation to Wendy Santizo Méndez and the next of kin of the other victims in this case, which includes fair compensation.”

##### ***D.1.a) Loss of earnings***

359. The representatives stated that the Court should order the State to compensate the loss of earnings of the victims in this case; to this end, it should take into consideration “not only the employment of each of [them], but also their career goals and life project.” In order to calculate the amounts corresponding to each victim, the representatives presented an actuarial study on each of the disappeared victims with the exception of Crescencio Gómez López, and on Rudy Gustavo Figueroa Muñoz, prepared by the expert Bernardo Morales Figueroa (hereinafter also “the representatives’ actuarial study”), indicating an amount of loss of earnings for each of them.

360. Meanwhile, the Court recalls that, on the instructions of the President, the State presented an actuarial study prepared by the expert Roberto Molina Cruz (hereinafter also

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<sup>429</sup> In this regard, the State advised that the said file “was now administered by the General Archive of the Ministry of Culture and Sports, under Ministerial Decision 1052-2009,” and that “conversations have begun between the representatives of [the said] Ministry and the UNESCO Office for Guatemala, for the [Historical Archive of the National Police] to be declared World Heritage.”

<sup>430</sup> This Court has established that pecuniary damage supposes “the loss or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a monetary nature that have a causal nexus to the facts of the case.” *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Preliminary objection, merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 382.

<sup>431</sup> *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra*, para. 43, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 382.

“the State’s actuarial study”) (*supra* para. \*10), in order “to provide [the] Court with background information when determining an eventual compensation in favor of the victims.” The said study estimated, *inter alia*, the amounts corresponding to the concept of loss of earnings for each of the victims in the case.

361. Regarding the State’s actuarial study, the representatives indicated that it “simplifies excessively the employment categories of the disappeared victims in order to determine their incomes,” by limiting the calculation of the loss of earnings “to two categories of employment [...], agricultural and non-agricultural activities,” when “the victims had numerous types of employment and life projects.” Thus, they considered that their actuarial study was more accurate because it was based on various criteria.

362. The Court has considered that compensation for loss of earnings includes the income that the deceased victim would have perceived during his or her probable life;<sup>432</sup> however, owing to the death of the victim, the amount is given to the next of kin. Therefore, the Court will determine the amounts that it finds pertinent to establish in this case with regard to the 26 victims of forced disappearances. The Court recalls that the detention and subsequent death of Rudy Gustavo Figueroa Muñoz does not fall within its competence; thus, it is not incumbent on this Court to award compensation for the loss of earnings that the said victim may have suffered.

363. The Court appreciates the actuarial studies submitted by both parties. However, it notes that owing to the Court’s temporal competence, the compensation for loss of earnings in this case must be calculated as of 1987. In addition, although the exact amount of the earnings that the victims failed to perceive as a result of the violations declared in this Judgment have not been verified, the Court considers that the professions and occupations of these persons that have been proved in this case allow it to be established with sufficient certainty that they would have been able to perform a remunerated activity or profession.<sup>433</sup> Consequently, taking into account as a basis for the calculation the studies presented, and then subtracting the earning prior to 1987, as well as a prudent percentage for the personal expenses that each victim would have incurred, the Court proceeds to establish, on an individual basis, the following amounts in United States dollars for loss of earnings.

| Victim                                      | Compensation for loss of earnings |
|---|-----------------------------------|
| <b>1. José Miguel Gudiel Álvarez</b>        | US\$ 118,027.00                   |
| <b>2. Orencio Sosa Calderón</b>             | US\$ 284,779.00                   |
| <b>3. Oscar Eduardo Barillas Barrientos</b> | US\$ 63,494.00                    |
| <b>4. José Porfirio Hernández Bonilla</b>   | US\$ 86,816.00                    |
| <b>5. Octavio René Guzmán Castañeda</b>     | US\$ 122,582.00                   |
| <b>6. Álvaro Zacarías Calvo Pérez</b>       | US\$ 105,192.00                   |
| <b>7. Víctor Manuel Calderón Díaz</b>       | US\$ 107,307.00                   |

<sup>432</sup> Cf. *Case of the La Rochela Massacre v. Colombia*, *supra*, para. 246, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 282.

<sup>433</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, para. 284.

