

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF GUTIÉRREZ HERNÁNDEZ AND OTHERS VS.**  
**GUATEMALA JUDGMENT OF AUGUST 24, 2017**  
***(Preliminary Objections, Merits, Reparations and Costs)***

In the case of Gutiérrez Hernández et al.,

the Inter-American Court of Human Rights (hereinafter the "Inter-American Court", the "Court" or the "Tribunal"), made up of the following judges<sup>1</sup>:

Eduardo Ferrer Mac-Gregor Poisot, Acting Chairman; Eduardo Vio Grossi, Judge,  
Humberto Antonio Sierra Porto, Judge; Elizabeth Hate Benedict, Judge; Eugenio Raúl Zaffaroni, Judge, and  
L. Patricio Pazmiño Freire, Judge; also

present,

Pablo Saavedra Alessandri, Secretary<sup>2</sup>,

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, 42, 65 and 67 of the Rules of Court (hereinafter "the Regulations" or "Regulations of the Court"), dictates the present Judgment, which is structured in the following order:

<sup>1</sup> Presiding Judge Roberto F. Caldas, for reasons of force majeure accepted by the Plenary, did not participate in the deliberation and signing of this Judgment. For this reason, in accordance with Articles 4.2 and 5 of the Rules of Procedure of the Court, Judge Eduardo Ferrer Mac-Gregor Poisot, Vice President of the Court, assumed the Acting Presidency in this case.

<sup>2</sup> The Assistant Secretary Emilia Segares Rodríguez did not participate in the deliberation of this Judgment for reasons of force majeure.

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**I**  
**INTRODUCTION OF THE CAUSE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.*– On July 15, 2015, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the jurisdiction of the Inter-American Court (hereinafter “the Court” or “the Tribunal”), In accordance with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure of the Court, the case of Mayra Angelina Gutiérrez Hernández and family regarding the Republic of Guatemala (hereinafter "the State" or "Guatemala") . According to the Commission, the case is related to the disappearance of Mayra Angelina Gutiérrez Hernández since April 7, 2000, and the lack of a serious, diligent, and timely investigation into what happened. The Commission determined that although it did not have sufficient elements to classify what happened to the alleged victim as a forced disappearance, the State incurred in international responsibility for the breach of the duty to protect the life and personal integrity of the former since it became aware of the disappearance. In addition, the Commission declared the international responsibility of the State for the breach of the guarantee of a reasonable time and the lack of due diligence in the investigations, as well as the omission to design and exhaustively investigate the logical lines of investigation, including those related to the activities carried out by Mrs. Gutiérrez on irregular adoptions in Guatemala, as well as multiple elements linked to the armed conflict. In addition, The Commission concluded that the investigation was not conducted with a gender perspective and that discriminatory stereotypes about the role and social behavior of women were present in it. The alleged victims in this case are Mrs. Mayra Gutiérrez, her daughter Ángela María del Carmen Argüello Gutiérrez, and her brothers Nilda and Armando, whose last names are Gutiérrez Hernández.
2. *Procedure before the Commission.*– The procedure before the Commission was as follows:
  - a) *Petition.* –On October 30, 2000, Nilda Gutiérrez Hernández, Ángela María del Carmen Argüello Gutiérrez and Greta Mancilla Chavarría presented the petition to the Commission<sup>3</sup>.
  - b) *Report on Admissibility and Merits.* -On October 3, 2006, the Commission informed the State that in application of Article 37.3 of the Regulations then in force<sup>4</sup>, the treatment of admissibility would be deferred until the debate and decision on the merits. After receiving various briefs and a friendly settlement proposal from the petitioners, on May 30, 2014, Guatemala reported that it was not in a position to reach an agreement. On March 23, 2015, the Commission approved Report on Admissibility and Merits No. 13/155.
  - *conclusions.* -The Commission concluded that "Guatemala is responsible for the violation of the rights to life, to personal integrity, to judicial guarantees, to the principle of equality and non-discrimination and to judicial protection, established in articles 4, 5, 8, 24 and 25 of the American Convention [on Human Rights (hereinafter “the American Convention” or “the Convention”)], in relation to the obligations established

<sup>3</sup> cf. Annex 3 to the submission brief of the Commission (evidence file, page 18). On August 22, 2000, Mr. Mario Polanco, director of the Mutual Support Group (GAM), had presented the facts of the case before the Commission.

<sup>4</sup> Article 37.3 Decision on admissibility: “In exceptional circumstances, and after having requested information from the parties in accordance with the provisions of Article 30 of these Regulations, the Commission may open the case but defer the treatment of admissibility until the debate and decision on the merits. The opening of the case will be carried out by means of a written communication to both parties”.cf.Regulations of the Inter-American Commission on Human Rights (Approved by the Commission at its 109th special period of sessions held from December 4 to 8, 2000, and modified at its 116th regular period of sessions, held from October 7 to 25, 2002 , and at its 118th regular session, held from October 6 to 24, 2003).

<sup>5</sup> cf. Admissibility and Merits Report No. 13/15, of March 23, 2015 (merits file, folios 6 to 46).

in Article 1.1 of the same instrument [...], to the detriment of the persons indicated in each of the sections of the [...] [R]eport [on the Merits]. Likewise, the Commission concluded[ed] that [...] Guatemala failed to comply with the obligation to investigate established in Article Ib) of the Inter-American Convention on Forced Disappearance of Persons.”

- *Recommendations.* -The Commission made the following recommendations to the State:
  1. Comprehensively make reparation for the human rights violations declared in the [...] report, both materially and morally.
  2. Develop and complete an impartial, complete, and effective judicial investigation, expeditiously, in order to establish the circumstances in which Mayra Angelina Gutiérrez Hernández disappeared; exhaustively explore and exhaust the logical lines of investigation in relation to the case; and identify and, if applicable, punish all the people who participated in the events.
  3. Conduct an exhaustive search for the fate or whereabouts of Mayra Angelina Gutiérrez Hernández.
  4. Order the corresponding administrative, disciplinary or criminal measures against the actions or omissions of state officials that contributed to the denial of justice and impunity in which the facts of the case are found.
  5. Implement measures of non-repetition to ensure that investigations of reports of disappearance comply with the standards established in this report.
- c) *Notification to the State.*- The Report on Admissibility and Merits was notified to the State by communication dated April 15, 2015. It was given a period of two months to report on compliance with the recommendations. On June 26, 2015, Guatemala sent a brief in which it rejected the conclusions of the Merits Report and indicated that it was not appropriate to grant any type of reparation to the victims.

3. *Submission to the Court.* -On July 15, 2015, the Commission submitted the case to the Court "due to the need to obtain justice" and because "it involves issues of inter-American public order." He appointed Commissioner James Cavallaro and then Executive Secretary Emilio Álvarez Icaza L. as his delegates. Likewise, it appointed Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers from the Commission's Executive Secretariat, as legal advisers.

4. *Requests from the Inter-American Commission.*- Based on the foregoing, the Commission asked this Court to conclude and declare the international responsibility of the State for the violations of rights declared in its Merits Report and to order the State, as reparation measures, the recommendations contained in the himself (supra para. 2).

## **II PROCEEDINGS BEFORE THE COURT**

5. *Notification to the State and the representatives.* -The State and the representatives of the alleged victims<sup>6</sup> (hereinafter "the representatives") were notified of the submission of the case on October 16, 2015.

6. *Brief of requests, arguments and evidence.* -On December 14, 2015, the representatives presented their pleadings, motions, and evidence brief (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Rules of Procedure of the Court. In said brief they adhered to the claim in toto. However, they also argued that what happened to the alleged victim constituted a forced disappearance committed by State agents, for which they argued additional violations of Articles 3 and 7 of the American Convention and the

<sup>6</sup> The representatives of the alleged victims in this case are Messrs. Mario Alcides Polanco Pérez, Maynor Estuardo Alvarado Galeano and Sergio Alejandro Apxuac, from the organization Grupo de Apoyo Mutuo.

Article II of the CIDFP7.

7. *answer brief.* – On April 8, 2016, the State submitted to the Court its preliminary objections brief, answer to the submission of the case by the Commission, and observations on the pleadings and motions brief (hereinafter “answer”). In said brief, he filed three preliminary objections and expressed “his willingness to negotiate with the next of kin of the alleged victim and her representatives [...] the signing of a friendly settlement agreement [...]”. On November 12, 2015, the State appointed attorney Steffany Rebeca Vásquez Barillas and attorneys Jhony César Javier Moreira and Carlos Rafael Asturias as Agents for this case.

8. *Observations to the preliminary exceptions.* – On June 8, 2016, the representatives and the Inter-American Commission presented their observations on the preliminary objections filed by the State.

9. *Public audience.* –By Order of the President of the Court of July 19, 2016<sup>8</sup>, the parties and the Commission were summoned to a public hearing that was held during the 55th Special Period of Sessions, in Mexico City, Mexico, on August 24, 2016<sup>9</sup>. At the hearing, the statements of the alleged victim Ángela María del Carmen Argüello Gutiérrez, proposed by the representatives, and of the expert witness Julissa Mantilla Falcón, offered by the Commission, were received. Likewise, in said Resolution it was ordered to receive the statement rendered before a notary public (affidavit) of the expert witness Víctor Manuel Quinteros Marquina, offered by the Commission.

10. *Evidence to resolve and observations of the parties and the Commission.* – By means of notes from the Secretariat of August 24 and 26, 2016, the Court asked the parties for certain evidence to facilitate adjudication. On September 9 and 12, 2016, the representatives, the Commission, and the State responded to the Court's request. The State sent 22 compact discs, therefore, on September 20, 2016, the State was asked to specify which material within the information sent referred to the alleged victims in the case. On September 30, 2016, the State reported that it was impossible to locate the required information, therefore, on December 12, 2016, the Human Rights Ombudsman was requested to submit said information. On January 23, 2017, the State forwarded the requested information. On February 14 and 16, 2017, the Commission and the representatives submitted observations on the information submitted by the State. On May 29 and June 9, 2017, the Court again requested evidence to facilitate a decision from the Human Rights Ombudsman, which was presented on June 21, 2017. On June 20, 2017, the Court requested the parties submit observations to Annex VI forwarded by the representatives on October 21, 2016 (infra para. 11). The State submitted observations in this regard on June 27, 2017. On June 20, 2017, the Court asked the parties to present observations on Annex VI forwarded by the representatives on October 21, 2016 (infra para. 11). The State submitted observations in this regard on June 27, 2017. On June 20, 2017, the Court asked the parties to present observations on Annex VI forwarded by the representatives on October 21, 2016 (infra para. 11). The State submitted observations in this regard on June 27, 2017.

<sup>7</sup> In its answer, the State stated that the pleadings and motions brief “presented before the Court bears the signature of attorney Alejandro Axpuc on the cover page, does not contain any seal, and at the end contains the name of Mr. Mario Polanco [... ], however, it does not record any signature, [and] at no time is there any pronouncement by the next of kin of the alleged victim.” In this sense, the State argued that said document does not contemplate the basic requirements of form or content regulated in the Convention, therefore should not have been admitted by the Court. In this regard, the Court verified that in accordance with the powers of representation granted by the next of kin of the victim, Mr. Alejandro Axpuc is empowered to present briefs before the Court on behalf of the alleged victims. Likewise, the pleadings and motions brief was submitted in due time and manner in accordance with Articles 28 and 40 of the Rules of Procedure of the Court. Thus, the State's allegations are dismissed.

<sup>8</sup> Available in: [http://www.corteidh.or.cr/docs/asuntos/gutierrez\\_19\\_07\\_16.pdf](http://www.corteidh.or.cr/docs/asuntos/gutierrez_19_07_16.pdf)

<sup>9</sup> At this hearing appeared: on behalf of the Inter-American Commission on Human Rights, Commissioner José de Jesús Orozco Henríquez; Silvia Serrano Guzmán, attorney for the Executive Secretariat, and Jorge H. Meza Flores, attorney for the Executive Secretariat; by the representatives of the alleged victims, lawyers Maynor Estuardo Alvarado Galeano; Nelson Fernando Alvarado Galeano, and Sergio Alejandro Axpuc, from the organization Grupo de Apoyo Mutuo, and on behalf of the State of Guatemala, Mrs. Enma Estela Hernández Tuy, Lawyer and Notary Public.

11. *Final written arguments and observations.* -On September 14 and 26, 2016, the representatives, the State, and the Commission submitted their respective final written arguments and observations. With their briefs, the representatives and the State forwarded attached documentation and indicated that a friendly settlement agreement was not reached. By means of a note of October 6, 2016, the parties and the Commission were granted a period of time to present observations on the annexes presented. On October 19 and 21, 2016, the State, the Commission, and the representatives submitted observations. On November 16, 2016, the representatives submitted the signature sheet of said observations document extemporaneously, therefore, the representatives' brief of October 21, 2016 will not be taken into account by the Court.

12. *Deliberation of the present case.* -The Court began deliberating this Judgment on August 23, 2017.

### **III COMPETITION**

13. The Inter-American Court is competent, under the terms of Article 62.3 of the American Convention, to hear this case, since 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<sup>10</sup>.

### **IV PRELIMINARY EXCEPTIONS**

14. The State filed a preliminary analysis of jurisdiction and two preliminary objections based on: i) the alleged lack of jurisdiction of the Court to rule on the Inter-American Convention on Forced Disappearance of Persons; ii) the alleged failure to exhaust domestic remedies, and iii) the alleged expiration of the Report on Article 50 of the American Convention, as well as the alleged lack of accreditation of the representatives.

#### **A. Objection of lack of jurisdiction of the Court to rule on the Inter-American Convention on Forced Disappearance of Persons**

##### **A.1. Arguments of the parties and the Commission**

15. The State argued that Article 62.3 of the American Convention<sup>11</sup> implies that at no time should the Court hold the State responsible for violation of rights enshrined in the Inter-American Convention on Forced Disappearance of Persons. Regarding the specific case, it maintained that it has not been proven that in the disappearance of Mayra Angelina Gutiérrez Hernández there has been participation, acquiescence, consent or tolerance of State authorities, therefore reference cannot and should not be made to the issue of forced disappearance, let alone the violation of the articles of the

10 On March 9, 1987, the State submitted to the General Secretariat of the Organization of American States (OAS) Government Agreement No. 123-87 of February 20, 1987, by which it recognized the jurisdiction of the Court with the following limitation: "(Article 2) The acceptance of the jurisdiction of the Inter-American Court of Human Rights is made for an indefinite period, in general, under conditions of reciprocity and with the reservation that the cases in which jurisdiction is recognized are exclusively those occurred after the date on which this declaration was presented to the Secretary General of the [OAS]". American Convention on Human Rights (Declarations, Reservations, Complaints and Withdrawals). Available in: [http://www.oas.org/dil/esp/tratados\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/esp/tratados_B-32_American_Convention_on_Human_Rights.htm).

11 Article 62.3 of the Convention establishes: "The Court has jurisdiction to hear any case regarding the interpretation and application of the provisions of this Convention that is submitted to it, provided that the States Parties in the case have recognized or recognize said jurisdiction, either by special declaration, as indicated in the preceding paragraphs, or by special agreement."

said Convention.

16. The Commission indicated that there are no reasons for the Court to depart from its reiterated criterion in relation to the fact that the petitions or communications presented before the Commission in which the forced disappearance of persons is alleged shall be subject to the procedures established in the American Convention, as well as in the Statutes and Regulations of the Commission and the Court. Likewise, it argued that the determination of the existence or not of a forced disappearance is a substantive matter, on which it is not appropriate to rule on a preliminary basis. By virtue of the foregoing, it requested the Court to declare the inadmissibility of this preliminary objection.

17. The representatives did not comment on the matter.

## **A.2. Considerations of the Court**

18. Guatemala deposited its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons (CIDFP) with the OAS General Secretariat on February 25, 2000, without limiting the jurisdiction of the Court or reservations in force<sup>12</sup>. This Court has repeatedly established<sup>13</sup> that Article XIII<sup>14</sup> of the CIDFP, in relation to Article 62 of the American Convention, establishes the power of the Court to hear matters related to compliance with the commitments undertaken by the States Parties to said instrument. It is clear then that the Court is competent to hear the alleged violations of said inter-American instrument. Besides, This Court recalls that the evaluation of whether certain facts constituted forced disappearances in accordance with the American Convention and the CIDFP is a substantive matter, on which it is not appropriate to rule on a preliminary basis<sup>15</sup>. Therefore, the Court dismisses the preliminary objection of the Court's lack of jurisdiction to hear alleged violations of the CIDFP.

## **B. Exception of lack of exhaustion of domestic remedies**

### **B.1. Arguments of the parties and the Commission**

19. The State considered that the existing remedies under domestic law had not been exhausted and that there was no alleged unjustified delay referred to by the Commission in granting the exception contained in Article 46.2 of the American Convention. In this regard, it maintained that it has adequate and effective administrative and judicial remedies for the petitioners to denounce or actively participate in the criminal investigation, but it did not do so.

<sup>12</sup> Instrument of ratification of the American Convention on Forced Disappearance of Persons by Guatemala. Available in: <http://www.oas.org/juridico/spanish/firmas/a-60.html>

<sup>13</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 110; *Case of Radilla Pacheco vs. Mexico. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 303; *Case of Osorio Rivera and family v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 26, 2013. Series C No. 274, para. 29; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 43; *Case of Tenorio Roca et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of June 22, 2016. Series C No. 314. para. 30, and *Case of Members of the Chichupac village and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 328, para. 29.

<sup>14</sup> Article XIII establishes: "For the purposes of this Convention, the processing of petitions or communications presented before the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights. Human Rights, and in the Statutes and Regulations of the Commission and of the Inter-American Court of Human Rights, including the norms related to precautionary measures".

<sup>15</sup> Cf. *Case of Osorio Rivera and family v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 26, 2013. Series C No. 274, para. 34, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala*, para. 29.



they did and decided to use the subsidiary system of the Commission. He indicated that through administrative channels, disciplinary sanctions were available to the officials in charge of the investigation in case of work that was not pertinent or diligent. By judicial means, not only the Public Prosecutor's Office, but also the parties could have requested a conclusive act that would determine the possibility of presenting an accusation and petition for the Opening of a Trial, constituting third parties civilly sued as adhesive plaintiffs, or appearing in person and expressing their opinion. about the actions in the process. On the other hand, he argued that there could be no unjustified delay in the decision on the appeals that were never filed, since the ones used by the petitioners were those of habeas corpus on April 11 and May 3, 2000, and a request that a special investigation procedure be carried out on June 12, 2000. However, they did not use any other type of available recourse, such as requests for information, searches or summoning people to give statements under oath authorized by the controlling judge. He warned that although this participation is allowed, but not mandatory, the truth is that if the relatives were dissatisfied with the investigation efforts, they could have made it known to the judge controlling the investigation and proposed the steps that they considered most pertinent. Regarding the resources that were used by the petitioners, considered that there was no unjustified delay due to the complexity of the matter, the procedural activity of the interested party and the conduct of the judicial authorities. In addition, he referred in detail to each of these aspects applied to the specific case.

20. The Commission indicated that the preliminary objection filed can be divided into two points: first, the invocation of administrative remedies to punish officials and their participation in the criminal proceeding as complainants, and second, the criminal investigation into the disappearance of the victim and the disagreement of the State with the application of the exception of unjustified delay established in Article 46.2.c of the Convention. Regarding the administrative remedies and participation in the criminal proceedings as plaintiffs, it argued that their invocation was untimely, since the State did not mention the two remedies in the admissibility stage; in it, it only alleged that domestic remedies had not been exhausted and that the criminal proceeding was pending. In addition, said resources would not have the purpose of clarifying the facts, prosecute those responsible and, if applicable, establish the corresponding criminal sanctions; therefore, the exception in relation to these two mechanisms was also substantively inappropriate. Regarding the argument about the criminal investigation and its unjustified delay, it indicated that the State filed it at the appropriate procedural moment, but did not support it in detail or provide elements that would justify the almost 15-year duration of the investigation. at the time of the pronouncement of admissibility, which led the Commission to apply the exception enshrined in Article 46.2.c of the Convention. Finally, he stated that the prima facie determinations on the application of the exception of unjustified delay in the admissibility analysis were fully ratified in the merits analysis,

21. The representatives maintained that the State had not responded to the whereabouts of Mayra Angelina Gutiérrez Hernández, nor had it shown that it was conducting an effective, serious, and impartial investigation. They indicated that in a forced disappearance the legal and appropriate remedy is habeas corpus, and that they filed two of these without obtaining positive results.

## ***B.2. Considerations of the Court***

22. Article 46.1.a of the American Convention provides that in order to determine the admissibility of a petition or communication presented before the Inter-American Commission, in accordance with Articles 44 or 45 of the Convention, it is necessary that the remedies of the Inter-American Convention have been filed and exhausted. domestic jurisdiction, in accordance with generally recognized principles of International Law. In this regard, the Court has held that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust the

internal remedies must be presented at the appropriate procedural moment, that is, during the admissibility procedure before the Commission. When alleging the lack of exhaustion of domestic remedies, it is up to the State to specify which ones have not yet been exhausted, and to demonstrate that they were available, adequate, suitable and effective. In this sense, the Court has stated that it is not up to the Court or the Commission to identify *ex officio* which are the domestic remedies pending exhaustion. Therefore, it is not up to international bodies to correct the lack of precision in the State's allegations<sup>16</sup>.

23. In the first place, it is clear from the file that since its first brief presented during the proceedings before the Commission on June 13, 2001, at the appropriate procedural moment, Guatemala raised the failure to exhaust domestic remedies regarding the criminal investigation of the Ministry Public and the special investigation procedure of the Human Rights Ombudsman, which were in progress at that time<sup>17</sup>.

24. Second, it is clear that in the Report on Admissibility and Merits issued on March 23, 2015, the Commission "consider[ed] that *prima facie* the State [incurred] in an unjustified delay and, therefore, it result[ed] The exception enshrined in Article 46.2.c) of the American Convention is applicable."<sup>18</sup> For its part, before this Court, the State argued that it had not incurred in an unjustified delay. In this regard, the Court considers that the debate on the alleged unjustified delay in the investigation of the facts of the case implies an evaluation of the actions of the State in relation to its obligations to guarantee the rights recognized in the American Convention whose violation is alleged, which which is a matter that is closely related to the merits of the controversy<sup>19</sup>. Therefore,

25. Third, it is verified that during the proceedings before the Commission, the State did not refer at any time to the administrative route in the sense that disciplinary sanctions were available, nor to the possibility of the alleged victims to present themselves through the courts as adhesive plaintiffs, third parties civilly sued or appear in person and express their opinion on the actions within the proceeding, nor to the possibility that they request investigative proceedings (*supra* para. 19). Indeed, these arguments were presented for the first time only in his answer brief before the Court. Consequently, the State's arguments related to said remedies are time-barred.

26. By virtue of the foregoing, the Court dismisses the preliminary objection of failure to exhaust domestic remedies filed by the State.

### ***C. Exception of expiration of the Report of Article 50 of the American Convention and alleged lack of accreditation of the representatives***

#### ***C.1. Arguments of the parties and the Commission***

27. The State requested that the application be declared inadmissible due to expiration of the Admissibility and Merits Report, due to the alleged non-compliance by the Commission of

<sup>16</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, para. 60, and *Case of Favela Nova Brasília v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333*, paras. 85 and 86.

<sup>17</sup> cf. Brief of the State of June 13, 2001 (evidence file, folio 103 et seq.).

<sup>18</sup> cf. Admissibility and Merits Report of March 23, 2015, paras. 5, 6 and 28, as well as initial petition of October 30, 2000 (evidence file, folios 18 and ss).

<sup>19</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 1*, para. 96, and *Case of Human Rights Defender et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283*, para. 25.

Articles 50 of the American Convention, 23.2 of the Statute of the Commission, and 35 of the Rules of Procedure of the Court. It explained that in a brief presented to the Commission on May 21, 2014, it reported that "at no time could [he] be charged [...] either by participation or by omission, the violation of rights enshrined in the [American Convention] Therefore, there [would] not exist any reason to reach an amicable settlement of the case." Notwithstanding the foregoing, the Admissibility and Merits Report of March 23, 2015 was approved ten months after Guatemala presented its opinion, violating the 180-day term established in Article 23.2 of the Commission's Statute and extemporaneously as indicates the item

50.1 of the Convention. According to the State, the Commission should have produced the Merits Report no later than November 17, 2014, as established in Article 40.1 of the Commission's Regulations, and failure to comply with the indicated period resulted in a violation of the process before the organs of the inter-American system, in the balance between the parties and the right of defense of the State. On the other hand, the State indicated that the Commission did not comply with the requirements established in Article 35 of the Rules of Procedure of the Court, since it did not identify, did not identify or provide the name of the representatives of the alleged victims, nor did it accredit them. . Said act arose after having submitted the case to the Court and through the requirement formulated by the Court, which would denote that the alleged representatives did not have any authorization from the next of kin of the alleged victim to represent them. The physical or electronic address for his location would not have been recorded either.

28. The Commission indicated that it processed this case in accordance with its conventional and regulatory powers. Regarding the alleged delay in the approval of the Admissibility and Merits Report, it maintained that the State had not indicated to what extent this fact had affected its right to a defense and stressed that both parties participated in all the stages in which the principle was respected. of the contradictory Lastly, it requested that the criteria followed by the Court in the González Medina and family case be applied to this case. Regarding the alleged lack of accreditation of the representatives of the alleged victims, the Commission indicated that what was alleged by the State does not constitute a preliminary objection since it does not refer to matters of jurisdiction or to the requirements for admissibility of the petitions established in the Convention.

29. The representatives maintained that the State's argument is fallacious and should be declared null and void.

## ***C.2. Considerations of the Court***

30. Article 50(1) of the American Convention establishes that, "[f]e a solution is not reached, and within the period established in the Commission's Statute, the Commission shall draw up a report in which it will present the facts and its conclusions." In turn, Article 23.2 of the Commission's Statute stipulates that, "[f]e the friendly settlement referred to in Articles 44 to 51 of the Convention is not reached, the Commission shall draft the report required by the Commission within 180 days. article 50 of the Convention". Likewise, Article 40.4 of the Regulations of the Commission approved in 2009 and modified in 2011 and 2013, establishes in general lines that the Commission "[m]ay terminate its intervention in the friendly settlement procedure if it notices that the matter is not capable of being resolved in this way, or one of the parties does not consent to its application, decides not to continue in it, or does not show the will to reach a friendly solution based on respect for human rights"<sup>20</sup>. From the norms indicated above, this Court notes that it is the responsibility of the Commission to prudently assess the existing circumstances in

<sup>twenty</sup> The Court notes that said Regulation and the aforementioned reforms would have been applicable to the processing of this case before the Commission.

each case to determine that it will not be resolved through a friendly solution and thus proceed to draft the merits report, observing the 180-day term.

31. In the Case of Gonzalez Medina and family v. Dominican Republic, the Court indicated that the most appropriate thing in light of the aforementioned regulations is for the Commission to issue the merits report if the matter has not been resolved by the parties, in such a way that will not do so if there is still a possibility of a friendly settlement and without having given the State the opportunity to comply with its obligations with respect to the alleged violations with which it is accused and that the alleged victims can consider whether the actions of the State constitute an appropriate remedy . Likewise, this Court noted that neither the Convention nor the Statute of the Commission stipulate that the legal consequence of the lack of issuance of the report on the merits within the aforementioned period of Article 23(2) is that the case cannot be submitted to the Court<sup>21</sup>. Therefore,

32. Finally, regarding the second argument of the State related to the alleged lack of accreditation of the representatives, the Court recalls that the individual's access to the inter-American system for the protection of human rights cannot be restricted based on the requirement of having legal representative, given that if the submission of a case is not admitted because there is a lack of representation, an undue restriction would be incurred that would deprive the alleged victim of the possibility of accessing justice. In this sense, Article 35 of the Rules of Procedure of the Court indicates that "if applicable," the Commission must submit in the submission the names, address, telephone number, email address, and fax number of the duly accredited representatives of the alleged victims. Article 37 of the Rules of Procedure establishes that "[i]n cases of alleged victims without duly accredited legal representation, the Court may appoint an Inter-American Defender ex officio to represent them during the processing of the case." Thus, the possibility is contemplated that the alleged victims or their next of kin have not appointed representatives, and that such an omission does not imply the rejection of the case, but rather the possibility that the Court appoint an Inter-American Defender ex officio<sup>22</sup>. Thus, the alleged lack of identification or accreditation of the representation of the alleged victims has no effect on the admissibility of the case. the possibility that the presumed victims or their next of kin had not appointed representatives, and that such an omission does not imply the rejection of the case, but rather the possibility that the Court appoint an Inter-American Defender ex officio<sup>22</sup>. Thus, the alleged lack of identification or accreditation of the representation of the alleged victims has no effect on the admissibility of the case. the possibility that the presumed victims or their next of kin had not appointed representatives, and that such an omission does not imply the rejection of the case, but rather the possibility that the Court appoint an Inter-American Defender ex officio<sup>22</sup>. Thus, the alleged lack of identification or accreditation of the representation of the alleged victims has no effect on the admissibility of the case.

33. Notwithstanding the foregoing, the Court notes that the case was submitted by the Commission on July 15, 2015, and the quality of the representation of the alleged victims was confirmed on the days

September 4 and October 9, 2015, when the Court was forwarded, once requested, the affidavits of Angela María del Carmen Argüello Gutiérrez and Nilda Ileana Gutiérrez Hernández de Herrera, relatives of Mayra Angelina Gutiérrez Hernández, in which they granted representation in the case to the Mutual Support Group (GAM). Consequently, the Court also decides to dismiss this point of the preliminary objection.

34. Based on the reasons stated, the Court dismisses this preliminary objection filed by the State.

## **V TEST**

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

35. This Tribunal received various documents presented as evidence by the Commission and the parties, attached to their main briefs (supra paras. 3, 6 and 7). Likewise, it received from the State and from the representatives the documents requested as evidence to facilitate

adjudication, in accordance with Article 58 of the Rules of Procedure (supra para. 10). At the public hearing, he received

<sup>twenty-one</sup> Cf. *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, paras. 30 and 33.

<sup>22</sup> Cf. *Case of Yatama v. Nicaragua*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23 of 2005. Series C No. 127, paras. 82 and 86, and *Case of Human Rights Defender et al. v. Guatemala*, para. 36.

the statements of the alleged victim Ángela María del Carmen Argüello Gutiérrez, proposed by the representatives, and of the expert witness Julissa Mantilla Falcón, offered by the Commission (supra para. 9). It also received the expert opinion offered by the Commission of Víctor Manuel Quinteros Marquina, rendered before a notary public (affidavit) (supra para. 9). Finally, the Court received additional documents presented with the final written arguments of the representatives and the State that were not requested as helpful evidence (supra para. 11).

## **B. test admission**

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

36. The Court admits the documents presented by the parties and the Commission whose admissibility was not contested or challenged<sup>23</sup>, as well as the documents procured and incorporated ex officio by the Court<sup>24</sup>. Notwithstanding this, specific considerations are made below and the disputes raised about the admissibility of certain documents are resolved.

37. Pursuant to Article 57.2 of the Regulations, documentary evidence must generally be submitted together with the submission of the case, requests and arguments, or response briefs, as appropriate. Evidence submitted outside the due procedural opportunities is not admissible, except in the exceptions established in the aforementioned article 57.2 of the Regulation, namely, force majeure, serious impediment or if it were an event that occurred after the aforementioned procedural moments.

38. In this regard, regarding the five documents forwarded by the representatives together with their final written arguments that were not requested by the Court, the Court considers that annexes I, II, IV and V are time-barred and therefore inadmissible. On the other hand, the Court admits Annex III, "Notice of the Twelfth Criminal Court of First Instance, Narcoactivity and Crimes Against the Environment of the Department of Guatemala", of June 2, 2016, since this is a document supervening on the presentation of the pleadings and motions brief. In this regard, the State maintained that said document is incomplete; however, this would only affect the probative weight and scope of the evidence presented, but does not affect its admissibility.

39. On the other hand, the State requested that Annex VI presented by the representatives in the brief of October 21, 2016 be declared inadmissible, because: i) it was presented out of time, ii) the notary who took the statement of Mr. Edgar Gutiérrez Girón is a representative of the GAM, and iii) the aforementioned statement lacks elements that allow elucidating the facts of the case. In this regard, the Court considers that said document is useful for determining the facts of the case in light of the arguments of the representatives that what happened to Mayra Gutiérrez Hernández could have constituted a forced disappearance. Therefore, said document is incorporated into the file based on article 58.a of the Regulation. The State's allegations will be taken into account when considering its probative value.

40. Finally, regarding the Study on Adoptions and the Rights of Children in Guatemala in which Mrs. Mayra Gutiérrez allegedly participated, presented by the State together with her final written arguments, neither the representatives nor the Commission objected to its admissibility. Thus, in application of Article 58.a of the Rules of Procedure, the Court decides to admit said document as it considers it useful for the resolution of this case.

<sup>23</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, para. 140, and *Case of Acosta et al. v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334*, para. twenty-one.

<sup>24</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 140, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala*, para. 67.

## **B.2. Admission of testimonial and expert evidence**

41. Regarding the statements rendered before a notary public and evacuated during the public hearing, the Court admits them as long as they conform to the purpose defined by the President of the Court in the Order that ordered them to be received and to the purpose of this case. Regarding the State's observations on the statements of an alleged victim and the opinion of an expert witness, the Court notes that they deal with their content and, therefore, may have an impact on the assessment of their probative weight, but they do not affect its admissibility<sup>25</sup>.

### **C. Assessment of the test**

42. Pursuant to the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as its constant jurisprudence regarding evidence and its appreciation, the Court will examine and assess the documentary evidence submitted by the parties and the Commission, the statements, testimonies and expert opinions, as well as the helpful evidence requested and incorporated by this Court when establishing the facts of the case and ruling on the merits. To this end, it is subject to the principles of sound judgment, within the corresponding regulatory framework, taking into account the entire body of evidence and what is alleged in the case<sup>26</sup>. Pursuant to the jurisprudence of this Court, the statements made by the alleged victims cannot be assessed in isolation but rather within the set of evidence in the proceeding,

## **SAW PROVEN FACTS**

### **A. About Mayra Angelina Gutiérrez Hernández**

43. Mrs. Mayra Angelina Gutiérrez Hernández was born on January 23, 1958 in Guatemala City<sup>28</sup>. Her family is made up, among others, of her daughter Ángela María del Carmen Argüello Gutiérrez, as well as her brothers Nilda and Armando, whose last names are Gutiérrez Hernández<sup>29</sup>.

44. Ms. Mayra Gutiérrez obtained a degree in psychology in 1985<sup>30</sup>, studied sociology from 1992 to 1995, and specialized in human rights and international humanitarian law at the University of San Carlos in Guatemala<sup>31</sup>. She has not been disputed by the parties that from 1980 to the date of her disappearance, she served as a teaching assistant and later as a professor at the University of San Carlos. She was also a researcher at the Superior Council of the same University, and since June 1997 she has taught on Saturdays at the Mariano Gálvez University of Guatemala in the department of Huehuetenango. Among other activities, she conducted research on "Adoption Practices in Guatemala (1997)" in conjunction with the International Social Service (ISS), and "Adoption in Guatemala (1999)" in

<sup>25</sup> Cf. Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 26, 2012. Series C No. 244, para. 33, and Case of Acosta et al. v. Nicaragua, para. 25.

<sup>26</sup> Cf. Case of the "White Panel" (*Paniagua Morales et al.*) v. Guatemala. Background. Judgment of March 8, 1998. Series C No 37, paras. 69 to 76, and Case of Acosta et al. v. Nicaragua, para. 26.

<sup>27</sup> Cf. Case of Loayza Tamayo v. Peru. Background. Judgment of September 17, 1997. Series C No. 33, para. 43, and Case of Favela Nova Brasília v. Brazil, para. 98.

<sup>28</sup> Cf. Passport of Mayra Angelina Gutiérrez Hernández (evidence file, folio 3419).

<sup>29</sup> Cf. Verification report on the complaint of disappearance of Mayra Angelina Gutiérrez Hernández made by the United Nations Verification Mission in Guatemala -MINUGUA- on January 25, 2001 (evidence file, folio 1785).

<sup>30</sup> Cf. University Degree in Psychology (evidence file, folio 3215).

<sup>31</sup> Cf. Curriculum Vitae of Mayra Gutiérrez (evidence file, folios 6 and 7).

jointly with the United Nations Children's Fund (UNICEF). She also represented the School of Psychological Science before the University Commission for Women<sup>32</sup>.

45. According to statements by Armando Gutiérrez and Ángela María del Carmen Argüello Gutiérrez, Mayra Gutiérrez belonged to the guerrilla movement during the internal armed conflict, breaking up in the 1980s. In addition, in 1982 her brother Julio Roberto Gutiérrez was reportedly captured on the campus of the University of San Carlos by a group of men who took him away in a vehicle, without his whereabouts being known. Likewise, Brenda Mercedes Gutiérrez, sister of the alleged victim, disappeared in 1985. According to what was declared, both brothers were "activist[s] of the guerrilla movement"<sup>33</sup>.

### ***B. Disappearance of Mayra Angelina Gutiérrez Hernández on April 7, 2000***

46. On Friday, April 7, 2000, Mrs. Mayra Gutiérrez informed her family that she was going to carry out personal matters before starting the trip that she made every Friday afternoon together with Luis Felipe Figueroa to the department of Huehuetenango, in Transportes Halcones, to teach classes at the Mariano Gálvez University. That morning she accompanied her 17-year-old daughter<sup>34</sup>, Ángela María del Carmen Argüello, to the bus stop so that she could be transported to school<sup>35</sup>. During the afternoon, she received a call from Luis Felipe Figueroa asking for Mayra Gutiérrez<sup>36</sup>. That night Ángela María del Carmen Argüello called the hotel where her mother usually stayed, however they told her that she had not arrived<sup>37</sup>. The next day she called her aunt Nilda Gutiérrez to ask if her mother had turned up,

### ***C. Open investigations in relation to the facts of the case***

47. It is clear from the body of evidence that in this case an investigation was carried out by the Public Prosecutor's Office. On the other hand, the Supreme Court of Justice of Guatemala determined that a special investigation procedure was in order<sup>39</sup>, whose investigation was in charge of the Human Rights Ombudsman, who enjoyed the faculties of agent of the Public Ministry. Likewise, three writs of habeas corpus were filed in favor of Ms. Mayra Gutiérrez, two by Mr. Mario Polanco, representative of the Mutual Support Group (GAM), before two different courts of first jurisdiction.

<sup>32</sup> Cf. Curriculum Vitae of Mayra Gutiérrez (evidence file, folios 7 and 13), and Certificate issued by the Secretary of the School of Psychological Sciences of the University of San Carlos de Guatemala (evidence file, folio 26).

<sup>33</sup> Cf. Statement of Ángela María del Carmen Argüello Gutiérrez at the public hearing of August 24, 2016; Testimony of Armando Gutiérrez of April 15, 2000, before the PNC investigating agent (evidence file, folios 1369 and 1370); Verification report on the disappearance of Mayra Angelina Gutiérrez Hernández made by the United Nations Verification Mission in Guatemala -MINUGUA- on January 25, 2001 (evidence file, folios 1785 and 1786); Diario Mosaico, "El Misterio de Mayra", press release of May 21, 2000 (evidence file, folio 92); El Periódico newspaper, "Mayra Gutiérrez case[:] Possible reasons for plagiarism", press release of May 12, 2000 (evidence file, folio 4991).