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|--|-----------------|
| <b>8. Amancio Samuel Villatoro</b>         | US\$ 23,922.00  |
| <b>9. Alfonso Alvarado Palencia</b>        | US\$ 35,367.00  |
| <b>10. Manuel Ismael Salanic Chiguil</b>   | US\$ 135,990.00 |
| <b>11. Carlos Guillermo Ramírez Gálvez</b> | US\$ 141,604.00 |
| <b>12. Sergio Saúl Linares Morales</b>     | US\$ 401,622.00 |
| <b>13. Zoilo Canales Salazar</b>           | US\$ 2,635.00   |
| <b>14. Moisés Canales Godoy</b>            | US\$ 57,329.00  |
| <b>15. Luz Haydée Méndez Calderón</b>      | US\$ 44,859.00  |
| <b>16. Juan Pablo Armira López</b>         | US\$ 99,129.00  |
| <b>17. María Quirina Armira López</b>      | US\$ 107,685.00 |
| <b>18. Lesbia Lucrecia García Escobar</b>  | US\$ 129,946.00 |
| <b>19. Félix Estrada Mejía</b>             | US\$ 60,915.00  |
| <b>20. Otto René Estrada Illescas.</b>     | US\$ 83,211.00  |
| <b>21. Julio Alberto Estrada Illescas</b>  | US\$ 59,643.00  |
| <b>22. Rubén Amílcar Farfán</b>            | US\$ 122,395.00 |
| <b>23. Sergio Leonel Alvarado Arévalo</b>  | US\$ 131,926.00 |
| <b>24. Crescencio Gómez López</b>          | US\$ 44,055.00  |
| <b>25. Luis Rolando Peñate Lima</b>        | US\$ 124,316.00 |
| <b>26. Joaquín Rodas Andrade</b>           | US\$ 146,429.00 |

364. The amounts indicated in favor of the above-mentioned persons as compensation for loss of earnings must be paid to their next of kin within the respective time frame established by the Court (*infra* para. 384), based on the following criteria:

- a) Fifty percent (50%) of the compensation to be distributed, in equal shares, among the children of the victim. If one or more of the children is deceased, their corresponding share shall increase the share of the other children of this victim;
- b) Fifty percent (50%) of the compensation to be paid to the spouse or permanent companion of the victim at the start of the disappearance or at the time of his or her death, as applicable;
- c) In the event that there are no family members in one of the categories defined in the preceding paragraphs, the amount that would have corresponded to the next of kin in that category shall increase the share corresponding to the other category;

- d) If the victim had no children, or spouse, or permanent companion, the compensation shall be paid to his or her parents or, if they are deceased, to his or her siblings in equal shares, and
- e) In the event that there are no next of kin in one or more of the categories defined in the preceding paragraphs, the compensation shall be paid to the heirs in accordance with domestic inheritance laws.

#### *D.1.b) Consequential damage*

365. The representatives indicated that, in this case, there are "127 beneficiaries who are related to [the] victims" of the violations that "have originated diverse consequential damage" and effects on the quality of life of the families. Consequently, they asked that the State be ordered "to compensate consequential damage."<sup>434</sup> In order to determine the amount, they asked the Court to analyze each claim individually together with the circumstances of each family member "in order to determine the consequential damage in accordance with the principles of justice and equity."<sup>435</sup>

366. The State's actuarial study (*supra* para. 360) indicated that, owing to the lack of information on the consequential damage caused to the victims and their next of kin, it was "advisable to consider the same amount (average) to compensate the beneficiaries of each victim," which it estimated at Q.200,000.00 (two hundred thousand quetzals), considering this an adequate amount.<sup>436</sup>

367. Regarding the consequential damage, the Court observes that, even though the representatives had described the financial consequences and harm suffered by the next of kin, they failed to provide any evidence that would substantiate the consequential damage to each of them individually. Nevertheless, the Court considers that it is reasonable that the family units had to incur certain expenses as a result of the facts of this case in order to undertake the search for justice and for the whereabouts of their loved ones, as well as to take care of the physical and psychological ailments they suffered as a result of the violations declared in this Judgment. The Court also takes into account the financial impact on the family unit caused by the disappearance of one or several of its members. Consequently, the Court establishes, in equity, the sum of US\$10,000.00 (ten thousand United States dollars) as compensation for consequential damage, which must be paid within two years of notification of this Judgment. For the purposes of the payment of the said amount, the representatives must indicate, within six months of notification of the Judgment, the person in each family unit to whom the said sum must be delivered.