<sup>34</sup> Cf. Passport of Ángela María del Carmen Argüello Gutiérrez (merits file, folio 763 bis 2).

<sup>35</sup> *cf.* Note from the Human Rights Ombudsman of July 31, 2000 (evidence file, page 40).

<sup>36</sup> *cf.* Statement of Ángela María del Carmen Argüello Gutiérrez rendered on October 2, 2000 (evidence file, folios 5078 to 5079).

<sup>37</sup> *cf.* Statement by Ángela María del Carmen Argüello Gutiérrez at the public hearing on August 24, 2016.

<sup>38</sup> *cf.* Statement of Ángela María del Carmen Argüello Gutiérrez rendered on October 2, 2000 (evidence file, folio 5080).

<sup>39</sup> Through a special inquiry procedure, the Court The Supreme Court of Justice can intimidate the Public Ministry to report on the investigation and grant a mandate to an investigator.



criminal instance, and another by the prosecutor of the Public Ministry before the Chamber of Amparo and Pretrial of the Supreme Court of Justice.

### **C.1. Investigation of the Public Ministry**

48. On April 9, 2000, at 3:00 a.m., Sofía Mazariegos Soto, a friend and co-worker of Mayra Gutiérrez, reported to Station 111 of the National Civil Police (hereinafter "PNC") that she had disappeared since April 7, 2000, since he had not returned from a trip he had to Huehuetenango "so it is presumed that something bad has happened to him"<sup>40</sup>. On the same April 9 at 7:00 p.m., Armando Gutiérrez, Mayra Gutiérrez's brother, also reported her disappearance, two days earlier, at Station 13.1 of Zone 5 of the PNC. He pointed out, among other things, that he "had] suspicions of Mr. [A] [...] who had a relationship with the disappeared woman and that they ended due to problems that are unknown." That same day, the Chief of Station 13.

49. On April 12, 2000, the prosecutor of the Public Ministry in charge of the investigation asked the Head of the Criminal Investigations Department of the Public Ministry to name the investigators<sup>42</sup>, who went to Armando Gutiérrez's home that same day, but did not find him. They also interviewed Ángela María del Carmen Argüello, daughter of the disappeared woman. Among other things, she stated that when her mother "was late in returning to her home, [Mr. A, who was Mayra Gutiérrez's boyfriend,] called every so often and was more aggressive in tone of voice. She recall[ed] that on 12-27-99 at about 11:30 a.m., said individual was in the dining room of her home together with her mother, and she asked her mother for permission to carry out personal matters outside her home. room and she answered no, and she asked why and her mother brought her into a room to talk to her, where she told her that she had broken off her love relationship with Mr. [A] and was afraid of being left alone." Ángela María del Carmen Argüello concluded her interview by stating that "Mr. [A], [is] responsible for having his mother hidden somewhere X, in order to live together, a deduction he makes from the relationship they previously had." <sup>43</sup>

50. The following day, the investigators received the statement from Mr. A, who stated, among other things, that "the last time he [saw Mayra Gutiérrez] was on 04-03-00 at about 3:00 p.m. at the place of his USAC job." He indicated that he learned of the disappearance on April 9, 2000, but that on April 6, 2000, "he left the Guatemalan country for the Republic of Honduras, to give a workshop [...] returning to our country on 09- 04-00" <sup>44</sup>.

51. On April 17 and 24, 2000,<sup>45</sup> the investigators received the statements of three people who referred to the investigations carried out by Ms. Mayra Gutiérrez in relation to the adoption and trafficking of minors (supra para. 44).

52. On April 16, 2000, the investigators went to the Immigration Department of the La Aurora Zone 13 International Airport in order to review the corresponding files of Mr. A. They verified that he left the country on April 6, 2000 "with the destination of the [R]epublic of Mexico [...] and returned to Guatemala on 04-09-2000 [...] from the [R]epublic of El Salvador"<sup>46</sup>.

<sup>40</sup> cf. Note from Station 111 of April 9, 2000 (evidence file, folio 6033).

<sup>41</sup> cf. Official letter from the Station 13.1 of April 9, 2000 (evidence file, page 1585).

<sup>42</sup> cf. Brief of the prosecutor of the Public Ministry of April 12, 2000 (evidence file, page 76).

<sup>43</sup> Report preliminary report of April 25, 2000 (evidence file, folios 1367 to 1368).

<sup>44</sup> Report preliminary report of April 25, 2000 (evidence file, folios 1367 to 1368). This report includes interviews conducted with various people between April 12 and April 24, 2000.

<sup>45</sup> Four. Five cf. Preliminary report of April 25, 2000 (evidence file, folios 1371, 1372 and 1374).

<sup>46</sup> cf. Preliminary report of April 25, 2000 (evidence file, page 1371).

53. On April 19, 2000, the Court of First Instance authorized the tracking of the calls received on the telephone owned by Mrs. Mayra Gutiérrez from April 6 to 8, 2000<sup>47</sup>. On April 25, 2000, TELGUA SA responded to the request and sent the requested information<sup>48</sup>. On August 17, 2000, a second request for information was authorized<sup>49</sup> to different telecommunications companies in relation to said number, as well as Mayra Gutiérrez's cell phone, among others<sup>50</sup>. On September 26, 2002, the assistant prosecutor requested a "detailed report of the incoming and outgoing calls [to the first number mentioned and another one] from the Guatemalan Telecommunications Service SA, from May 2002 to date"<sup>51</sup>.

54. In the Preliminary Report of April 25, 2000 of the Criminal Investigation Service of the PNC, sent to the prosecutor of the Public Ministry, it was indicated that "[i]n based on the investigations and interviews carried out, it is presumed that the main person responsible for the disappearance of Mayra Angelina Gutiérrez Hernández, it is Mr. [A]". The foregoing, because he had indicated that on April 6 she had traveled to Honduras, while the Immigration Delegation reported that she had actually traveled to Mexico<sup>52</sup>.

55. On April 28, 2000, the prosecutor of the Public Prosecutor's Office submitted a report to the First Criminal Peace Court in which she indicated that she suspected that Mr. A was holding Mayra Gutiérrez "in captivity against her will" inside Mr. B's property. , because there "[t]he disappeared person [...] had love affairs with her lovers"<sup>53</sup>. In another Preliminary Report dated April 2000, the Criminal Investigation Technicians of the Public Ministry recommended to the prosecutor of the Public Ministry that search warrants be requested from a competent judge of the respective houses of Messrs. A and B, as well as of houses located at kilometer 22 of the highway to the Atlantic, since, according to an "informant" Mayra Gutiérrez could be detained there because of the "ties" she had with the guerrillas<sup>54</sup>.

56. On May 16, 2000, the Criminal Investigation Technicians of the Public Ministry issued a second preliminary report regarding the proceedings carried out at the homes of Messrs. A and B. They also indicated that they contacted an informant who stated that Mayra Gutiérrez had had information about a "business with a lot of money" that "did not come out" and for "fear that she would betray the other people", she was "held in Santiago Atitlán Municipality of the Department of Sololá [...] in a kind of house or hut that was previously used by the Guerrilla". According to the report, the investigators and the prosecutor of the Public Ministry, with the support of personnel from the region's police stations, met in the Municipality of Santiago Atitlán on the 13th,

47 Cf. Note from the Second Official of the National Civil Police received on April 19, 2000 (evidence file, folio 6049); Request from the Public Ministry to the Court of First Instance for Criminal, Drug-trafficking and Crimes against the Environment received on April 19, 2000 (evidence file, folio 6050), and Authorization dated April 19, 2000 (evidence file, folio 6052).

48 Cf. Brief TELGUA SA of April 25, 2000 (evidence file, folio 6053), and Detail of Telephone Charges from April 5 to April 9, 2000 (evidence file, folio 1808).

49 Cf. Authorization of August 17, 2000 of the Tenth Criminal Court of First Instance, Drug-trafficking and Crimes against the Environment (evidence file, folio 6135).

50 Cf. Undated request from the Public Prosecutor's Office of Guatemala to the Tenth Court of First Instance, Drug Trafficking and Crimes against the Environment (evidence file, folio 6134).

51 Request from the assistant prosecutor of September 26, 2002 (evidence file, folio 6357).

52 Cf. Preliminary report of April 25, 2000 (evidence file, page 1374).

53 Report addressed to the First Criminal Justice of the Peace on Duty on April 28, 2000 (evidence file, folios 4970 to 4971).

54 Cf. Preliminary report of April 2000 (evidence file, folios 1295 to 1297).

55 Cf. Report addressed to the prosecutor of the Public Ministry of May 2, 2000 (evidence file, folios 1408 to 1409).

56 Cf. Second preliminary report of the Public Ministry of May 16, 2000 (evidence file, folios

57. On May 18, 2000, the Criminal Investigation Technician of the Public Ministry wrote a letter to the Director of Investigations of the Public Ministry, providing a list of the steps taken up to that moment in the investigation. Among others, he reported that the searches carried out in the place indicated by the informant were unsuccessful. However, "we are waiting to contact an ex-guerrilla guide who knows the area"<sup>57</sup>.

58. On May 19, 2000, investigators from the Public Ministry interviewed Mr. "César Montes", "former guerrilla commander in both El Salvador and Guatemala," and on May 22 and 23, 2000, they interviewed an informant in Chiapas, Mexico, who indicated that Mayra Gutiérrez "was in Tactíc, Municipality of the Department of Alta Verapaz." However, "[we] could not find her whereabouts, since the information [...] was very scarce" and the informant refused to travel to Guatemala<sup>58</sup>.

59. On May 29, 2000, the Public Ministry set up a telephone line in Guatemala so that if anyone knew about the whereabouts of Mayra Gutiérrez, they could call that number and provide information about her<sup>59</sup>.

60. On May 30, 2000, Mayra Gutiérrez's brother and a co-worker were interviewed again. The latter told the investigators the names of the two people who worked with Mrs. Gutiérrez on the investigative report on the adoptions delivered to UNICEF<sup>60</sup>.

61. On June 2, 2000, investigators requested that the location of certain telephone numbers be investigated. On June 25, 2000, the origin of said numbers was reported<sup>61</sup>.

62. On July 6, 2000, the investigator from the Public Ministry went to the General Directorate of Migration, in order to review the passport files "if Ms. Mayra Gutiérrez had left the country with a false identity and false documents"<sup>62</sup>. From July 14 to 16, 2000, the investigators went to the Department of Huehuetenango, where they interviewed four of Mayra Gutiérrez's co-workers who expressed different hypotheses about the disappearance<sup>63</sup>.

63. On August 10, 2000, the fiscal agent informed the Chief of Logistics Support of the Public Ministry that they had learned that Mayra Gutiérrez "had recently had contact with Mr. [RC], who was a strategic guerrilla, and that on several occasions he took country to people who were being persecuted for collaborating with the guerrillas", and that "after Ms. Gutiérrez disappeared [this person made] visits to Ms. Ms.'s home, offering financial help to her daughter". Likewise, she indicated that it was known that calls were being made to certain places in Mexico from Mayra Gutiérrez's home telephone and that her daughter intended to continue her studies in the United States of America. However, it was considered that "this trip is doubtful, since not having the economic possibility to defray the expenses [of the same,] it would be logical that said person leave the country at some point to meet with his mother." Therefore, it was requested

1298 to 1299).

<sup>57</sup> Report of May 18, 2000 (evidence file, folios 1301 to 1303).

<sup>58</sup> *cf.* Third Preliminary Report of the Public Ministry, undated (evidence file, page 6103).

<sup>59</sup> *cf.* Third Preliminary Report of the Public Ministry, undated (evidence file, page 6104).

<sup>60</sup> *cf.* Third Preliminary Report of the Public Ministry, undated (evidence file, page 6104).

<sup>61</sup> *cf.* Third Preliminary Report of the Public Ministry, undated (evidence file, folios 6104 to 6105).

<sup>62</sup> Third Undated Preliminary Report of the Public Ministry (evidence file, page 6105).

<sup>63</sup> *cf.* Third Preliminary Report of the Public Ministry, undated (evidence file, folios 6105 to 6108).

authorization for the investigators to travel to Mexico in order to determine if Mayra Gutiérrez resided there<sup>64</sup>.

64. On September 19, 2000, the technical consultant of the Public Ministry informed the Private Secretary of the Public Ministry about omissions in the investigation, as well as formulated recommendations on procedures that could contribute to it. Among them, he mentioned attaching to the file the minutes of the inspection of Mayra Gutiérrez's house, as well as requesting UNICEF for the report on the adoption of boys and girls in which Mrs. Gutiérrez would have participated<sup>65</sup>. On October 4, 2000, the fiscal agent asked UNICEF to send a copy of the document prepared by Mrs. Gutiérrez jointly with the Women's Commission of the University of San Carlos of Guatemala on adoptions<sup>66</sup>. In the months of October, November and December 2000, various declarations were received from people before the Fiscal Agency<sup>67</sup>,

65. On October 16, 2000, the fiscal agent requested Mayra Gutiérrez's clinical file from the Guatemalan Social Security Institute (IGSS)<sup>69</sup>. On October 23, 2000, the IGSS responded that "it is not possible to comply with the request"<sup>70</sup>.

66. On January 14, 2001, the assistant prosecutor proceeded to remove a deceased female person on the highway from Quezaltenango to the South Coast and ordered that the respective autopsy of the body be carried out in order to determine the cause of death<sup>71</sup>. On March 19, 2002, a second removal of the body was carried out in the village of El Carrizal, in the Municipality of Esquipulas, Chiquimula<sup>72</sup>.

67. On February 13, 2001, the Guillermo Toriello Foundation (FGT) stated that Mayra Gutiérrez "does not appear in the database of this institution as a demobilized member of the Guatemalan National Revolutionary Unity (URNG)"<sup>73</sup>.

68. By means of a letter dated February 22, 2001, sent to the fiscal agent, the PNC investigative agent detailed the study plans abroad of Ángela María del Carmen Argüello, daughter of Mrs. Gutiérrez, and indicated that "this decision makes us think that possibly Mayra Gutiérrez is in Chiapas, Mexico"<sup>74</sup>.

69. On March 20, 2001, the PNC investigative agent informed the fiscal agent of the details of the calls made to the residence of Mayra Gutiérrez by Messrs. A and Luis Felipe Figueroa between January and April of the year 2000, concluding that "[d ]during the months of February and March of the year 2000, [those] carried out Mayra Gutiérrez, from four to five

<sup>64</sup> *cf.* Report of the prosecutor of the Public Ministry of August 10, 2000 (evidence file, folios 6131 to 6132).

<sup>65</sup> *cf.* Brief sent to the Private Secretary of the Public Ministry on September 19, 2000 (evidence file, folios 1450, 1457 and 1461).

<sup>66</sup> *cf.* Request made to UNICEF-Guatemala received on October 4, 2000 (evidence file, folio 6179).

<sup>67</sup> *cf.* Statements rendered before the Fiscal Agency of the Public Ministry (evidence file, folios 6186 to 6227).

<sup>68</sup> *cf.* Report of the PNC investigator of June 15, 2001 (evidence file, folios 6285 to 6287).

<sup>69</sup> *cf.* Note from the fiscal agent of October 16, 2000 (evidence file, page 6210).

<sup>70</sup> Job of the Guatemalan Social Security Institute of October 23, 2000 (evidence file, folio 6217).

<sup>71</sup> *cf.* Record of removal of the corpse of January 14, 2001 (evidence file, folio 6231).

<sup>72</sup> *cf.* Note 23-31 from the Substation Chief received on March 19, 2002 (evidence file, folio 6328), and Record of the removal of the corpse of March 19, 2002 (evidence file, folio 6330).

<sup>73</sup> Constancy of the Guillermo Toriello Foundation (evidence file, folio 6247).

<sup>74</sup> Report of the investigating agent of the National Civil Police of Guatemala on February 22, 2001 (evidence file, folios 1659 to 1661).

Daily calls at different hours. For this reason they made a chain or war of calls, possibly out of jealousy or another reason”75.

70. On May 11, 2001, when asked about the entry and exit control files for Guatemalans and foreigners, an Immigration Delegate confirmed that “from [April 7, 2000] to [May 11, 2001], there have been no there is a record of some exit and entrance”76 by Mayra Gutiérrez.

71. Through an undated report, it is indicated that “all the Public Prosecutor's Offices were requested to inform[ed] about the women who died and were buried as XX, in order to be able to request exhumations, of which Quetzaltenango reported, Chiquimula [and] Jutiapa”77. In this regard, there are documents from various prosecutors, presented to the prosecutor in August 2001, in which they state that they have not received corpses with the indicated characteristics78. Three other prosecutors indicated that they had received female corpses, without establishing their identity79.

72. On January 18, 2002, the fiscal agent requested the Attorney General of the Republic and Head of the Public Prosecutor's Office to “authorize the commission to [Honduras]” in order to “obtain witness statements [to] establish the veracity [...] [of] the places [in] that [Mr. A] stayed on April 6 to 9, 2000”80.

73. On February 1, 2002, Mr. D appeared at the Fiscal Agency, who indicated that he was the Executive President of the Association of Non-Governmental Organizations (ASUNOG), and that Mr. A was invited to a discussion forum in Honduras. He maintained that it arrived on April 6 and that the forum was held on April 7, 8, and 9, 200081.

74. On November 13, 2002, the fiscal agent forwarded the passport of Mayra Gutiérrez to the Criminal Investigation Service of the PNC, for the performance of the “expert opinion consisting of a comparison of the fingerprints of Mrs. Gutiérrez, with the fingerprints of corpses reported as XX female, from [April 7, 2000] to the present date, between the ages of 35 and 50 years”82. On July 31, 2003, Mr. Armando Gutiérrez asked the Fiscal Agency to deliver his sister's passport, since it “would serve [it] the family to claim the labor benefits that correspond to him by law.” The passport was given to him83.

75. On August 26, 2003, the fiscal agent informed the Director of the Department of Promotion and Follow-up of the Presidential Commission for the Coordination of Executive Policy on Human Rights (COPREDEH) of the investigation carried out on the disappearance of Mayra Gutiérrez and included the investigations pending to be carried out.

75 Report of the investigating agent of the National Civil Police of March 20, 2001 (evidence file, folio 3131).

76 Report of the investigating agent of the National Civil Police of June 15, 2001 (evidence file, folio 6286).

77 Undated report of the prosecutor of the Public Ministry (evidence file, folio 1680).

78 Cf. Briefs from different Prosecutors for the month of August 2001 (evidence file, folios 6291 to 6315).

79 Cf. Brief of the Jutiapa District Prosecutor's Office of August 10, 2001 (evidence file, folio 6291); Brief of the assistant prosecutor of the Public Ministry received on August 16, 2001 (evidence file, page 6298), and Brief of the assistant prosecutor of the Public Ministry of August 22, 2001 (evidence file, page 6301). Also, the

On December 13, 2001, the assistant prosecutor of the Public Ministry requested the District Prosecutor of the Chiquimula Public Ministry to send original photos of the corpses found in said Department within a period of 72 hours. Cf. Brief of the assistant prosecutor (evidence file, page 6321).

80 Brief of the fiscal agent of January 18, 2002 (evidence file, folios 6323 to 6324).

81 Cf. Statement of Mr. D before the prosecutor of the Public Ministry on February 1, 2002 (evidence file, folio 6326).

82 Request from the fiscal agent received on November 13, 2002 (evidence file, folio 6426).

83 Cf. Appearance of Armando Gutiérrez before the Fiscal Agency (evidence file, folio 6435).

84 Cf. Brief of the fiscal agent of August 26, 2003 (evidence file, folios 6436 to 6443).

76. On March 13, 2004, the fiscal agent requested UNICEF's Adoption Department to "inform [the] prosecutor's office if [Mayra Gutiérrez] collaborated with you in a study and investigation on adoptions established in Guatemala, what was her impact at the national and international level and how it harmed the institutions and lawyers that are detailed [...]. What is required is to establish in the investigation whether there were [or] political persons and those with government power affected in the analysis of the adoption study"<sup>85</sup>.

77. On March 18, 2004, the PNC investigative agent issued a preliminary investigation report indicating that, according to the statement by Armando Gutiérrez, Mr. C was suspected of the disappearance. He indicated that in the year 2000 the Mr. C, Head of the Technical Evaluation Office of the University of San Carlos, would have stolen money that should have been invested in the infrastructure of said center. Mr. Armando Gutiérrez indicated that Mayra Gutiérrez had become aware of this situation, for which reason it constituted "a great and serious obstacle for the Rectoría [...and] the only way out was to disappear her to avoid being betrayed [...] by inventing that it had been gone abroad with a boyfriend"<sup>86</sup>.

78. On February 9, 2005, the Office of the Attorney General of the Republic received a letter from the fiscal agent, reporting on the investigation carried out. She indicated that they were pending "exhumations of people who have appeared dead as XX [...] who were found in [the] department [s] of Quetzaltenango, Chiquimula [and] Jutiapa." She also indicated that it was pending that "[m]r. C] be summoned [...] and other investigations that cannot be disclosed at the moment" <sup>87</sup>.

79. The case of the disappearance of Mayra Gutiérrez was processed in Prosecutor Agency No. 34, however, due to the restructuring of the Public Ministry, the Prosecutor Agency that handled the case became Agency 1 of the Property Crimes Prosecutor of the Metropolitan Prosecutor's Office and continued to be in charge of the case<sup>88</sup>. On September 26, 2005, the Executive Secretary of the Office of the Attorney General of the Republic informed the Office of the Prosecutor for Patrimonial Crimes, which attached the notification related to the special investigation procedure No. 1-2000, which was promoted by Mario Polanco, to favor of Mayra Gutiérrez<sup>89</sup>.

80. On December 16, 2005, the prosecutor of Agency 1 of the Property Crimes Prosecutor sent to the Public Prosecutor a Metal Plate P-405776 from 1998 as evidence, in order for it to be safeguarded and guarded<sup>90</sup>.

81. On January 24, 2007, the fiscal agent informed the Coordinator of the Technical Coordination Secretariat of the Public Ministry of the facts investigated in the case, as well as the investigations pending. In addition, it was informed that "a Special Investigation Procedure is being processed in favor of Ms. Mayra Angelina Gutiérrez [...] before the Supreme Court of Justice" and that the "Human Rights Ombudsman at the time requested an arrest warrant against Mr. [A]"<sup>91</sup>. On August 17, 2007, Mr. C testified before the tax agent<sup>92</sup>.

<sup>85</sup> Application from the fiscal agent to UNICEF on March 13, 2004 (evidence file, folio 6453).

<sup>86</sup> Preliminary Investigation Report of the National Civil Police of March 18, 2004 (evidence file, folios 3306 to 3308).

<sup>87</sup> Written of the fiscal agent of February 9, 2005 (evidence file, folio 6473).

<sup>88</sup> *cf.* Circular No. 43-2009, Distribution of files for reorganization of the Metropolitan District Prosecutor's Office (evidence file, folios 3797 to 3800).

<sup>89</sup> *cf.* Brief of the Executive Secretary of the Office of the Attorney General of the Republic of September 26, 2005 (evidence file, folio 6462).

<sup>90</sup> *cf.* Brief from the fiscal agent received on December 16, 2005 (evidence file, folio 6476).

<sup>91</sup> Written of the fiscal agent of January 24, 2007 (evidence file, folio 6481).

<sup>92</sup> *cf.* Statement of Mr. C of August 17, 2007 (evidence file, folios 3723 to 3725).

82. On September 19, 2007, the prosecutor informed the Administrative Chief of the Public Prosecutor's Office that his prosecutor's office was "processing exhumation orders for the XX female corpses, buried in 2001," in order to determine if "it ] some[or] to Ms. Gutiérrez." In addition, she stated that on September 13, 2007, "in the Department of Jutiapa, the first exhumation was carried out" 93.

83. On September 9, 2009, the Metropolitan District Prosecutor's Office was reorganized, which is why a distribution of files was carried out<sup>94</sup>.

84. On September 22, 2009, the prosecutor of Agency 1 of the Property Crimes Unit indicated to the Technical Coordination Secretary of the Public Prosecutor's Office that the case file was in said Prosecutor's Office, but it should be known by the Special Prosecutor for Human Rights. Human Rights, "who also have the personnel and the capacity to carry out a better investigation due to the low volume of files that it has, and [...] it is investigated jointly with the Office of the Human Rights Ombudsman." For this reason, it "request[ed] your consent to transfer them to the Human Rights Prosecutor's Office[,], or to the pertinent [...] prosecutor's office"<sup>95</sup>.

85. On December 23, 2009, the fiscal agent indicated to the Technical Coordination Secretary of the Public Ministry that "Lic. Gutiérrez Hernández was a member of the guerrilla movement and some members of her family died during the internal armed conflict." It also added that "[t]he investigation is carried out within a special investigation procedure [...] and since the Human Rights Prosecutor's Office denied the transfer of the aforementioned file, [...] I raise before you a conflict of jurisdiction, all time that the Prosecutor for Property Crimes considered that it is not competent to take cognizance of said proceeding"<sup>96</sup>.

86. In response to a query made on March 17, 2016 by the assistant prosecutor of the Metropolitan District Prosecutor's Office, as to whether during the course of the investigation carried out any complaint or administrative complaint had been made against any employee, On March 18, 2016, the General Supervisor of the Public Ministry stated that "there are no complaints filed for the processing of the file [...] or against the people who have been in charge of it"<sup>97</sup>.

87. On March 28, 2016, the tax agent informed the Private and Strategic Affairs Secretariat of the Public Ministry that the disappearance file was under investigation status and explained the hypotheses developed during it. She also pointed out that "an immigration report has been requested from Mr. [A], which establishes that he has not left the country since 1999, but it cannot be ruled out that he has currently left the country illegally"<sup>98</sup>.

## **C.2. Personal exhibition resources**

88. On April 11, 2000, the Ninth Criminal, Drug-trafficking and Environmental Crimes First Instance Court received the request for a writ of habeas corpus in favor of Mayra Gutiérrez, managed by Mr. Mario Polanco Pérez, from the Mutual Support Group (GAM )<sup>99</sup>. That same day, the Judge ordered habeas corpus in favor of Mrs. Gutiérrez and

<sup>93</sup> Written of the fiscal agent of September 19, 2007 (evidence file, folio 3472).

<sup>94</sup> cf. Circular No. 43-2009 of September 9, 2009 (evidence file, folios 3797 to 3800).

<sup>95</sup> Written forwarded by the tax agent on September 22, 2009 (evidence file, folio 3838).

<sup>96</sup> Written Sent by the tax agent on December 23, 2009 (evidence file, folio 3843).

<sup>97</sup> Written forwarded by the General Supervisor of the Public Ministry on March 18, 2016 (evidence file, folio 5136).

<sup>98</sup> Information Sent by the tax agent on March 28, 2016 (evidence file, folios 5318 to 5139).

<sup>99</sup> cf. Request for habeas corpus received on April 11, 2000 (evidence file, page 71).

ordered that “as much diligence [was] necessary, in order to establish the extremes of the appeal filed”<sup>100</sup> be carried out.

89. On April 13 and 14, 2000, the Judge requested the General Director of the Roosevelt Hospital, the Director of the Accident Hospital of the Guatemalan Social Security Institute, the General Commander of the Municipal Fire Department, the General Commander of the Volunteer Fire Department, the Director of the San Juan de Dios General Hospital, the Director of the Santa Teresa Women's Prison, the General Director of the National Civil Police and the Chief of the Forensic Medical Service of the Judicial Branch,<sup>101</sup> that they send directly to that Court information regarding Mrs. Mayra Gutierrez. Between April 14 and May 29, 2000, all the entities that were consulted indicated that they had no record of an arrest against her or any information regarding the whereabouts of Mayra Gutiérrez<sup>102</sup>.

90. On May 16, 2000, the Ninth Court requested the General Directorate of Immigration to urgently refer the migratory movement of Mayra Gutiérrez in the current year<sup>103</sup>. In a letter dated May 23, 2000, the Deputy Director of Immigration Control replied that there had been no movement of Mrs. Gutiérrez since September 1995 at the immigration office at La Aurora International Airport, and that there was no further information regarding the rest of the cases. the 21 migratory delegations<sup>104</sup>.

91. On June 1, 2000, the Ninth Court declared the writ of habeas corpus filed in favor of Mrs. Gutiérrez admissible and determined that “it is appropriate that the body in charge of criminal prosecution carry out the respective investigation in relation to the disappearance [...], since to date their whereabouts have not been established”<sup>105</sup>.

92. On May 3, 2000, Mario Polanco filed a request for a second writ of habeas corpus in favor of Mayra Gutiérrez before the Eighth Court of First Instance for Criminal, Drug-related Activity and Crimes against the Environment<sup>106</sup>. That same day, the Judge ordered habeas corpus in her favor and requested “all the Tribunals and Tribunals of the Republic to inform[ed] immediately if [she] was consigned, crime and date of arrest, Mrs. [ Mayra Gutierrez]”. She also ordered that “the Detention Centers for Women throughout the Republic be notified so that they inform [aran] if she [was] detained [Mayra Gutiérrez]” <sup>107</sup>. Between May 4 and 16, 2000, around 150 entities and organizations in Guatemala,<sup>108</sup> including the National Civil Police,<sup>109</sup> various courts,<sup>110</sup>

<sup>100</sup> Habeas Personal/1-2000 of April 11, 2000 (evidence file, folio 948).

<sup>101</sup> Cf. Request briefs received on April 13 and 14, 2000 (evidence file, folios 950 to 957).

<sup>102</sup> Cf. Response brief from the General Directorate, National Civil Police, received on April 15, 2000 (evidence file, folio 963); Response brief from the Santa Teresa Women's Prison received on April 17, 2000 (evidence file, folio 966); Response brief from the Municipal Fire Department received on May 4, 2000 (evidence file, page 971); Response brief from the Volunteer Fire Department received on May 5, 2000 (evidence file, page 973); Response brief from the Roosevelt Hospital received on May 5, 2000 (response file, page 975); Response brief from the San Juan de Dios General Hospital received on May 12, 2000 (evidence file, folios 978 and 979); Evidence brief from the Guatemalan Social Security Institute received on May 29, 2000 (evidence file, folio 981), and Response brief from the General Directorate of the National Police received on April 14, 2000 (evidence file, folio 968).

<sup>103</sup> Cf. Brief received on May 16 by the General Directorate of Immigration (evidence file, folio 5180).

<sup>104</sup> Cf. Report of the National Immigration Office received on May 30, 2000 (evidence file, folio 1000).

<sup>105</sup> Brief of the Ninth Criminal Court of First Instance, Drug Activity and Crimes against the Environment of June 1, 2000 (evidence file, folio 989).

<sup>106</sup> Cf. Request from Mario Polanco received on May 3, 2000 (evidence file, folio 1049).

<sup>107</sup> Brief of the Eighth Criminal Court of First Instance of May 3, 2000 (evidence file, page 1051).

<sup>108</sup> Cf. Briefs in response to the request received between May 4 and 16, 2000 (evidence file, folios 1055 to 1257).

<sup>109</sup> Cf. Official letter from the National Civil Police, Police Station No. 22, received on May 4, 2000 (evidence file, page 1055), and Official Letter from the National Civil Police, Police Station 32, received on May 8, 2000 (evidence file, page 1063).



women's guidance centers and women's prisons responded<sup>111</sup>, all in the negative.

93. By Order of May 15, 2000, the Eighth Court considered that, "after carrying out the proceedings in the case file, all of them were received in the negative sense, [so] it is appropriate to investigate the complaint made by Mario Alcides Polanco Perez. Thus, it ruled "[c]ow the habeas corpus raised"<sup>112</sup>.

94. Finally, between April 7 and May 18, 2000, the prosecutor of the Public Ministry filed a writ of habeas corpus before the Amparo and Pretrial Chamber of the Supreme Court of Justice, in favor of Mayra Angelina Gutiérrez Hernández. She requested that all the First Instance Judges of the Republic be commissioned, in order to establish the military zones, military detachments, and police forces, in order to establish the whereabouts of the disappeared<sup>113</sup>. On March 23, 2001, the Amparo and Pretrial Court declared the appeal inadmissible, since "from the proceedings carried out by the Executing Judge and the Justices of the Peace and First Instance of the Criminal branch of the Republic<sup>114</sup> [...] it can be established that the whereabouts of Mayra Angelina Gutiérrez Hernández is uncertain and unknown"<sup>115</sup>.

### ***C.3. Special inquiry procedure***

95. By means of letters of June 12 and 23, 2000, Mr. Mario Polanco requested the Supreme Court of Justice to initiate a special investigation procedure since, after having filed two writs of habeas corpus that were resolved favorably, the whereabouts had not been established. from Mayra Gutiérrez nor had he received any news regarding the investigation by the Public Prosecutor's Office<sup>116</sup>.

96. On July 14 and August 16, 2000, the Criminal Chamber of the Supreme Court of Justice requested the Public Prosecutor's Office to "investigate[d] into what was stated" by Mario Polanco<sup>117</sup> within a period of five days. Thus, on August 25, 2000, the fiscal agent reported on the investigations carried out<sup>118</sup> and on December 7, 2000, a hearing was held in which she stated that "we ruled out the kidnapping, the illegal detention, for not receiving telephone calls and for the personal exhibitions in favor of the aforementioned"<sup>119</sup>.

110 Cf. Briefs and Official Letters presented by various Courts (evidence file, folios 1056, 1059, 1061, 1064, 1087 to 1149, 1151 to 1201, 1206 to 1218, 1224 to 1226, and 1241 to 1257). Costa that in some cases, the judges established themselves in detention centers of the National Civil Police, where they proceeded to review the facilities, and only on a few occasions was Mayra Gutiérrez called by name "without anyone answering the call ". Judicial proceedings (evidence file, folios 1080, 1202 to 1205, 1222, 1223, 1228 to 1240, and 1263 to 1237).

111 Cf. Letters from the Fraijanes Women's Orientation Center, from the Antigua Guatemala de Sacatepéquez Women's Prison, from the Los Jocotes Preventive Center for Both Sexes, from the Chiquimula Women's Prison, Cobán de Alta Verapaz Women's Prison, Amatlán Women's Prison ( Evidence file, folios 1060, 1062, 1080, 1086, 1150 and 1219), and Note from the Guastatoya El Proceso Departmental Prison (evidence file, folio 1057).

112 Resolution of the Eighth Criminal Court of First Instance of May 15, 2000 (evidence file, folio 1259).

113 Cf. Brief of the Supreme Court of Justice, Chamber of Amparo and Pretrial of March 23, 2001 (evidence file, folios 2962 to 2966).

114 It is on record that the judges, among others, sent official letters to various institutions requesting information about the disappeared woman, all of this in May 2000. Likewise, only in a few cases, the judges set up detention centers, National Civil Police stations, military barracks and military zones, reviewed the files and records, and made tours and raised their voices naming the wanted person "without anyone giving an answer."

115 Brief of the Supreme Court of Justice, Chamber of Amparo and Pretrial of March 23, 2001 (evidence file, folio 2965).

116 Cf. Brief from Mario Polanco received on June 12, 2000 (evidence file, folio 5416), and Brief from Mario Polanco received on June 23, 2000 (evidence file, folio 100).

117 Cf. Brief of the Criminal Chamber of the Supreme Court of Justice of July 14, 2000 (evidence file, folio 5436), and Brief of the Secretariat of the Supreme Court of Justice received by the Public Ministry on August 18, 2000 (evidence file, page 5440).

118 Cf. Brief from the Public Ministry received on August 25, 2000 (evidence file, folios 5441 to 5445).

119 Minutes No. 82, Hearing within the special inquiry procedure 1-2000 of December 7, 2000

97. During said hearing, the Criminal Chamber considered that "the special investigation proceeds, when a habeas corpus appeal has been filed without finding the person in whose favor it was requested and there are sufficient grounds for suspicion to affirm that they have been illegally detained or held in detention by a public official, by members of the State security forces, or by regular or irregular agents, without giving a reason for their whereabouts." Thus, it declared the request filed admissible and ordered the Human Rights Ombudsman to "carry out an investigation into the disappearance" of Mayra Gutiérrez. For such purposes, it equated the Prosecutor "to the agents of the Public Ministry, enjoying the faculties and duties inherent to said position."

98. On January 10, 2001, a work colleague of Ms. Mayra Gutiérrez testified before the Attorney General's Office. Among others, she referred to the investigations on adoptions carried out by the alleged victim<sup>121</sup>.

99. On January 19, 2001, the Human Rights Ombudsman requested the Chief of the Identification Office of the National Civil Police to remit the original ID of Mayra Gutiérrez<sup>122</sup>, the same one that was remitted<sup>123</sup>.

100. On January 23, 2001, the Human Rights Ombudsman incorporated into the file of the special investigation procedure, the study on the adoption of boys and girls in Guatemala, sent by UNICEF<sup>124</sup>. On January 25, 2001, the Attorney General incorporated into the file the report of the United Nations Verification Mission in Guatemala (MINUGUA) on the complaint of disappearance of Mayra Gutiérrez, which indicated different acts of obstruction and failures in the investigation<sup>125</sup>.

101. On February 13, 2001, the Prosecutor received a letter from his Departmental Assistant, which indicated that "information ha[d] been requested from all the CIVIL REGISTRARS OF THE DEPARTMENT regarding the burials as XX, of female corpses from on [A]pril 7, 2000. [Received] a response from 17 municipalities indicating that they have not had female burials as XX during the indicated time; except in Malacatán where the civil registrar indicates that [t]here are several cases, but the sex is unknown, only the cause of death and the place where it occurred. In San Pedro Sacatepéquez, two persons of unknown age and gender were buried"<sup>126</sup>.

(Evidence file, page 53).

<sup>120</sup> Cf. Special investigation procedure 1-2000 of December 7, 2000 (evidence file, folios 54 to 56).

<sup>121</sup> Cf. Brief of the Human Rights Ombudsman of January 10, 2001 (evidence file, folios 1761 to 1762).

<sup>122</sup> Cf. Brief of the Human Rights Ombudsman of January 19, 2001 (evidence file, folio 1776).

<sup>123</sup> Cf. Mayra Gutiérrez's identity card (evidence file, folios 1777 to 1781).

<sup>124</sup> Cf. Special investigation procedure 1-2000 (evidence file, folio 1782).

<sup>125</sup> Cf. Special investigation procedure 1-2000 (evidence file, folio 1783).

<sup>126</sup> Brief of the Departmental Assistant of the Human Rights Ombudsman (evidence file, folio 1842). "14 responses that [had] come in writing" were attached, while three corresponding to "Sipacapa, Ixchiguán and Tacaná were taken personally." Cf. Report of the Municipality of San Marcos of January 17, 2001 (evidence file, folio 1843); Report from the Municipality of Malacatán received on January 25, 2001 (evidence file, folio 1844); Report from the Municipality of Concepción Tutuapa received on January 29, 2001 (evidence file, folio 1845); Report from the Municipality of Comitancillo received on January 29, 2001 (evidence file, folio 1846); Report from the Municipality of San Rafael Pie de la Cuesta of January 22, 2001 (evidence file, folio 1847); Report of the Municipality of San José "El Rodeo" of January 23, 2001 (evidence file, folio 1848); Río Blanco report of January 19, 2001 (evidence file, folio 1849); Report of the Municipality of San Antonio de Sacatepéquez of January 19, 2001 (evidence file, folio 1850); Report of the Municipality of San Marcos of January 18, 2001 (evidence file, folio 1851); Report

102. On April 30, 2001, the Prosecutor sent a letter to the comptroller judge in which he indicated that "[t]he hypothesis that the investigation put forward in this case was plagiarism or kidnapping [...] for reasons of passion" and requested that "[p]rior to concluding the procedure" the statement will be taken and the arraigo of Mr. A127 will be decreed. On May 2, 2001, the Prosecutor forwarded to the Supreme Court of Justice an investigation report that reiterated said information<sup>128</sup>.