#### **D.2) Non-pecuniary damage**

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<sup>434</sup> The representatives indicated that the consequential damage included the expenses incurred in determining the whereabouts of the victim, the search for justice at the national and international level, the burial expenses of the remains of the victims, the loss of material goods seized by the authorities, the medical and psychological treatment for family members, and the displacement of the families.

<sup>435</sup> The representatives indicated that, in this case, a "variety of consequential damages suffered as a result of the facts and the type of evidence that the next of kin have available." In this regard, they considered that the "diversity results from various factors, including the age of the family member at the time of the events, the family's financial resources, the access to medical and psychological treatment, the intensity of the stigmatization suffered and the displacement caused by the disappearance, among other factors."

<sup>436</sup> The report establishes this amount for each one of the victims of forced disappearance, for Wendy Santizo Méndez and Rudy Gustavo Figueroa Muñoz.

368. International case law has repeatedly established that the judgment constitutes, *per se*, a form of reparation.<sup>437</sup> Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage and has established that it may include the suffering and distress caused to the direct victims and their families, the impairment of values that are of great significance to them, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victims or their family.<sup>438</sup>

369. The representatives asked the Court to order the State to repair the non-pecuniary damage relating to “the effects suffered by the victims.” Specifically, they asked that, pursuant to the Court’s case law, “in equity,” it order Guatemala to pay the following amounts: (i) US\$100,000.00 (one hundred thousand United States dollars) to each victim; (ii) US\$65,000.00 (sixty-five thousand United States dollars) to each member of the immediate family, and (iii) US\$20,000.00 (twenty thousand United States dollars) to each indirect family member for the non-pecuniary damage suffered as a result of the facts.<sup>439</sup> In this regard, they indicated that, in other cases, the Court had taken into account the characteristic of “double condition of victim”; hence, they considered that the compensation should not be paid by family group. Additionally, they asked that “the compensation ordered in this Judgment should not prevent any reparations that might, eventually, be ordered under domestic law. For its part, in its answering brief, the State expressed its “willingness to pay financial compensation to the next of kin of the victims in this case for the violations suffered.” However, it noted that “the amounts requested [...] are too high, taking into account the financial situation of the country.” Therefore, it considered that the Court should consider establishing “an amount of Q. 200,000.00 for each family unit” in order “to cover the amount for the non-pecuniary damage suffered.”<sup>440</sup>

370. Considering the circumstances of the case *sub judice*, the sufferings that the violations committed caused to the victims, as well as the alteration in their living conditions and the other consequences of an intangible or non-pecuniary nature that they suffered, the Court finds it pertinent to establish an amount, in equity, as compensation for non-pecuniary damage.

371. Based on the compensation ordered by the Court in other cases relating to the forced disappearance of persons, as well as the circumstances of this case, the magnitude, nature and gravity of the violations committed, the sufferings caused to the victims and their next of kin, the time that has passed since the disappearances began and the denial of justice, and the impunity of the facts for more than 25 years, the Court finds it appropriate to establish, in equity, the sum of US\$80,000.00 (eighty thousand United States dollars) in favor of the 26 victims of forced disappearances; US\$40,000.00 (forty thousand United

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<sup>437</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 382.

<sup>438</sup> *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 382.

<sup>439</sup> The representatives asked that, in order to determine the non-pecuniary damage suffered by the next of kin, the Court take into account: (i) “the harm suffered [...] due to the threats, harassment and attempts on their life after the [...] facts”; (ii) that “some of them [...] were forcibly displaced from their place of residence”; (iii) that “they were subjected to all kinds of harassment, discrimination and stigmatization”; (iv) “the ostensible reduction in their physical, mental and material quality of life”; (v) the “feelings of anguish and helplessness as a result of the denial of justice and the impossibility, to date, of knowing the whereabouts of the disappeared,” and (vi) the concealment by the State of “official documents [on] the circumstances of the disappearances, as well as the involvement of State agents” which has “increased their suffering and anguish.”