103. For his part, on May 12, 2001, Mr. A filed a brief "reclaiming rectification" before the Second Judge, in which he requested that "it be verified that the [Attorney] no longer had special powers at the time to present his brief in [the] requesting that he be summoned to testify and that arraigo be decreed"<sup>129</sup>. Said judge declared the request inadmissible through a decision of June 14, 2001.

104. In a letter dated October 2, 2003, the Second Judge informed the President of the Criminal Chamber of the Supreme Court of Justice that he summoned Mr. A on May 15, 2001 at the request of the Human Rights Ombudsman. In addition, it reported that the arrest of the same was ordered on May 9, 2001. However, the aforementioned wife indicated that he could not appear because "he was on a trip," for which reason a new hearing was scheduled for May 3. July 2001. Once again he did not appear, so on July 6, 2001, the Second Judge declared him in absentia<sup>131</sup>.

105. On January 8, 2004, the Second Court informed the Criminal Chamber of the Supreme Court of Justice that "[t]he defendant, [Mr. A], to date is pending capture"<sup>132</sup>. On September 9, 2004, the Human Rights Ombudsman stated before the Amparo and Pretrial Chamber of the Supreme Court of Justice that on August 5, 2004, Mr. A's defense attorney "appeared to file an objection for LACK OF ACTION within of the criminal process, which is currently being processed as an incident. Mr. [A] has not yet appeared in the proceeding"<sup>133</sup>.

106. The file shows that between February 2001 and January 2013, the Human Rights Ombudsman submitted at least twenty-five requests for extension of the investigation period before the Criminal Chamber. All were granted. It is also stated that on the 14th

from the Municipality of Esquipulas Palo Gordo on January 17, 2001 (evidence file, folio 1852); Report of the Municipality of Sibinal of February 2, 2001 (evidence file, folio 1854); Report of the Municipality of El Tumbador of January 25, 2001 (evidence file, folio 1855), and Report of the Municipality of San Miguel Ixtahuacán of January 31, 2001 (evidence file, folio 1856).

<sup>127</sup> *cf.* Report of the Human Rights Ombudsman (evidence file, folios 1825 and 1834).

<sup>128</sup> *cf.* Report of the Human Rights Ombudsman (evidence file, folios 5550 to 5557).

<sup>129</sup> Written of Mr. A on May 12, 2001 (evidence file, folios 2988 to 2995).

<sup>130</sup> *cf.* Decision of June 14, 2001 of the Second Criminal Court of First Instance, Drug Activity and Crimes against the Environment (evidence file, folios 2996 and 2997).

<sup>131</sup> *cf.* Brief of the Second Criminal, Drug-trafficking and Environmental Crimes Court of First Instance received on October 8, 2003 (evidence file, folio 5531).

<sup>132</sup> Writ of the Second First Court Criminal Instance, Drug Activity and Crimes against the Environment received on January 8, 2004 (evidence file, folio 5544).

<sup>133</sup> Written of the Human Rights Ombudsman of September 9, 2004 (evidence file, folio 4087).

<sup>134</sup> *cf.* Writs of the Human Rights Ombudsman requesting various extensions of February 8, 2001, March 12, 2001, February 2, 2005, May 25, 2005, September 6, 2005, December 20, 2005, April 25, 2006, August 2, 2006, July 31, 2006, November 8, 2006, February 16, 2007, May 2007, September 7, 2007, September 12, 2007, December 24, 2007, April 17, 2008, 5 August 12, 2008, November 12, 2008, March 4, 2009, June 18, 2009, October 7, 2009, March 2010, June 15, 2010, October 15, 2010, January 27, 2011, May 18, 2011, October 3 2011, February 2, 2012, October 12, 2012, November 24, 2012, and January 29, 2013 (file of evidence, pages 5509 to 5510, 5518 to 5519, 5604, 5616, 5630, 5639, 5652, 5660, 5662, 5668, 5679, 5688, 5697, 5700, 5709, 5721, 5731, 5741, 5756, 5765, 5774, 5783, 5796, 5807, 5833, 5891, 5901, 5911, 5952, 5970 and 5976). writings of the Criminal Chamber of the Supreme Court of Justice granting the requested extensions (evidence file, folios 5511, 5520, 5605, 5622, 5631, 5640, 5647, 5648, 5655, 5663, 5671, 5680, 5689, 5698, 5701, 5712, 5722, 5732,

December 2004,<sup>135</sup> 9136 and May 18,<sup>137</sup> 2005 and June 26, 2012,<sup>138</sup> the Criminal Chamber of the Supreme Court of Justice requested the Human Rights Ombudsman to report on the outcome of the investigation.

107. On July 18, 2013, Mario Polanco asked the Criminal Chamber to warn the Human Rights Ombudsman and require him to submit a report on the investigation within a peremptory term<sup>139</sup>. The following day, the Criminal Chamber granted the Human Rights Ombudsman a period of ten days to report on the progress of the investigation<sup>140</sup>.

108. On August 9, 2013, the Prosecutor reported that "there are sufficient indications that there was no direct participation, acquiescence, or tolerance on the part of members of the State security forces or, in general, State agents in the facts investigated." . He also reported that "investigations have been carried out to establish the whereabouts of the accused [,] [Mr. A], which have led to the presumption that he is in Mexico City, DF." Thus, he requested that the Criminal Chamber "consider[ed] to present the final report on the progress of the investigation" <sup>141</sup>.

109. On September 13, 2013, the Criminal Chamber of the Supreme Court of Justice issued a final resolution of the special investigation procedure, through which it declared "the mandate granted to the Human Rights Ombudsman expired" and ordered that the Structures Prosecutor, agency nine, of the Public Ministry "take into consideration the conclusions of the special investigator, to continue with the common rules of the criminal process"<sup>142</sup>.

## **FUND VII**

110. According to the arguments of the parties and the Commission, in this case the Court will examine: i) the alleged forced disappearance of Mayra Gutiérrez, as well as the alleged failure of the State to prevent violations of her rights to life and personal integrity, and ii) the alleged violations of judicial guarantees and judicial protection, as well as the alleged violations of the personal integrity of their next of kin.

### **VII.I. ALLEGED ENFORCED DISAPPEARANCE AND ALLEGED FAILURE OF THE STATE TO PREVENT VIOLATIONS OF THE RIGHTS TO PERSONAL INTEGRITY AND LIFE OF MAYRA GUTIÉRREZ HERNÁNDEZ**

#### ***A. Arguments of the Commission and of the parties***

5742, 5757, 5766, 5775, 5784, 5797, 5824, 5835, 5893, 5902, 5903, 5912, 5919, 5959, 5971 and 5977).

<sup>135</sup> Cf. Note of the Sub-Secretary of the Supreme Court of Justice of December 14, 2004 (evidence file, folio 5603).

<sup>136</sup> Cf. Brief of the Criminal Chamber of the Supreme Court of Justice of May 9, 2005 (evidence file, folio 5618).

<sup>137</sup> Cf. Request of the Undersecretary of the Supreme Court of Justice of May 18, 2005 (evidence file, folio 5613).

<sup>138</sup> Cf. Brief of the Criminal Chamber of the Supreme Court of Justice of June 13, 2012 (evidence file folio 5919) and Report of the Human Rights Ombudsman of October 15, 2012 (evidence file folio 4786).

<sup>139</sup> Cf. Brief from Marco Polanco received on July 18, 2013 (evidence file, folio 5985).

<sup>140</sup> Cf. Brief of the Criminal Chamber of the Supreme Court of Justice of July 19, 2013 (evidence file, folio 5986).

<sup>141</sup> Brief of the Human Rights Ombudsman of August 9, 2013 (evidence file, folios 5994 to 5996).

<sup>142</sup> Brief of the Criminal Chamber of the Supreme Court of Justice of September 13, 2013 (evidence file, folio 6017).

111. The Commission maintained in its Report on the Merits that the negligence with which the internal investigations have been carried out has generated a situation of total uncertainty regarding what happened to Mayra Gutiérrez, without having evidence that is consistent with each other and that has a sufficient degree of specificity to classify what happened as a forced disappearance. Although there are elements to consider that certain actors, including state agents, could have been involved in her disappearance, there are no contextual elements or other indications that she had been in state custody at some point. Subsequently, in a brief of February 14, 2017, the Commission indicated that "the information provided by the petitioners at the public hearing [...], as well as the documentation presented by the State, suggests that Mrs. Gutiérrez was a victim of monitoring by military agents." It highlighted that the State limited itself "to providing the required documentation without providing an explanation as to why [her] name is found in the military documentation presented." Thus, it considered that these elements "as a whole may be relevant for the Court to analyze the hypothesis of participation of State agents in the disappearance of Mrs. Gutiérrez."

112. Secondly, the Commission held that there are no elements that indicate a situation of previous threats or the persistence of the context of the armed conflict in Guatemala, therefore, the State's response must be analyzed from the moment it became aware of the disappearance of the alleged victim, that is, through the complaint filed by his next of kin on April 9, 2000. From that moment on, the State knew or should have known that he was in serious risk. In addition, it cited the Case of Veliz Franco et al., when indicating that during that time a complaint for the disappearance of a woman implied for the state authorities an indication of the probable violation of the rights of said person. However, The Commission maintained that during the first 48 hours no search measure was taken and in the following weeks the steps taken were minimal and were not related to the lines of investigation that arose from the very moment of the complaint. Consequently, the lack of an immediate and diligent response to search for Mrs. Gutiérrez in the initial moments after the complaint constituted a breach by the State of its duty to guarantee, specifically the obligation to protect the rights to life and personal integrity, established in Articles 4 and 5 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Mayra Gutiérrez. In its final written observations, the Commission maintained that the duty to guarantee in this case was "reinforced[,"

113. The representatives adhered to the Commission's arguments. Notwithstanding this, they argued that Mayra Gutiérrez was a victim of forced disappearance in violation of Articles 1.1, 3, 4, 5 and 7 of the American Convention and Articles I and II of the Inter-American Convention on Forced Disappearance of Persons<sup>144</sup>. In this regard, they argued that their

<sup>143</sup> In relation to the alleged violation of judicial guarantees and judicial protection, the Commission maintained that there was in Guatemala "a growing context of violence against women around the time of the events," for which reason the strict due diligence standard upon receipt of a missing woman report. However, after receiving the complaint of the disappearance of Mrs. Gutiérrez, the first search procedures began on April 11, 2000, since this omission constituted in itself a breach of the State's duty to investigate with due diligence.

<sup>144</sup> They alleged that the State violated Article 3 of the Convention by concealing the whereabouts of Mrs. Gutiérrez and disqualifying her from exercising her rights, as well as from receiving a burial according to her religion or custom, if applicable. In addition, they indicated that it is possible to presume that she was arbitrarily and illegally deprived of her life, in violation of Article 4 of the Convention. Likewise, the forced disappearance would have constituted an arbitrary deprivation of liberty and a violation of her personal integrity, which violated Articles 7 and 5 of the Convention. Finally, they argued that the State is responsible for failing to comply with the commitments established in the Inter-American Convention on Forced Disappearance of Persons (CIDFP), by not creating legal instruments that facilitate the search for forcibly disappeared persons,

brother, sister and the latter's sentimental partner were disappeared during the internal armed conflict for political reasons. During the public hearing and in their final arguments, they alleged that in the days after the forced disappearance of Mayra Gutiérrez, a military newspaper containing information about her was declassified and made available to the Office of the Human Rights Ombudsman, as well as other people who had suffered extrajudicial executions and, in the case of one of these, a disappearance. They indicated that the information it contains leads one to believe that Mayra Gutiérrez was being monitored by the Guatemalan army. Regarding this point, they indicated that no further investigation has been made regarding the origin and object of the file, nor the reason why the name of Mayra Gutiérrez appears in it, from which "it can be deduced that there is a clear concealment of information related to [her] forced disappearance." Likewise, during the public hearing they mentioned that it is known that at the time of her disappearance, Mayra Gutiérrez was preparing an investigation report together with UNICEF, and there has been a refusal to investigate, so it seems that "they are trying to cover something or cover up someone".

114. First, the State denied being responsible for the alleged disappearance of Mayra Gutiérrez. It indicated that the Commission itself has already determined that in this case there is no evidence or sufficient elements to come to consider it as a forced disappearance. According to Guatemala, there is no documentary or testimonial evidence that demonstrates State participation or eventual support or acquiescence in her disappearance, nor is there any indication that leads to the presumption that she had at some point been in State custody<sup>145</sup>. Likewise, it highlighted that the disappearance occurred outside the time frame in which the internal armed confrontation in Guatemala took place, a period in which the Court has established the existence of a systematic practice of forced disappearances by State agents.

115. Secondly, regarding the alleged breach of the duty to protect the life and integrity of the alleged victim, it maintained that its legislation contemplates criminal regulations and a justice system designed to prevent, suppress, and punish the deprivation of life and the affectations to the freedom and integrity of people.

116. On the other hand, it argued that during the time when the disappearance of the alleged victim occurred, specifically in April 2000, the existence of the context of violence against women in Guatemala established in previous cases by the Inter-American Court did not arise. Consequently, the State opposed the attempt to attribute international responsibility, invoking a context of violence against women, which "without any support, it is argued that the State was aware of it at the time of the alleged victim's disappearance," as well as to be subject to a strict due diligence standard based on the existence of such context.

relation to this point, without providing any additional argumentation. In their final written arguments, the representatives again allege the violation of Articles I and II of the CIDFP, without referring to Article 2 of the American Convention. The Court understands that what is alleged in relation to the aforementioned bill is a violation of Articles I and II of the CIDFP.

145 In relation to this point, in the first place, it argued that both the Commission and the representatives have indicated that the alleged victim had carried out an investigation into illegal adoptions that compromised lawyers and the military, which would have been used by the United Nations Special Rapporteur United States on the Sale of Children, Child Prostitution and the Use of Children in Pornography, in the preparation of the Report of his visit to Guatemala in 1999. However, the aforementioned Report at no time made reference to the alleged investigation or to Mrs. Gutierrez. Secondly, in the special investigation procedure it would have been concluded that there was no participation, acquiescence or tolerance of State agents in the disappearance of Mrs. Gutiérrez. Said conclusion would have coincided with that drawn up by MINUGUA. Third, the internal criminal investigation would have led to the identification of a possible perpetrator, who would be on the run. Fourth, even the next of kin and representatives were unaware of what happened to Mrs. Gutiérrez, which would become evident through the different versions presented before the internal organs and the inter-American system. Fifth, she maintained that the declassified file of the Guatemalan Army presented by the Office of the Human Rights Ombudsman does not verify the alleged forced disappearance. even the next of kin and representatives were unaware of what happened to Mrs. Gutiérrez, which would become evident through the different versions presented before the internal organs and the inter-American system. Fifth, she maintained that the declassified file of the Guatemalan Army presented by the Office of the Human Rights Ombudsman does not verify the alleged forced disappearance. even the next of kin and representatives were unaware of what happened to Mrs. Gutiérrez, which would become evident through the different versions presented before the internal organs and the inter-American system. Fifth, she maintained that the declassified file of the Guatemalan Army presented by the Office of the Human Rights Ombudsman does not verify the alleged forced disappearance.

117. In addition, it alleged that the state took notice of the disappearance two days after it occurred, which negatively affected the possibilities of providing protection to the alleged victim and the reasonable possibilities of impeding or avoiding the consummation of said act and its subsequent consequences. . On this point, it maintained that the Commission is not clear when indicating why the obligation of the State should have been reinforced when it became aware of the fact of the disappearance of the alleged victim, nor why the situation of the alleged victim should have been explicit for the authorities. serious and/or extreme risk in which he was found<sup>146</sup>.

118. In this sense, it affirmed that, based on the State's knowledge of the disappearance of Mayra Gutiérrez, the investigators of the Criminal Investigation Service of the National Civil Police and the Public Ministry carried out a series of formal and immediate procedures in order to resolve the fact. denounced and find the whereabouts of Mrs. Gutiérrez. According to the State, these actions and procedures responded to the information provided at the time the disappearance was filed, as well as the statement made by Ángela María del Carmen Argüello, who from the beginning pointed to Mr. A as a suspect.

119. On the other hand, the State maintained that when information emerged during the investigations that would indicate that Mrs. Gutiérrez was involuntarily detained in the departments of Sololá and Alta Verapaz, it would have carried out the corresponding search procedures.

120. For all of the foregoing, the State asked the Court to declare that it is not responsible for the alleged violation of Articles 4 and 5 of the American Convention, in relation to Article 1.1. of said instrument, and that it is not responsible for the alleged forced disappearance and the alleged violation of Articles 3, 4, 5 and 7 of the Convention, related to Article 1.1 thereof, to the detriment of Mayra Gutiérrez.

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

121. In the present case, it is a proven fact that Mayra Gutiérrez disappeared on April 7, 2000. The representatives allege that it was a forced disappearance, while Guatemala denies that there are indications of State participation in said act. In the Admissibility and Merits Report, the Commission stated that it did not "c[ount] with evidence that [were] consistent with each other and that [had] a sufficient degree of specificity to classify what happened as a forced disappearance." On the other hand, both the Commission and the representatives argued that in the present case the State failed to comply with its duty to prevent violations of the rights of Mrs. Gutiérrez to life and personal integrity. The Court will address these two aspects below.

### ***B.1. Regarding the alleged forced disappearance***

122. In the present case, the representatives alleged the following factors as evidence that Mayra Gutiérrez had been forcibly disappeared: i) the fact that during the internal armed conflict her brother, her sister, and the latter's romantic partner disappeared; ii) the fact that the name of the alleged victim appears in a "military diary" declassified in the year 2000; and iii) the fact that the investigation carried out by the

<sup>146</sup> On this point, it alleged that according to the terms and content of the aforementioned complaint, it could be appreciated that at no time had reference been made to a particular or special situation of vulnerability that, by its very nature and intensity, would have made it presume that the authorities the existence of a real and imminent risk to the life and integrity of the disappeared person. Neither in the aforementioned complaint nor in the subsequent statements of his relatives had it been indicated "that the fact of the disappearance could be the consequence of an investigation into illegal adoptions presumably carried out and/or coordinated by the disappeared person. The truth is that said information would have emerged a posteriori,

Mrs. Gutiérrez on irregular adoptions in Guatemala was used in a report published in January 2000 by the United Nations Special Rapporteur on the sale of children, child prostitution and the use of children in pornography.

123. In this regard, the Court recalls that the disappearance of a person because his whereabouts are unknown is not the same as a forced disappearance<sup>147</sup>. The forced disappearance of persons is a violation of human rights made up of three concurrent elements: a) 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 whereabouts of the person concerned<sup>148</sup>. Thus, it is for the Court to determine whether what happened to Mrs. Gutiérrez in this case constitutes a forced disappearance and, if so, it will analyze the pertinent violations of the rights to recognition of legal personality,<sup>149</sup> to life,<sup>150</sup> to personal integrity<sup>151</sup> and personal liberty<sup>152</sup>,

124. This Court has developed in its jurisprudence the multi-offensive nature of forced disappearance, as well as its permanent or continuous nature, in which the disappearance and its execution begin with the deprivation of the liberty of the person and the subsequent lack of information about their destination, and remains until the whereabouts of the disappeared person are known or their remains are found so that their identity can be determined with certainty. In this sense, the analysis of a possible forced disappearance must cover the entire set of facts that are presented to the consideration of the Court. Only in this way is the legal analysis of the possible forced disappearance consistent with the complex violation of human rights that it entails,

147 Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 14, 2014, para. 226.

148 Cf. Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 97, and Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, para. 226.

149 Article 3 of the Convention establishes: "Everyone has the right to have their legal personality recognized."

150 Article 4.1 of the Convention establishes: "Every person has the right to have his life respected. This right will be protected by law and, in general, from the moment of conception. No one can be deprived of life arbitrarily".

151 Article 5 of the American Convention establishes, as pertinent: "1. Every person has the right to have their physical, mental and moral integrity respected. 2. No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment. Every person deprived of liberty shall be treated with the respect due to the inherent dignity of the human being".

152 Article 7.1 of the Convention establishes: "Every person has the right to personal liberty and security."

153 Article 1.1 of the Convention establishes: "The States Parties to [the] Convention undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons who are subject to their jurisdiction, without discrimination of any kind. reasons of race, color, sex, language, religion, political or any other opinion, national or social origin, economic position, birth or any other social condition".

154 Article I of the CIDFP establishes: "The States Parties to this Convention undertake to: a) Not practice, not allow, or tolerate the forced disappearance of persons, not even in a state of emergency, exception, or suspension of individual guarantees; b) Punish the perpetrators, accomplices and accessories after the crime of forced disappearance of persons, as well as the attempted commission of the same; c) Cooperate with each other to help prevent, punish and eradicate the forced disappearance of persons; and d) Take the measures of a legislative, administrative, judicial or any other nature necessary to comply with the commitments assumed in this Convention".

155 Article II of the CIDFP establishes: "For the purposes of this Convention, forced disappearance is considered to be the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to report on the whereabouts of the person, thus preventing the exercise of the rights legal resources and the pertinent procedural guarantees".

156 Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006.



125. Due to the lack of direct evidence on the alleged forced disappearance, the Court recalls that the use of circumstantial evidence, indications, and presumptions to base a sentence is legitimate, provided that consistent conclusions about the facts can be inferred from them. In this regard, this Tribunal has indicated that the plaintiff bears, in principle, the burden of proof of the facts on which its allegation is based; However, it has highlighted that, unlike domestic criminal law, in proceedings on human rights violations, the defense of the State cannot rest on the impossibility of the plaintiff to adduce evidence, when it is the State that has control of the means to clarify events that occurred within its territory. Additionally,

126. Now, regarding the first two pieces of evidence presented by the representatives, as already indicated, according to statements by the daughter and brother of Mayra Gutiérrez, during the internal armed conflict in Guatemala, in 1982 Julio Gutiérrez Hernández, brother of the alleged victim and presumed activist in the guerrilla movement, was reportedly captured on the campus of the University of San Carlos, where he worked as a teacher, by a group of men who took him away in a vehicle, without his whereabouts being known. Likewise, Brenda Mercedes Gutiérrez, sister of the alleged victim and a student at the same University and who was also an activist of the guerrilla movement, disappeared in 1985 (*supra* para. 45).

127. On the other hand, with regard to the "military diary" referred to by the representatives, it should be noted that in a note of December 12, 2006, the Court requested the Human Rights Ombudsman to remit "the parts of the Guatemalan Army file allegedly made public in May 2000" that referred to the case of Mrs. Mayra Gutiérrez or her next of kin. Thus, on January 23, 2017, the Attorney General's Office submitted a brief in which it maintained that the information required by the Court was delivered to it in the year 2000 by the Secretariat for Strategic Analysis of the Presidency of the Republic (SAE) and that it consists of in the following three "data tables" containing various files<sup>158</sup>:

- a) "People", which "includes names of people and organizations with their respective numerical code";
- b) "Additional", which identifies individuals and appearances in print media, "but which has not been fully deciphered". This table would contain information classified "with an unknown coding system", and
- c) "Catalog", in which "six tables with code 1 to 6 are identified": 1) "Criminal record table"; 2) "Table of political affiliations"; 3) "Table of security codes"; 4) "Table of countries"; 5) "Table of professions [and] trades"; and 6) "Table of departments [and] municipalities".

128. As reported by the Human Rights Ombudsman, the "Persons" table can be related to the "Additional" table, by means of the person's code. However, "[w]e need a table that allows relating the [C]atalog table with the [P]ersons and [A]ditional tables." Now, with regard to Mrs. Mayra Gutiérrez, her name

Series C No. 153, para. 85, and Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, para. 229.

<sup>157</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, paras. 130, 131 and 135, and Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, para. 230.

<sup>158</sup> cf. SAE file (merits file, folios 1015-1020, and evidence file, folios 6706 bis 1 to 6706 bis 7).

appears in the "Persons" table, however, according to the Attorney General's Office, "no record related to the person code assigned to her was found in the '[A]ditional' table."

129. According to the record, the aforementioned files contain the records of about 650,000 people corresponding to the period from 1954 to December 1999, "which was the last date of entry of information found in [them]"<sup>159</sup>. In other words, the records of the declassified army archive date from the period of the internal armed conflict that Guatemala experienced between 1962 and 1996, and after it until 1999. In addition, according to a 2000 Amnesty International statement, the file was "apparently compiled by military intelligence in the 1980s" and "contains a list of 650,428 people, more than 6% of the population"<sup>160</sup>.

130. However, in previous cases, this Court has established that between 1962 and 1996 Guatemala experienced an internal armed conflict that caused great human, material, institutional and moral costs<sup>161</sup>. Within the framework of said conflict, the State applied the so-called "National Security Doctrine", based on which it used the notion of "internal enemy", which initially included guerrilla organizations but was expanded to include "all those persons who identified[with] the communist ideology or who belonged to an organization -union, social, religious, student-, or to those who for whatever reason were not in favor of the established regime"<sup>162</sup>. At the time of the internal armed conflict, the forced disappearance of persons in Guatemala also constituted a State practice carried out mainly by agents of its security forces<sup>163</sup>, with the purpose of dismantling the movements or organizations that the State identified as prone to "insurgency" and spreading terror in the population<sup>164</sup>. A peace process began in 1990 that culminated in December 1996 when the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unity (URNG), with the participation of civil society, signed the Firm and Lasting Peace Agreement, with the purpose of ending the armed conflict<sup>165</sup>. with the purpose of dismantling the movements or organizations that the State identified as prone to "insurgency" and spreading terror in the population<sup>164</sup>. A peace process began in 1990 that culminated in December 1996 when the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unity (URNG), with the participation of civil society, signed the Firm and Lasting Peace Agreement, with the purpose of ending the armed conflict<sup>165</sup>. with the purpose of dismantling the movements or organizations that the State identified as prone to "insurgency" and spreading terror in the population<sup>164</sup>. A peace process began in 1990 that culminated in December 1996 when the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unity (URNG), with the participation of civil society, signed the Firm and Lasting Peace Agreement, with the purpose of ending the armed conflict<sup>165</sup>.

131. The Court notes that the brothers of the alleged victim disappeared in 1982 and 1985, within the framework of said context. For her part, Mayra Gutiérrez, who allegedly belonged to guerrilla groups between 1977 and 1986 (supra para. 45), disappeared on April 7, 2000. In this regard, the Court does not have elements to establish whether the practice of forced disappearance used by the State during the internal armed conflict was extended after its formal conclusion in 1996 and up to the date on which Mayra Gutiérrez disappeared. On the other hand, it is not clear from the evidence before the Tribunal whether the files handed over by the SAE in which the name of Mayra Gutiérrez appears date from the time of the conflict or whether it is information compiled contemporaneously with the events of the present case<sup>166</sup>.

<sup>159</sup> Cf. Sworn statement before a notary public of Edgar Armando Gutiérrez Girón of October 18, 2016 (evidence file, folios 6702 and 6703).

<sup>160</sup> Cf. Communiqué of Amnesty International of the year 2000 (evidence file, folio 29). The translation is own. Original text: "The database, apparently compiled by military intelligence during the 1980s, was made public by the Secretary of Strategic Affairs of the Presidency (SAE), Secretary of Strategic Affairs of the Presidency, on 7 May 2000. It contains a list of 650, 428 people, more than [n] 6% of the population."

<sup>161</sup> Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Background. Judgment of April 29, 2004. Series C No. 105, para. 42.1, and Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 30, 2016, para. 76.

<sup>162</sup> Cf. Case of Gudiel Álvarez et al. v. Guatemala. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 54, and Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala, para. 77.

<sup>163</sup> Cf. Case of Bámaca Velásquez v. Guatemala, Merits. Judgment of November 25, 2000, para. 132, and Case of García and family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012, para. 54.

<sup>164</sup> Cf. Case of Molina Theissen v. Guatemala, Merits. Judgment of May 4, 2004, para. 40.1, and Case of García and family v. Guatemala, para. 120.

<sup>165</sup> Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Background. Judgment of April 29, 2004, para. 42.1, and Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala, para. 76.

<sup>166</sup> Said information was requested from the Human Rights Ombudsman, however, he indicated that he did not

of information was collected about her. Thus, the Court considers that these indications are insufficient, by themselves, to demonstrate that Mrs. Gutiérrez was deprived of her liberty by agents of the State or with their acquiescence.

132. On the other hand, regarding the third indication indicated by the representatives, related to the investigation carried out by Mrs. Gutiérrez on irregular adoptions in Guatemala, it is clear from the file that, in effect, in the years 1997 and 1999 (*supra* para. 44) the The alleged victim conducted investigations related to the adoption and trafficking of children in the country, in which the participants in the adoption processes were interviewed. Likewise, that the information collected in 1999 was sent to the United Nations Children's Fund (UNICEF)<sup>167</sup>.

133. On the other hand, in the "Report on the mission to Guatemala" of January 27, 2000 issued by the United Nations Special Rapporteur on the sale of children, child prostitution and the use of children in pornography, it is indicated that , during said mission, interviews were conducted with representatives of UNICEF, among other organizations. Likewise, the report indicates that UNICEF, in cooperation with the "Latin American Institute of Education and Communication" (ILPEC), "has established an investigation team on adoption, one of whose objectives is to promote the transparency of the adoption process." It also indicates that "[t]he team will submit its conclusions to Congress to help it in its study on [a] bill on adoption"<sup>168</sup>. According to the statement of a co-worker of Mayra Gutiérrez,

134. In this regard, the Court considers that the investigations related to the adoption and trafficking of children in the country by Mrs. Gutiérrez could provoke a reaction against her by the persons involved in them. However, from the information in the file before the Court, it is not possible to establish whether such a reaction against her occurred or not, nor whether said persons deprived her of her liberty as State agents or acting with the acquiescence of she.

135. In the next chapter of this Judgment, this Court determines that the investigations carried out by the State regarding the disappearance of Mayra Gutiérrez have not been diligent (*infra* paras. 147 to 196). Therefore, the possibility that what happened to her was a forced disappearance cannot be ruled out.

136. Notwithstanding the foregoing, the Court considers that the indications mentioned by the representatives and analyzed in this subheading are insufficient by themselves to establish that Mrs. Gutiérrez was deprived of her liberty by state agents or with their acquiescence. Therefore, the Court does not find sufficient elements to declare the responsibility of the State for the violation of Articles 3, 4, 5 and 7 of the Convention, in relation to Articles I and II of the Inter-American Convention on Forced Disappearance of Persons, regarding the alleged forced disappearance of Mrs. Gutiérrez.

It has the dates of creation of the files related to Mrs. Gutiérrez. Cf. Brief of the Human Rights Ombudsman of Guatemala and its annexes of June 14, 2017 (merits file folios 1105 to 1122).

<sup>167</sup> Cf. Preliminary report of the Criminal Investigation Service, Section for Minors and Disappeared Persons, National Civil Police, Guatemala, of April 25, 2000 (evidence file, folios 1022, 1024, 1025 and 1371); Third Preliminary Report of the Public Ministry of Guatemala, undated (evidence file, page 1305); Brief of the Guatemalan Human Rights Ombudsman of January 10, 2001 (evidence file, folio 1761-1762), and Study on adoptions and the rights of children in Guatemala. Guatemala, 2000. [Evidence file, page 6611].

<sup>168</sup> Cf. Economic and Social Council of the United Nations, Report on the mission to Guatemala (evidence file, folios 38 bis 3, 38 bis 7, 38 bis 20 and 38 bis 27).

<sup>169</sup> Cf. Statement of Estela Zamora of April 17, 2000, Preliminary report of the Criminal Investigation Service, Section for Minors and Disappeared Persons, National Civil Police, Guatemala, of April 25, 2000 (evidence file, folio 1025).

## **B.2. On the duty to prevent the violation of human rights**

137. Both the Commission and the representatives argued that in this case the State failed to comply with its duty to prevent violations of the rights of Mrs. Gutiérrez to life and personal integrity, given that, in an alleged context of violence against women known to the State, would not have taken any search measures during the first 48 hours after receiving the report of his disappearance. The Court will analyze these arguments below.

138. In the first place, in the case of Veliz Franco et al., the Court verified that although it was difficult to specify with full certainty the moment in which it began, in any case, in December 2001 the existence of a context of increased homicidal violence against women in Guatemala, and indications that it was known to the State<sup>170</sup>. However, in said case the Court also had information in the sense that between 1995 and 2004 the increase in the growth rate of homicides of women was twice the increase of men<sup>171</sup>. In addition, the Court documented that reports from organizations such as the United Nations Economic and Social Council, the United Nations Committee for the Elimination of Discrimination against Women, the United Nations Economic Commission for Latin America and the Caribbean, 2000<sup>173</sup>.

<sup>170</sup> Cf. Case of Veliz Franco et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 19, 2014, paras. 73, 81 and 152, and Case of Velásquez Paiz et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 19, 2015, para. 45. The Court notes that Guatemala approved Decree No. 22-2008 or Law against Femicide and other forms of Violence against Women in May 2008, which typified crimes of public action, among them, "femicide", stating in its article 3 that this crime consists of the "[v]olent death of a woman, caused in the context of unequal power relations between men and women, in the exercise of gender power against women." Cf. Case of Veliz Franco et al. v. Guatemala, note 68.

<sup>171</sup> Regarding the link between the general situation regarding violent deaths and the deaths of women, the Court cited the expert witness Ana Carcedo Cabañas, who indicated that between 2000 and 2006, "while the homicides of men between 1995 and in 2004 they increased by 68%, those of women did so by 141%, that is, they grew more than twice as fast as the former". Case of Veliz Franco et al. v. Guatemala, para. 77 and footnote 81, citing the expert opinion of Ana Carcedo Cabañas. Concordantly, Carcedo, Ana, "We do not forget or accept: Femicide in Central America 2000-2006", San José, Costa Rica, 2010, p. 41.

<sup>172</sup> Cf. Case of Veliz Franco et al. v. Guatemala, para. 75 and note 74, and Case of Velásquez Paiz et al. v. Guatemala, note. 27, citing the Economic Commission for Latin America and the Caribbean (ECLAC), "If it doesn't count, it doesn't count. Information on violence against women", Santiago de Chile, Chile, 2012, p. 246-247; United Nations Economic and Social Council. Commission on Human Rights 6th session, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Mission to Guatemala. UN Doc. E/CN.4/2005/72/Add.3, February 10, 2005, para. 28; Committee for the Elimination of Discrimination against Women. Pre-session working group. 35th period of sessions, May 15 to June 2, 2006. Replies to the list of issues and questions relating to the review of the sixth periodic report. Guatemala. UN Doc. CEDAW/C/GUA/Q/6/Add.1, March 27, 2006; Inter-American Commission on Human Rights, Report on the situation of Human Rights in Guatemala. OEA/Ser.LJ/V/II.111, Doc. 21 rev., April 6, 2001, Chapter XIII on the Rights of Women, para. 47, footnote 64. Available at: <http://www.cidh.org/countryrep/Guatemala01sp/cap.13.a.htm#E>. The Commission quoted the director of the "Domestic Violence" program of the United Nations Latin American Institute for Crime Prevention (ILANUD), who estimated in November 1999, "that half of all Guatemalan women suffer[ed] some form of violence, mainly physical". In addition, according to data from the MESECVI, the following evolution of the number of homicides of women in the country was presented: 1995: 150; 1996: 163; 1997: 249; 1998: 190; 1999: 179; 2000: 213; 2001: 215; 2002: 266; 2003: 282; 2004: 286. Cf. Case of Veliz Franco et al. v. Guatemala, para. 76, and Case of Velásquez Paiz et al. v. Guatemala, para. 46, citing the Follow-up Mechanism of the Belém do Pará Convention (MESECVI). Second Conference of States Parties. July 9 and 10, 2008. OEA/Ser.L/II.7.10, MESECVI-II/doc.31/08, June 24, 2008. Available at: <http://www.oas.org/es/mesecvi/docs/Questionnaire1-GuatemalaResponse.doc>, p. 74.

<sup>173</sup> Cf. Human Rights Ombudsman of Guatemala. Circumstantial Annual Report of 2000, published

139. From the foregoing it can be deduced that by the year 2000 gender-based violence and, in particular, homicidal violence against women, was a phenomenon on the rise in Guatemala. However, the evidence provided to the Court that documents said homicides of women dates from 2001 onwards,<sup>174</sup> therefore it has not been proven, on this occasion, that the state authorities were aware of this phenomenon in April 2000, when the events of this case occurred. This has the consequence that in the instant case the State does not apply the duty of strict due diligence in the face of reports of disappearance of women, with respect to their search during the first hours and the first days, which it has applied in other cases against Guatemala<sup>175</sup> .

140. However, according to the jurisprudence of the Court, a State cannot be responsible for any violation of human rights committed between individuals within its jurisdiction. In effect, the conventional guarantee obligations in charge of the States do not imply an unlimited responsibility of the latter for any act or fact of individuals, since their duties to adopt measures of prevention and protection of individuals in their relations with each other are conditioned to knowledge of a situation of real and immediate risk for a specific individual or group of individuals – or to the fact that the State should have known about said situation of real and immediate risk - and to the reasonable possibilities of preventing or avoiding that risk<sup>176</sup>. That is to say, Even if an act or omission by an individual has the legal consequence of violating certain human rights of another individual, it is not automatically attributable to the State, since it must be considered in light of the particular circumstances of the case and the realization of said guarantee obligations. . Thus, in order to establish a breach of the duty to prevent violations of the rights to life and personal integrity, it must be verified that: i) the state authorities knew, or should have known, of the existence of a real and immediate risk for the life and/or personal integrity of a determined individual or group of individuals, and that ii) such authorities did not adopt the necessary measures within the scope of their powers that, reasonably judged, could be expected to prevent or avoid that risk<sup>177</sup>.

141. In this case, there is no evidence that State authorities have received any complaint prior to the disappearance of Mrs. Gutiérrez regarding possible threats against her, the risks she would face, or the need for protection measures. In this regard, the record shows that the first time the authorities

in January 2001, Page 74. Available in: <http://www.pdh.org.gt/biblioteca/informes/category/9-informes-annual.html?start=10>.

<sup>174</sup> It should be noted that the Annual Report for the year 2000 of the Human Rights Ombudsman was published in February 2001 and the Fifth Report on the situation of Human Rights in Guatemala of the Inter-American Commission on Human Rights was published on April 6, 2001.

<sup>175</sup> Cf. Case of Veliz Franco et al. v. Guatemala, para. 141 and Case of Velásquez Paiz et al. v. Guatemala, para.

122. See also, Case of González et al. (“Campo Algodonero”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009, para. 283.