<sup>440</sup> In its brief with final arguments, the State indicated “that to cover the amount for non-pecuniary damage suffered, the [...] Court should consider establishing the sum of Q.200,000.00 for each family unit affected.”

States dollars) in favor of the mothers, fathers, daughters and sons, spouses, and permanent companies, and US\$10,000.00 (ten thousand United States dollars) in favor of the siblings and grandchildren of the said victims, given that the effects on their personal integrity as a result of the facts of this case has been proved and also their efforts to search for the whereabouts of their loved ones and for justice. The said amounts shall be paid within the time frame that the Court determines to this end (*infra* para. 384).

372. The Court notes that, in order to grant her the compensation for non-pecuniary damage, it will consider Laurenta Marina Sosa Calderón as if she were the mother of Orencio Sosa Calderón because, even though she is his sister, upon the death of their mother, she was the one responsible for his upbringing and care.<sup>441</sup> The Court also notes that the nephews and nieces of Rubén Amílcar Farfán will be considered as if they were his children, when determining the compensation that corresponds to them because, from the information provided by the representatives, which the State has not contested, they looked upon him as their father.<sup>442</sup>

373. Furthermore, the Court establishes, in equity, the additional compensation of US\$20,000.00 (twenty thousand United States dollars) in favor of Wendy Santizo Méndez and Igor Santizo Méndez for the additional non-pecuniary damage caused as a result of the failure to investigate the presumed acts of torture and detention committed against them (*supra* paras. 270 to 282). These sums must be paid within the respective time frame established by the Court (*infra* para. 384).

374. Also, for the same concept, the Court establishes, in equity, compensation of US\$20,000.00 (twenty thousand United States dollars) in favor of the victim Rudy Gustavo Figueroa Muñoz, and US\$10,000.00 (ten thousand United States dollars) in favor of each of his family members; namely: his wife, Francisca Florinda Maldonado Jeréz; his mother, Mercedes Muñoz Rodas, and children, Rudy Alberto and Brenda Marisol Figueroa Maldonado, owing to the harm suffered as a result of the presumed extra-judicial execution of their loved one and the failure to investigate the facts.

375. The State must make pay the said amounts within the respective time frame established by the Court (*infra* para. 384). The amounts determined in favor of the persons who were disappeared, or of the victims recorded in the *Diario Militar* who are deceased, must be paid in accordance with the criteria mentioned previously (*supra* para. 364).

### **E) Costs and expenses**

376. As the Court has indicated previously, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.<sup>443</sup> The Court reiterates that, in accordance with its case law,<sup>444</sup> costs and expenses are part of the reparation, because the measures taken by the victims in order to obtain justice, at both

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<sup>441</sup> Cf. Testimony of Laurenta Marina Sosa Calderón, filmed and authenticated on March 24, 2008 (file of annexes to the merits report, tome I, annex 22, folio 495).

<sup>442</sup> Cf. Testimony of Aura Elena Farfán filmed and authenticated on March 25, 2008 (file of annexes to the merits report, tome II, annex 114, folio 1006).

<sup>443</sup> 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 the Massacres of El Mozote and nearby places v. El Salvador. Preliminary objection, merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 385.

<sup>444</sup> 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 the Massacres of El Mozote and nearby places v. El Salvador. Preliminary objection, merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 389.

the national and the international level, involve expenditures that must be compensated when the State's international responsibility has been declared in a judgment.

377. The representatives indicated that the Myrna Mack Foundation had incurred various expenses because, since 2005, it had served as co-petitioner before the inter-American system. These expenses were estimated at US\$212,067.93 (two hundred and twelve thousand and sixty-seven United States dollars and ninety-three cents).<sup>445</sup> They also indicated that the International Human Rights Law Clinic of the University of California, Berkeley, School of Law – Boat Hall (IHRLC) “in its capacity as adviser and co-petitioner,” had also incurred expenses related to advancing this case for five years, which they estimated at US\$165,000.00 (one hundred and sixty-five thousand United States dollars).<sup>446</sup> They also indicated that the Court should take into account any future expenses that the Myrna Mack Foundation could incur, which they estimated at US\$15,000.00 (fifteen thousand United States dollars), for the costs related to the litigation and to attending the hearing before the Court.

378. With regard to the costs and expenses, the State considered that it “should not be ordered to pay costs and expenses because, on several occasions, it had expressed its willingness to reach a friendly agreement to settle this case.” Despite this, the State contested the request for costs and expenses of the IHRLC, because “it had not appeared as co-petitioner” during the proceedings before the Inter-American Commission.

379. Owing to the argument submitted by the State, the Court considers it pertinent to clarify that the friendly settlement agreements mentioned in Articles 48(1)(f), 49 and 50(1) of the American Convention are optional procedural mechanisms, and the petitioning party before the inter-American system has no obligation to accept an agreement offered by the State. This is clearly revealed by the conditional language used in the said Articles 49 and 50 of the Convention.<sup>447</sup>

380. The Court has indicated that the claims of the victims or their representatives with regard to costs and expenses, and the evidence that supports them, must be submitted to the Court at the first procedural occasion granted to them; namely, in the pleadings and motions brief, without prejudice to the possibility that these claims may be updated subsequently, in keeping with the new costs and expenses that are incurred as a result of

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<sup>445</sup> The representatives detailed the total amount requested, indicating that they incurred expenses for the honoraria of an lawyer and legal assistants, for psychosocial support, for the expert opinion on loss of earnings, the periodic meetings with the victims' next of kin, the subsistence allowance for the next of kin to attend meetings, consultancies used in the proceedings, per diems for the consultants, three trips to Washington D.C., internal transportation, expenses related to the videotaping of the statements of the next of kin, administrative and communication expenses.

<sup>446</sup> The representatives indicated that the IHRLC began its work on this case before the Inter-American Commission in 2006 and, since then “it has expedited the proceedings,” which has entailed “dedicating a significant number of hours” to collaborating with the litigation of this case. In addition, they alleged that “the Associate Director has devoted approximately one-third of her time to the case during the last five years.

<sup>447</sup> Article 49 of the Convention establishes: “[i]f a friendly settlement has been reached in accordance with paragraph 1(f) of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.” Article 50(1) of the Convention stipulates: “[i]f a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.”

the proceedings before this Court.<sup>448</sup> Furthermore, the Court reiterates that it is not sufficient to merely submit probative documentation; rather, the parties are required to present arguments relating the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, to establish clearly the items and their justification.<sup>449</sup>

381. The Myrna Mack Chang Foundation has worked on the research, documentation, monitoring and processing of the litigation of this case at the international level from 2005 up until the present.<sup>450</sup> The Court has verified that the expenses of the Myrna Mack Chang Foundation for which evidence has been provided amount to approximately US\$188,991.58 (one hundred and eighty-eight thousand nine hundred and ninety-one United States dollars and fifty-eight cents). However, the Court notes that: (a) some vouchers refer in general to the payment of the salary and termination payments for one of the Foundation's lawyers, expenses for documentation, office supplies and gasoline, without indicating the specific percentage that should correspond to this case; (b) some payment vouchers show an expense item that is not clearly and precisely related to this case, and (c) some vouchers are illegible. In fairness, these items have been deducted from the calculation made by this Court. In addition, as it has in other cases, the Court may infer that the representatives incurred in expenses in the processing of the case before the inter-American human rights system, arising from the litigation and the attendance at the hearing held before the Court and, consequently, these will be taken into account when determining the respective costs and expenses.

382. Regarding the State's argument to exclude the IHRCLC from the payment of costs and expenses (*supra* para. 378), the Court notes that, according to the body of evidence corresponding to the file of the case before the Commission, the participation of the IHRCLC in the proceedings, as well as in the hearing is evident. Moreover, its participation before the Inter-American Court has been accredited by the powers of attorney that the next of kin the victims granted to the Clinic and to the Myrna Mack Foundation. Therefore, the Court will take into account its participation in the litigation in order to determine the costs and expenses it is entitled to.

383. Consequently, the Court decides to establish, in equity, the sum of US\$70,000.00 (seventy thousand United States dollars) for the Myrna Mack Chang Foundation for costs and expenses related to the work carried out in litigating the case at the international level since 2005 and, in addition, the Court establishes for the IHRCLC, in equity, a total of US\$10,000.00 (ten thousand United States dollars) for costs and expenses for litigating the case at the international level as of 2007. The said amounts must be delivered directly to the representative organizations. The Court considers that, during the proceedings on

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<sup>448</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Preliminary objection, merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 390.