<sup>176</sup> Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006, para. 123, and Case of Velásquez Paiz et al. v. Guatemala, para. 109. In this sense, the European Court of Human Rights has understood that: “[...] not every alleged risk to life imposes on the authorities the conventional obligation to take operational measures to prevent that risk from materializing. For this positive obligation to arise, it must be established that at the time of the facts the authorities knew, or should have known, of the existence of a real and immediate risk to the life of an identified individual [...] regarding criminal acts by third parties. , and that such authorities did not take measures within the scope of their powers that, reasonably judged, could be expected to avoid said risk [...]”. (Translation by the Secretariat) Cf. ECHR, Case of Kiliç v. Turkey, No. 22492/93, Judgment of March 28, 2000, paras. 62 and 63, and ECtHR, Osman v. United Kingdom, No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116.

<sup>177</sup> Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006, para. 123, and Case of Velásquez Paiz et al. v. Guatemala, para. 109.

<sup>178</sup> Cf. Case of Castillo González et al. v. Venezuela. Background. Judgment of November 27, 2012. Series C No. 256, para. 131. See also, Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 159; Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 189; Case of Luna López v.

The state authorities became aware of the disappearance of Mayra Gutiérrez two days after it occurred, through the complaint of April 9, 2000 from a colleague of hers to Police Station 111 (supra para. 48). Therefore, at the time that Mrs. Gutiérrez disappeared, there were not enough elements to establish that she was in a situation of real and immediate risk that entailed the obligation on the part of the State to adopt special measures of protection and prevention in favor of her. Therefore, it is appropriate to analyze the alleged responsibility of the State for the response of its authorities to the complaint of her disappearance in the next chapter of this Judgment on the duty to investigate the facts with due diligence.

142. Based on all of the foregoing, the Court finds no responsibility of the State for the violation of its duty to guarantee the rights to life and personal integrity recognized in Articles 4.1 and 5.1 of the American Convention, in relation to the general obligation to guarantee contemplated in article 1.1 of said treaty.

## VII.II.

### **THE RIGHT TO GUARANTEES<sup>179</sup> AND TO JUDICIAL PROTECTION<sup>180</sup> (ARTICLES 8.1 AND 25.1 OF THE AMERICAN CONVENTION), IN RELATION TO ARTICLE 1.1 OF THE SAME, AND TO THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION (ARTICLES 1.1 AND 24 OF THE AMERICAN CONVENTION)<sup>181</sup>, AS WELL AS ARTICLE 7.B OF THE BELÉM DO PARÁ CONVENTION<sup>182</sup>**

#### ***A. Arguments of the parties and the Commission***

143. The Commission considered that the State violated Articles 5.1, 8.1 and 25 of the American Convention, in relation to the obligations established in Article 1.1 of the same instrument, as well as Article 1.b) of the Inter-American Convention on Forced Disappearance of Persons. (CIDFP), to the detriment of Mayra Angelina Gutiérrez and her next of kin, namely, her daughter Ángela María del Carmen Argüello Gutiérrez, her sisters Ángela (sic) and Nilda Gutiérrez, and her brother Armando Gutiérrez. In addition, it concluded the violation of the principle of equality and non-discrimination in access to justice, recognized in Article 24 of the American Convention. All this based on the following arguments:

a) It was "evident that neither the criminal investigation nor the habeas corpus remedies, nor the special investigation procedure were carried out with the due diligence that

*Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, paras. 125 and 126; Case of Human Rights Defender et al. v. Guatemala, paras. 144 to 149, and Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, paras. 518 to 530.

<sup>179</sup> Article 8(1) of the American Convention establishes: "Every person has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law, in the substantiation of any criminal accusation made against it, or for the determination of its rights and obligations of a civil, labor, fiscal or any other nature."

<sup>180</sup> Article 25 of the American Convention establishes: "1. Every person has the right to a simple and prompt recourse or any other effective recourse before the competent judges or courts, that protects them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed. by persons acting in the exercise of their official duties. 2. The States Parties undertake: a) to guarantee that the competent authority established by the legal system of the State will decide on the rights of any person who files such a remedy; b) to develop the possibilities of judicial recourse, and c) to guarantee the compliance, by the competent authorities, of any decision in which the recourse has been deemed appropriate".

<sup>181</sup> Article 24 of the American convention establishes: "all persons are equal before the law. consequently, they are entitled, without discrimination, to equal protection of the law."

<sup>182</sup> Article 7.b of the Belém do Pará Convention states: "The States Parties condemn all forms of violence against women and agree to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing, and eradicating said violence and in carrying out the following: [...] b. act with due diligence to prevent, investigate and punish violence against women".

it was required of the authorities", since the few initial steps taken during the first three months after the complaint continued to decrease progressively throughout the rest of the investigation and to date, with periods of absolute inactivity. In addition, habeas corpus appeals were processed and resolved in formal terms.

b) From the initial stage of the investigation, the logical lines were not followed based on the information available, since at least two hypotheses had emerged that established the possible relationship between the disappearance and state actors<sup>183</sup>, a strategy that responded to these lines was not designed. research. On the contrary, priority was given to the line relating to the alleged relationships of Mrs. Gutiérrez, without further objective elements. In addition, the 16 years that have elapsed from the filing of the complaint to date do not constitute a reasonable period of time.

c) The presence of gender stereotypes in several "parts of the file" is identified by referring to the research hypothesis regarding the alleged relationships of Mrs. Mayra Gutiérrez. The foregoing occurred in a context in which there were delays in the investigation of the disappearance of women, as well as the authorities did not proceed to search for the victims quickly and disqualified and blamed them for their actions, with the impact of understanding them as undeserving. of state actions to locate and protect them. In the present case, gender stereotypes shifted the blame for what happened to the victim and her relatives, closing off other possible lines of investigation. Thus, the research was not conducted with a gender perspective.

d) The disappearance of a loved one and the absence of a complete and effective investigation that causes suffering for not knowing the truth constitutes in itself an affectation to the mental and moral integrity of the relatives of Mayra Gutiérrez, who have expressed fear that it will happen to them. Something similar.

144. The representatives indicated that the State violated Articles 8 and 25 of the American Convention, in relation to Article 1(1). of the same, given the denial of effective remedies in favor of Mayra Gutiérrez and her relatives, who presented various habeas corpus remedies that did not result in a duly conducted investigation. They also maintained that more than 15 years have passed and the State has not provided an answer on the whereabouts of the alleged victim, "[w]hile there is an unjustified delay," and that the State authorities did not duly carry out the investigation. diligence and did not inform the next of kin of the investigations carried out. They also argued that the State has not complied with punishing the perpetrators of the crime of forced disappearance, violated the right to the truth and "denied information and access to prompt and enforceable justice in the courts of justice," violating the commitment contained in articles I and II of the CIDFP. They also highlighted that the "forced disappearance" of Mayra Gutiérrez violated the personal integrity of her next of kin in violation of Article 5 of the American Convention, and that the violations committed by the State extend over time and make the disappearance a kind of psychological torture against family members.

145. During the public hearing, they indicated that they believe that there is "a refusal to investigate on the part of the authorities", since "they try to cover something or cover up someone." They explained that in none of the investigations was there an analysis of the file from the army that was declassified and made public in the year 2000 by the Secretary for Security Affairs at that time, which would demonstrate that "there is indeed a [n] surveillance within the army at that time that survived the signing of the peace accords", and that

183 Namely: i) the active and visible participation of Mrs. Gutiérrez in the investigation on illegal adoptions and the rights of children in Guatemala, and ii) the alleged participation of Mrs. Gutiérrez during the armed conflict in the FAR, her alleged inclusion on a military intelligence list as "presumed subversive", the reports of forced disappearance of his brother and sister, and his alleged support for the political party Unión de Izquierda Democrática.

Mayra Gutiérrez was under surveillance by the Guatemalan army. Therefore, they considered it "necessary to declassify the military files that contain information on the victim." They added that recently and by order of a judge, Ángela María del Carmen Argüello Gutiérrez went to the judicial body to have some blood samples taken in order to carry out the DNA analysis, however, later "a judge ordered[ed] again that the proceedings be annulled," that is, "once again the State authorities themselves blocked the investigations."

146. The State maintained that the conventional precepts that refer to judicial guarantees and judicial protection are duly guaranteed in its domestic legal system, and denied the violation of Articles 5, 8, and 25 of the American Convention and Articles I and II of the the CIDFP, in the following terms:

a) Within the substantiation of the two habeas corpus appeals presented by the GAM, the State accepted and exhausted one of the available legal means whose purpose is to urgently determine the possible whereabouts of a disappeared person in the circumstances in which the events occurred. sub judge, verifying in the different public hospitals, national courts, police stations, stations or substations of the National Civil Police, detention centers throughout the country and through the services of the fire department, the possible whereabouts of Mrs. Mayra Gutiérrez. In this sense, she complied with her procedural obligation in terms of due diligence after ordering said actions to be carried out.

b) In the special investigation procedure, a "serious, impartial, and diligent investigation" was carried out, which exhausted the available investigative means and established that the disappearance cannot be attributable to State agents.

c) From the first moments and throughout the investigation, Guatemala has complied with its conventional obligations, and in this sense, it mentioned in detail the actions carried out by the bodies in charge of investigating the disappearance of the alleged victim. The investigation into the whereabouts of Mrs. Gutiérrez was carried out based on investigative lines that traced routes to find the alleged victim. Said investigative lines were based on the statements of next of kin and people close to the alleged victim<sup>184</sup>. Likewise, the investigation has not been suspended and all the actions of the Public Ministry to find the whereabouts of the alleged victim are still in force.

d) It maintained that the reasonable period of time in the investigation has been complied with for the following reasons: i) there is complexity in the fact that is being investigated since Mrs. Mayra Gutiérrez disappeared without leaving any trace, since the participation of several people is suspected and there are many versions of the facts, added to the fact that when the complaint was filed, more than 48 hours had already elapsed since the disappearance; ii) in this case the action

184 During the public hearing, the State maintained that it ruled out other lines of investigation such as the participation of Mayra Gutiérrez "in the counterinsurgency movement", determining that her name "does not appear in the records of this movement". In addition, it "reviewed the report of the United Nations Special Rapporteur in which they had allegedly made reference to an investigation carried out by Mrs. Gutiérrez on the subject of illegal adoptions and purchase of children, [...] and it was verified that said report of the UN makes no reference to said investigation". In this regard, in her final written arguments, she highlighted that "the related report on the illegal adoptions that she carried out [Mayra Gutiérrez], (not tested within the process) seems to be a short consult; Well, she was never a UNICEF employee; therefore it should not be considered as a forceful element to link her presumed disappearance ". According to the State, "the adoption issue took on a risk in the country after the adoption of the Adoption Law came into effect in 2007; and not before. [...] Likewise, she never belonged to the civil society movement that promotes and/or defends the rights of children in Guatemala." Added to this, the "Study on Adoptions and the Rights of Boys and Girls in Guatemala", prepared by Mayra Gutiérrez, "was eminently academic", "did not identify those responsible or evidence any criminal structure that existed at the time and had limited diffusion. Equally, [her] authorship of it was not attributed to her",



of relatives has been minimal; iii) the processing of the Public Prosecutor's Office has adhered to the lines of investigation arising from the inquiries and statements collected, likewise, the actions of the courts that were in charge of the two habeas corpus were carried out within a reasonable time with the objective of to find the whereabouts of the victim; and iv) the State, through its institutions, has expeditiously processed the actions undertaken since its inception.

e) At no time was there violence or discrimination against Ms. Mayra Gutiérrez and she was not disqualified or blamed for her actions. The line of investigation that inquired about the relationships that the alleged victim had was derived from the statements made by his family, friends, colleagues, and co-workers, and not from stereotypes or prejudices of public officials or employees in charge of the investigation.

f) It denied that the personal integrity of the relatives of Mayra Gutiérrez had been violated, and maintained that no evidence of the alleged consequences suffered had been presented. He pointed out that the next of kin are not always considered victims and that in order to constitute themselves as such, the suffering suffered must be a consequence of the attitude assumed by the State upon learning of the fact. In this case, he carried out the necessary steps to find the whereabouts of the alleged victim.

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

147. In accordance with the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due legal process (Article 8.1), all this within the general obligation to guarantee the free and full exercise of the rights recognized by the Convention to all persons under its jurisdiction (article 1.1). Likewise, the right of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to have everything necessary done to find out the truth of what happened and to investigate, prosecute and, where appropriate, punish the eventual responsible parties.

148. The duty to investigate is an obligation of means and not of result, which must be assumed by the State as its own legal duty and not as a simple formality preordained to be unsuccessful, or as a mere management of private interests, which depends of the procedural initiative of the victims or their relatives or of the private contribution of probative elements. The investigation must be serious, impartial, and effective, and be oriented toward determining the truth and the prosecution, capture, trial, and eventual punishment of the perpetrators of the facts. Likewise, due diligence requires that the investigating body carry out all the actions and investigations necessary to achieve the desired result. Otherwise, the investigation is not effective under the terms of the Convention<sup>186</sup>.

149. In cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and reinforced for those States that are Parties, with the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará. Article 7.b of said Convention specifically obliges the States Parties to use due diligence to prevent, punish and eradicate violence against women. Likewise, in its article 7.c it obliges the States Parties to adopt the necessary regulations to investigate and punish violence against women. So that

<sup>185</sup> Cf. Case of Fairén Garbí and Solís Corrales v. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 2, para. 90, and Case of Acosta et al. v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334, para. 131.

<sup>186</sup> Cf. Case of Velásquez Rodríguez. Merits, para. 177, and Case of Acosta et al. v. Nicaragua, paras. 132 and 136.

In the face of an act of violence against a woman, it is particularly important that the authorities in charge of the investigation carry it out with determination and efficiency, taking into account the duty of society to reject violence against women and the obligations of the State to eradicate it, and to give victims confidence in state institutions for their protection<sup>187</sup>. Consequently, the Court considers that, in application of the *iura novit curia* principle,<sup>188</sup> it is appropriate to analyze the arguments presented by the parties also in relation to Article 7.b of the Convention of Belém do Pará.

150. Furthermore, the Court recalls that at the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. On it rests the legal scaffolding of national and international public order and it permeates the entire legal system. States must refrain from carrying out actions that in any way are aimed, directly or indirectly, at creating situations of *de jure* or *de facto* discrimination<sup>189</sup>. In this sense, while the general obligation of Article 1.1 of the American Convention refers to the duty of the State to respect and guarantee, "without discrimination", the rights contained in said treaty, Article 24 protects the right to "equal protection of the law". That is to say, Article 24 of the Convention prohibits discrimination in law or in fact, not only with regard to the rights enshrined therein, but also with regard to all laws approved by the State and their application. In short, if a State discriminates in the respect or guarantee of a conventional right, it would violate article 1.1 and the substantive right in question. If, on the contrary, the discrimination refers to unequal protection of domestic law or its application, the fact must be analyzed in light of Article 24 of the Convention in relation to the categories protected by Article 1.1 thereof. 190. If a State discriminates in the respect or guarantee of a conventional right, it would violate Article 1.1 and the substantive right in question. If, on the contrary, the discrimination refers to unequal protection of domestic law or its application, the fact must be analyzed in light of Article 24 of the Convention in relation to the categories protected by Article 1.1 thereof. 190. If a State discriminates in the respect or guarantee of a conventional right, it would violate Article 1.1 and the substantive right in question. If, on the contrary, the discrimination refers to unequal protection of domestic law or its application, the fact must be analyzed in light of Article 24 of the Convention in relation to the categories protected by Article 1.1 thereof. 190.

151. In consideration of the foregoing, it must be analyzed, taking into account the statements of the parties and the Commission, whether or not the way in which the investigation into the disappearance of Mayra Gutiérrez has been carried out up to now constitutes a violation of the obligations derived from the rights enshrined in Articles 5.1, 8.1 and 24 and 25 of the American Convention, in

<sup>187</sup> Cf. Case of Fernández Ortega et al. v. Mexico, para. 193, and Case of Favela Nova Brasília v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333, para. 244.

<sup>188</sup> The Court recalls that international jurisprudence has repeatedly used the *iura novit curia* principle in the sense that the judge has the power, and even the duty, to apply the pertinent legal provisions in a case, even when the parties do not invoke them. expressly. Cf. Case of Velásquez Rodríguez v. Honduras. Merits, para. 163, and Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 107.

<sup>189</sup> Cf. Legal Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2013. Series A No. 18, paras. 101, 103 and 104, and Case of Workers of the Brasil Verde Farm v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 336.

<sup>190</sup> Cf. Case of Apitz Barbera et al. ("First Court of Administrative Litigation") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 209, and Case of Workers of the Brasil Verde Farm v. Brazil, para. 334. From a general perspective, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, "CEDAW") defines discrimination against women as "any distinction, exclusion or restriction based on sex that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by women, regardless of their marital status, on the basis of the equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural and civil or in any other sphere". In this sense, the Committee for the Elimination of Discrimination against Women of the United Nations (hereinafter, "the CEDAW Committee") has declared that the definition of discrimination against women "includes violence based on sex", that is, violence directed against a woman [i] because she is a woman or [ii] that affects her disproportionately." It has also stated that "[v]iolence against women is a form of discrimination that seriously prevents them from enjoying rights and freedoms on an equal footing with men." At the inter-American level, The Convention of Belém do Pará states in its preamble that violence against women is "a manifestation of historically unequal power relations between women and men" and also recognizes that the right of every woman to a life free from violence includes the right to be free from all forms of discrimination. Cf. Case of González et al. ("Campo Algodonero") v. Mexico, paras. 394 and 395, citing the Convention on the elimination of all forms of discrimination against women, of December 18, 1979, article 1; the Committee for the Elimination of Discrimination against Women, General Recommendation 19: Violence against Women, 11th period of sessions, 1992, paras. 1 and 6; and the Convention of Belém do Pará, preamble and article 6.

in relation to Article 1.1 thereof and Article 7.b of the Convention of Belém do Pará<sup>191</sup>. To this end, in this chapter the Court will analyze the following aspects:

- B.1. Lack of due diligence, presence of negative gender stereotypes in the investigation and its impact on following logical lines of investigation and reasonable time;
- B.2. Investigation into the complaint of an alleged forced disappearance, and
- B.3. Impact on the next of kin of Mayra Angelina Gutiérrez Hernández.

***B.1. Lack of due diligence, presence of negative gender stereotypes in the investigation and its impact on the follow-up of logical lines of investigation and reasonable time***

*i. Early stages of research*

152. In the first place, this Court has verified a series of lacks of due diligence in the early stages of the investigation into the disappearance of Mayra Gutiérrez since the authorities became aware of it. These are detailed below.

153. First, the file shows that the first time that the state authorities became aware of the disappearance of Mrs. Mayra Gutiérrez was on Sunday, April 9, 2000, at 3:00 a.m., when her co-worker Sofía Mazariegos Soto informed Station 111 of the PNC in this regard and specified that the alleged victim had not returned from a trip he had to Huehuetenango, "so it is presumed that something bad has happened to him" (supra para. 48). That same April 9, at 7:00 p.m., Armando Gutiérrez, brother of the alleged victim, appeared before Station 13.1 of Zone 5 of the PNC and reported that: i) Mayra Gutiérrez had disappeared two days ago and her family He had already searched for her "by all means" without any news of her; ii) she did not take her personal documents with her; iii) her work colleagues did not know about her, and iv) the family suspected the involvement of Mr. A, with whom Mrs. Gutiérrez had had a relationship that would have ended "due to problems that were unknown"<sup>192</sup>. However, there is no record that the authorities who interviewed Mr. Armando Gutiérrez on April 9, 2000, asked him the reasons why he suspected Mr. A's participation in the disappearance of his sister, nor that they carried out any other investigation. in this regard at that time, despite the fact that said complaint denoted the possible commission of interpersonal violence<sup>193</sup> and, therefore, the possible commission of gender-based violence.

<sup>191</sup> In For the reason that in the present case it is not clear whether those responsible for the disappearance were state agents and/or private agents, and that it is up to the State to clarify the facts through the corresponding internal investigations, the Court deems that it is not appropriate to carry out a specific analysis on the alleged violation of Articles I and II of the Inter-American Convention on Forced Disappearance of Persons. These articles state that: Article I. The States Parties to this Convention undertake to: a) Not practice, allow, or tolerate the forced disappearance of persons, not even in a state of emergency, exception, or suspension of individual guarantees; b) Punish the perpetrators, accomplices and accessories after the crime of forced disappearance of persons, within the scope of its jurisdiction, as well as the attempted commission thereof; c) Cooperate with each other to help prevent, punish and eradicate the forced disappearance of persons; and d) Take the measures of a legislative, administrative, judicial or any other nature necessary to comply with the commitments assumed in this Convention.

ARTICLE II. For the purposes of this Convention, forced disappearance is considered to be the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or the acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to inform about the whereabouts of the person, thus preventing the exercise of legal remedies and the pertinent procedural guarantees.

<sup>192</sup> Note from the Chief of Station 13.1 of April 9, 2000 (evidence file, folio 1585).

<sup>193</sup> This type of violence has been known as "domestic", "intra-family" or "interpersonal"; violence that occurs "within the couple", "in the home", "in the family" or "in the family unit"; or violence committed by "family members", among others. The Court notes that, in order to be compatible with articles 7.b and 7.c of the Convention of Belém do Pará, national legislation must be capable of preventing, punishing, and eradicating violence against women when such violence is perpetrated by persons with whom: i) they are or have been married or legally related; ii) are or have been engaged in marriage; iii) have cohabited or are currently

154. Second, despite the fact that on April 14, 2000, a visual inspection was carried out at the property of the presumed victim,<sup>194</sup> the body of evidence does not include any record related to said inspection or any document detailing its results. In this regard, it should be noted that on September 19, 2000, the technical consultant of the Public Prosecutor's Office recommended that a series of procedures be carried out that could contribute to the investigation of the case, and among them he mentioned attaching to the file the minutes of the inspection of the house of Mayra Gutierrez<sup>195</sup>.

155. Third, in her complaint of April 9, 2000, Sofía Mazariegos Soto declared that the day Mayra Gutiérrez disappeared, she had left her home "to make some payments at Unicentro" and, in her statement of April 12, 2000 Ángela María del Carmen Argüello reiterated that her mother had told her that she would make a payment in that place, "ignoring if she had made said payment"<sup>196</sup>. Despite this, there is no record in the file that the investigators went to the aforementioned center or verified whether the payment was made.

156. Fourth, the Court notes that in her statement of April 14, 2000, a neighbor of Mayra Gutiérrez indicated that she had seen her the day she disappeared, "at about 08:30 [hours,] [...]"

cohabitants; iv) live or have lived together, without the need to be sentimentally or legally related; v) have or have had a romantic or sexual relationship, without the need for them to be or have been legally bound; vi) have or are going to have a son or daughter; vii) are relatives or relatives; viii) have maintained a relationship of intimacy, courtship, friendship or companionship; and/or ix) when the woman is or has been hired as a domestic worker. They must also be capable of preventing, punishing, and eradicating violence against women perpetrated by persons who attempt or intended, repeatedly or continuously, to establish or reestablish a relationship or intimate relationship with the alleged victim. This list is not exhaustive.

See, Article 2.a, Convention of Belém do Pará; General Recommendation No. 19, Committee for the Elimination of Discrimination against Women, para. 24 b), k), r) and t); Guatemala, Decree No. 97-1996 Law to prevent, punish and eradicate intrafamily violence, November 28, 1996. Articles 1 and 7. Available at: <http://old.congreso.gob.gt/archivos/decretos/1996/gtdcx97-1996.pdf>; Argentina, Law No. 26,485 of 2009 on Comprehensive Protection to Prevent, Punish and Eradicate Violence against Women in the Areas in which They Develop their Interpersonal Relations, March 1, 2009, article 26. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/150000-154999/152155/norma.htm>; Brazil, Law No. 11,340, of August 7, 2006, creates mechanisms to cover domestic and family violence against women, in terms of § 8 of art. 226 of the Federal Constitution, of the Convention on the Elimination of All Forms of Discrimination against Women and of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; provide for the child two Domestic and Family Violence Courts against the Woman; alters the Code of Criminal Procedure, or the Criminal Code and the Law of Criminal Execution; e dá outras providências, of August 7, 2006, art. 22, available at: <http://www2.camara.leg.br/legin/fed/lei/2006/lei-11340-7-agosto-2006-545133-norma-actualizada-pl.html>; Colombia, Law No. 1257 of December 4, 2008 "by which norms of awareness, prevention and punishment of forms of violence and discrimination against women are issued, the Criminal Codes, Criminal Procedure, the Law

294 of nineteen ninety six and HE dictate others provisions", articles 8 and 17 Available at: <http://www.sdmujer.gov.co/images/pdf/ley1257.pdf>; Chile, Law 20,066 Law on Intrafamily Violence, October 7, 2005, articles 7 and 15, available at: <http://www.leychile.cl/Navegar?idNorma=242648>, and Law 19,968 Creates the Courts of Family, 7 of August of 2004, article 92, available at: <https://www.landychile.cl/Navegar?idNorma=229557>; Costa Rica, Law against Domestic Violence No. 7586, Article 3, available at: [http://www.pgrweb.gov.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=27926&nValue3=84069&m2=1&strTipM=TC&lResult=3&strSim=simp](http://www.pgrweb.gov.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=27926&nValue3=84069&m2=1&strTipM=TC&lResult=3&strSim=simp); Ecuador, Law against Violence against Women and the Family of eleven of December of 1995. Article 13. Available at: [http://www.cncine.gob.ec/imagesFTP/64255.Ley\\_contra\\_la\\_violencia\\_a\\_la\\_Mujer\\_y\\_la\\_Familia\\_.pdf](http://www.cncine.gob.ec/imagesFTP/64255.Ley_contra_la_violencia_a_la_Mujer_y_la_Familia_.pdf); Mexico, General Law on Women's Access to a Life Free of Violence, articles 8, 29 and 81. Available at: <http://legislacion.scjn.gob.mx/Buscador/Paginas/wfOrdenamientoDetalle.aspx?q=WVhKjmhCYz0ufl+8glULIOKRtBAaWggk3wJWIa8xCcZKV27nU7cDuXu6MXSHbZv>; Peru, Law for Protection against Family Violence, Article 10. Available at: [http://www.mpfm.gob.pe/Docs/0/files/4\\_6324653leydeproteccionfrentealaviolenciafamiliar.pdf](http://www.mpfm.gob.pe/Docs/0/files/4_6324653leydeproteccionfrentealaviolenciafamiliar.pdf); Protocol of Judicial Action for cases of Gender Violence against Women prepared by the XVII Ibero-American Judicial Summit in 2014, p. 51 et. I know that.; and Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, November 2014. Articles 52 and 56. Available at <https://www.myesssi.gob.es/ssi/igualdadOportunidades/internacional/consejoEU/CAHVIO.pdf>.

<sup>194</sup> written without date of the fiscal agent addressed to the Office of the Attorney General of the Republic (evidence file, folio 1676).

<sup>195</sup> Written sent to the Private Secretary of the Public Ministry on September 19, 2000 (evidence file, folios 1457 and 1461).

<sup>196</sup> Report preliminary report of April 25, 2000 (evidence file, folios 1358 and 1367 to 1368).

accompanied by a man who had his arms around her”, and provided a description of said person<sup>197</sup>. However, there is no record that the investigators have attempted to establish the identity of the person described<sup>198</sup>. This was verified in the report of the United Nations Verification Mission in Guatemala (MINUGUA) on the complaint of disappearance of Mayra Gutiérrez dated January 25, 2001,<sup>199</sup> which was included in the special investigation procedure (supra para. 100 ).

157. Fifth, it is on record that on April 17 and 24, and May 30, 2000, the investigators received information on the investigations carried out by Ms. Mayra Gutiérrez in relation to the adoption and trafficking of minors in Guatemala, and that they were reported that a research paper was delivered to UNICEF (supra paras. 51 and 60). Thus, following the recommendation of the technical consultant of the Public Ministry, on October 4, 2000, the fiscal agent requested said document from UNICEF (supra para. 64). However, it is clear that on March 13, 2004, approximately three and a half years later, the prosecutor once again asked UNICEF to “inform [the] Prosecutor if [Mayra Gutiérrez] collaborated with you in a study and investigation on adoptions established in Guatemala, what was its impact at the national and international level, and how it harmed the institutions and lawyers that are listed” (supra para. 76). The foregoing, despite the fact that since January 23, 2001, the Human Rights Ombudsman had incorporated said study into the file of the special investigation procedure (supra para. 100).

158. Sixth, the Court recalls that in the aforementioned report of September 19, 2000, the technical consultant of the Public Prosecutor pointed out various omissions in the investigation (supra para. 64). In particular, he indicated that “[t]he majority of the investigative procedures carried out by the Prosecutor's Office are not documented, which implies that they are legally non-existent, nor can we prove them in the face of any questioning of our institution. For example, it is stated that numerous people who have provided some type of information have been interviewed, but there are no written statements from them”<sup>200</sup>.

159. Seventh, in the aforementioned MINUGUA report (supra para. 100) reference was also made to other shortcomings in the early stages of the investigation, such as the manipulation of evidence and misinformation caused by people providing distorted or incomplete information on the Mrs. Gutiérrez, who were given credibility. In particular, it was held that “acts of obstruction and disinformation of persons linked to military intelligence have been recorded which, in addition to influencing the course of the official investigation [...] have influenced the perception of the case by of public opinion, high authorities of Congress, the Ministry of the Interior and the PNC”<sup>201</sup>.

160. Eighth, the Court notes that despite the fact that both the technical consultant of the Public Ministry and MINUGUA alerted the authorities investigating these deficiencies, there is no evidence that the pertinent rectifications have been made. On this point, in the MINUGUA Report of January 25, 2001, it was indicated that “during the verification, a notorious institutional absence of the Court of Instance, jurisdictional control body, was verified”<sup>202</sup>. fits

<sup>197</sup> Report preliminary report of April 2000 (evidence file, page 1345).

<sup>198</sup> Further Beyond speculating that it could be the physical description of Mr. A.

<sup>199</sup> Verification Report on the disappearance complaint of January 25, 2001 (evidence file, folio 1789).

<sup>200</sup> Brief sent to the Private Secretary of the Public Ministry on September 19, 2000 (evidence file, folio 1450).

<sup>201</sup> Cf. Verification report on the complaint of disappearance of Mayra Angelina Gutiérrez Hernández made by the United Nations Verification Mission in Guatemala (MINUGUA) on January 25, 2001 (evidence file, folios 1787 and 1789).

<sup>202</sup> Cf. Verification report on the complaint of disappearance of Mayra Angelina Gutiérrez Hernández made by the United Nations Verification Mission in Guatemala (MINUGUA) on January 25, 2001 (evidence file, folio 1788).

It should be noted that previously, in the Velásquez Paiz et al. Case, the Court noted that "[t]he lack of administrative controls over the prosecutor's activity means that there is no real concern for carrying out an adequate investigation"<sup>203</sup>.

*ii. Presence of negative gender stereotypes in research and their impact on following logical lines of research*

161. In second place, in the present case it is clear that during the first year after the disappearance of Mayra Gutiérrez, state agents investigating the facts made reports using derogatory language that emphasized the social and sexual behavior of the alleged victim. In particular, they reported suspicion that Mrs. Gutiérrez was in the place where she "had an affair with her lovers", that she was "sexually insatiable", that Mr. A and Mr. Luis Felipe Figueroa "made a chain or war of calls on her, possibly due to jealousy or another reason", and that Mrs. Gutiérrez would have breached "the loyalty pact stipulated within the free relationship that she had [with Mr. A]"<sup>204</sup>. In this regard, the MINUGUA report of January 25, 2001 points out that:

"The tax investigation in its first stage [...] did not meet the criteria of objectivity, impartiality and exhaustiveness [...]. For its part, the Criminal Investigation Service (SIC) of the PNC delivered a report to the authorities of the USAC [Universidad de San Carlos] where a notorious degree of misinformation was observed to elaborate versions about the life of Mayra Gutiérrez. This not only has not contributed to the investigation but, by denigrating the victim, it has provided elements to support an interpretation of the facts in which she appears to be responsible for her own disappearance"<sup>205</sup>.

<sup>203</sup> Cf. Case of Velásquez Paiz et al. v. Guatemala, para. 185.

<sup>204</sup> On April 28, 2000, the assigned prosecutor of the Public Ministry submitted a report stating that Mayra Gutiérrez was suspected of being in the property owned by Mr. B "because the disappeared woman frequently visited said house, place where he had love affairs with his lovers, so it is suspected that Mr. A is holding her in captivity against her will, since said person had a sentimental relationship with the disappeared woman and this place was the one they used to meet". Report of the prosecutor of the Public Ministry of April 28, 2000 (evidence file, folio 6072).

On June 13, 2000, the Section Chief of the Criminal Investigation Service of the Section for Minors and Disappeared Persons of the National Civil Police submitted a report in which he stated that the Section's investigators were "knowing that Mayra had a boyfriend named [LI], whom he respected as a father but that this man suffered from sexual impotence and [he] himself opened a bank account for Mayra, herself [who] is sexually insatiable, since she possibly suffers from a disease called antomania, finally They indicated that Mayra was quite hermetic since she told no one about her problems, nor did she receive money from her lovers." Report of the Section Chief of the Criminal Investigation Service of the Section for Minors and Disappeared Persons of the National Civil Police of June 13, 2000 (evidence file, page 6117).

On March 20, 2001, the investigating agent of the National Civil Police informed the tax agent of the details of the calls made to the residence of Mayra Gutiérrez by Messrs. A and Luis Felipe Figueroa between January and April of the year 2000, concluding that "[d]uring the months of February and March of the year 2000, [Mr. A] and Luis Felipe Figueroa Molina made four to five calls a day to Mayra Gutiérrez at different times. For which they made a chain or war of calls, possibly out of jealousy or another reason. Report of the National Civil Police of March 20, 2001 (evidence file, folio 3131).

On April 30, 2000, the Human Rights Ombudsman reported that "[t]he hypothesis raised by the investigation in this case was that of plagiarism or kidnapping [...] for motives of passion as a result of the analysis of the statements of the witnesses, documentary evidence and statement of the implicated Mr. [A]". In this regard, it explained that "[t]he action could be determined because [Mayra Gutiérrez] failed to comply with the loyalty agreement stipulated within the free relationship that she had [with Mr. A]," which would consist of "notifying the couple when was going to have an intimate relationship with another person. [Mr. A] said that he was unaware that Mayra Gutiérrez had an intimate relationship with Luis Felipe Figueroa Molina, but later acknowledged that Mayra breached the agreement by not having informed her [said] relationship." It added that Mr. A "never bothered to locate [...] Mayra Gutiérrez and in his statements he dedicated himself to denigrating her when her descriptions should have been different. Undoubtedly, the breach of the pact, jealousy and fear of HIV infection determined his actions ". Brief of the Human Rights Ombudsman (evidence file, folios 5551, 5556 and 5557).

<sup>205</sup> Verification report on the complaint of disappearance of Mayra Angelina Gutiérrez Hernández prepared by the United Nations Verification Mission in Guatemala (MINUGUA) on January 25, 2001 (evidence file, folio 1787).

162. Likewise, within the framework of the criminal investigation and the special investigation procedure, carried out in parallel, various investigative activities were carried out through which investigators from the Public Ministry and the Human Rights Ombudsman received information linking the disappearance of Mayra Gutiérrez with various people and alleged facts<sup>206</sup>. In this regard, it is clear that approximately five months after the disappearance, in the criminal investigation the theses on an alleged kidnapping, illegal detention and forced disappearance were ruled out, because "at no time has any ransom been requested for his release", for the habeas corpus in favor of Mayra Gutiérrez and because "at no time has there been news of a corpse that has the same characteristics as [...] Mayra Gutiérrez."

163. The Court considers that these hypotheses were ruled out without an exhaustive investigation having been carried out in this regard. Although during the first year of the investigation there was activity of the Public Ministry and the Human Rights Ombudsman through which information was obtained on important aspects that could have made it possible to clarify what happened, subsequently, there was no follow-up on those specific aspects in the investigation<sup>208</sup>.

164. In particular, no efforts were made to link to the investigation into the disappearance of Mayra Gutiérrez, the information that was available at that time about the

<sup>206</sup> In the framework of the criminal investigation, information was received that linked the disappearance of Mayra Gutiérrez to:

i) Mr. A; ii) Mr. C; iii) alleged economic problems; iv) the investigation he carried out on the adoption and trafficking of girls and boys in Guatemala; v) an alleged plagiarism or kidnapping practiced by ex-guerrilla elements; vi) an alleged forced disappearance; and vii) that Mrs. Gutiérrez could be sedated in a detention center for the mentally ill. On the other hand, within the framework of the special investigation procedure, it is clear that three theses were put forward: "1. Political kidnapping, either by state security forces"; "2. Kidnapping by elements of the ex-guerrilla"; and "3. Passionate kidnapping given that according to her ex-partner she had many boyfriends. Cf. Report of the investigators of the Public Ministry of April 2000 (evidence file, folios 6024 to 6026); Report of the National Civil Police investigators of April 25, 2000 (evidence file, folios 6054 to 6063); Report of the prosecutor of the Public Ministry of August 12, 2002 (evidence file, folio 6352); Report of the prosecutor of the Public Ministry of March 28, 2016 (evidence file, folios 5137 to 5139); Statement of Mr. A on April 18, 2000 rendered before the assistant prosecutor of the Public Ministry (evidence file, folio 6044); Statement made by Armando Gutiérrez on April 12, 2000, rendered before the assistant prosecutor of the Public Ministry (evidence file, folio 6036); Second preliminary report of the Public Ministry of May 16, 2000 (evidence file, folios 1298 to 1299); Third Preliminary Report of the Public Ministry without date (evidence file, folios 6106 and 6107); Report of the Human Rights Ombudsman of May 2, 2001 (evidence file, folios 5550 to 5557), and Report of the Human Rights Ombudsman of September 9, 2004 (evidence file, folios 5591 to 5592).

<sup>207</sup> On August 25, 2000, that is, approximately five months after the disappearance, the prosecutor in charge of the investigation reported that "an illegal detention cannot be established," "one cannot speak of a forced disappearance" and "A kidnapping crime is not framed." In addition, on December 7, 2000, the fiscal agent reported that "kidnapping [and] illegal [de]tention" had been ruled out from the investigation. Subsequently, on February 20, 2001, that is, approximately ten months after the disappearance, the prosecutor once again reported that "the elements" of the "kidnapping" and "forced disappearance" are not given, "it is not possible to speak of an extrajudicial execution" and "his illegal detention vanishes." In the same way, The fiscal agent reported on March 28, 2016 that the hypotheses "that it is a forced disappearance" and regarding the "investigation on the issue of adoptions, for UNICEF", were ruled out. Cf. Brief from the Public Ministry received on August 25, 2000 (evidence file, folio 5444); Hearing of the special investigation procedure of December 7, 2000 (evidence file, folio 5497); Report of the fiscal agent of February 20, 2001 (evidence file, folios 1650 to 1652), and Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139). page 5444; Hearing of the special investigation procedure of December 7, 2000 (evidence file, folio 5497); Report of the fiscal agent of February 20, 2001 (evidence file, folios 1650 to 1652), and Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139). page 5444; Hearing of the special investigation procedure of December 7, 2000 (evidence file, folio 5497); Report of the fiscal agent of February 20, 2001 (evidence file, folios 1