<sup>449</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations and costs.* Judgment of November 21 2007. Series C No. 170, para. 277, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Preliminary objection, merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 390.

<sup>450</sup> With regard to the evidence on the financial disbursements made, the Court has verified that the vouchers sent correspond to 2006 and after and correspond to, among others, expenses related to the legal representation, consultancies on specialized issues, office utensils, expenses related to the video recording of the statements of the next of kin, honoraria for a lawyers, fees for psychosocial monitoring, fees for an expert opinion on loss of earnings, holding periodic meetings with next of kin of the victims, travel, accommodation, food and per diem expenses to attend one meeting and two hearings held at the seat of the Inter-American Commission, as well as to attend the hearing held before the Court in this case in Guayaquil, Ecuador.

monitoring compliance with this Judgment, it may determine that the State reimburse the victims or their representatives the reasonable expenses they incur during this procedural stage.

#### **G. Method of complying with the payments ordered**

384. The State must make the payment of the compensation for pecuniary and non-pecuniary damage as well as the reimbursement of costs and expenses established in this Judgment directly to the persons and organization indicated herein, within two years of notification of this Judgment, without prejudice to making the complete payment before that date.

385. If any of the beneficiaries are deceased or die before they have received the respective compensation, this will be provided directly to the heirs, pursuant to the applicable domestic law.

386. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent in national currency, using the exchange rate in force on the New York Stock Exchange, United States of America, the day before the payment, to make the calculation.

387. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the indicated period, the State shall deposit the amounts in their favor in an account or a deposit certificate in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

388. The amounts allocated in this Judgment as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses shall be delivered to the above-mentioned persons and organizations integrally, as established in this Judgment, without any deductions arising from possible taxes or charges, within two years of notification of this Judgment.

389. If the State has paid compensation to the victims of this case under the National Compensation Program, it may deduct the amounts that have been paid for the violations established in this Judgment when paying the reparations ordered. At the stage of monitoring compliance with judgment, the State must prove that, under this program, it has effectively paid the amounts established.

390. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Guatemala.

#### **X OPERATIVE PARAGRAPHS**

391. Therefore,

#### **THE COURT**

**DECIDES,**

unanimously,

1. To accept the partial acknowledgement of responsibility made by the State, in the terms of paragraphs 20 to 29 of the Judgment.

**DECLARES,**

unanimously, that:

1. The State is responsible for the forced disappearance and, therefore, for the violation of the rights to personal liberty, to personal integrity, to life and to the recognition of juridical personality, protected by Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) of this instrument and to Articles I(a) and XI of the Inter-American Convention on Forced Disappearance, to the detriment of José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Oscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydée Méndez Calderón, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López and Luis Rolando Peñate Lima, and also in relation to Article 19 of the Convention, to the detriment of Juan Pablo Armira López and María Quirina Armira López, as indicated in paragraphs 190 to 217 of this Judgment.

2. The State is responsible for the violation of freedom of association, recognized in Article 16(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the 26 victims who were forcibly disappeared identified in the first declarative paragraph, in the terms of paragraphs 219 to 222 of this Judgment.

3. The State is responsible for failing to comply with its obligation to ensure the rights recognized in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) of the American Convention and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rudy Gustavo Figueroa Muñoz and, in addition, in relation to Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the victims identified in the first declarative paragraph, owing to the absence of an effective investigation into the forced disappearances of the latter, and the death of Rudy Gustavo Figueroa Muñoz, as established in paragraph 267 of this Judgment.

4. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection recognized in Articles 8(1) y 25(1) of the American Convention, in relation to Article 1(1) of this instrument and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the disappeared victims' next of kin identified in the Annex to this Judgment on victims, as established in paragraphs 228 to 267 of this Judgment.

5. The State is responsible for failing to comply with its obligation to ensure the rights recognized in Articles 5(1), 5(2), 7(1) and 11(2) of the American Convention, in relation to

Article 1(1) thereof, to Article 7(b) of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the absence of an effective investigation into the presumed detention and tortured perpetrated to the detriment of Wendy Santizo Méndez, in the terms of paragraphs 272 to 281 of this Judgment.

6. The State is responsible for failing to comply with its obligation to ensure the rights recognized in Articles 5(1), 5(2) and 7(1) of the American Convention, in relation to Article 1(1) thereof and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the absence of an effective investigation into the presumed detention and torture perpetrated to the detriment of Igor Santizo Méndez, as established in paragraph 282 of this Judgment.

7. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of those victims identified in the Annex to this Judgment, as established in paragraphs 285 to 291 and 295 to 302 of this Judgment.

8. The State is responsible de 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 next of kin of Alfonso Alvarado Palencia, as established in paragraph 292 of this Judgment.

9. The State is responsible de the violation of the right to freedom of movement and residence recognized in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Florentín Gudiel Ramos, María Agripina Álvarez and their children Makrina, Beatriz, José Francisco, Florentín and Ana Patricia Gudiel Álvarez, in accordance with paragraphs 304 to 308 of this Judgment.

10. The State is responsible for the violation of the right to protection of the family, recognized in Article 17 of the Convention, in relation to Article 1(1) thereof, to the detriment of Reyna de Jesús Escobar Rodríguez and, also, in relation to Article 19 of the Convention, to the detriment of Marlyn Carolina, Juan Carlos and José Geovany Hernández Escobar, as established in paragraph 312 of this Judgment.

11. The State is responsible for the violation of the right to freedom of association recognized in Article 16(1) of the American Convention, in relation to the obligation to respect and guarantee rights established in Article 1(1) of this instrument, to the detriment of Bertha Fely Barrientos Morales, Juan Francisco Barillas Barrientos, Edgar Leonel Barillas Barrientos, Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Carlos Alberto Ramírez Pereira, Wilfrida Raquel Morales Cruz, Mirtala Elizabeth Linares Morales, Ruth Crisanta Linares Morales, Marcia Méndez Calderón, Efraín García, Beatriz María Velásquez Díaz, Aura Elena Farfán, Jesús Palencia Juárez, Salomón Estrada Mejía, Ana Dolores Monroy Peralta and Francisca Florinda Maldonado Jeréz, as established in paragraphs 314 to 318 of this Judgment.

12. It is not appropriate to make a ruling on the alleged violations of Articles 13 and 23 of the American Convention on Human Rights, in the terms of paragraphs 269 and 319 of this Judgment.

## **AND DECIDES**

unanimously, that:

1. This Judgment constitutes *per se* a form of reparation.
2. The State must open, continue and conduct the necessary investigations and proceedings, within a reasonable time, in order to establish the truth about the events, as well as to determine and punish, as appropriate, those responsible for the forced disappearances of the victims indicated in the first declarative paragraph, as well as for the death of Rudy Gustavo Figueroa Muñoz and the alleged detention and torture suffered by Wendy and Igor Santizo Méndez, as established in paragraphs 327 to 330 of this Judgment.
3. The State must conduct a genuine search, as soon as possible, in which it makes every effort to determine the whereabouts of the 24 victims who remain disappeared, and this search must be conducted as established in paragraphs 333 to 336 of this Judgment.
4. The State must provide, immediately, psychological or psychiatric treatment to the victims who request this and, as appropriate, pay the amount established for the expenses of psychological or psychiatric treatment to those victims who reside outside Guatemala, in the terms of paragraphs 339 and 340 of this Judgment.
5. The State must make the publications indicated in paragraph 342 of this Judgment, within six months of its notification.
6. The State must make the audiovisual documentary on the victims and the facts of this case, the context in which they occurred, and the search for justice of the next of kin, as established in paragraphs 345 and 346 of this Judgment.
7. The State must construct a park or a plaza to honor the memory of the victims of this case, which serves as a space where the next of kin are able to remember their loved ones, in the terms of paragraph 349 of this Judgment.
8. The State must pay the amounts established in paragraphs 363, 367, 371, 373 and 374 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, in the terms of the said paragraphs of this Judgment.
9. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures adopted to comply with it.
10. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention on Human Rights, and will consider the case closed when the State has complied fully with its provisions.

Done, at San José, Costa Rica, on November 20, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán  
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary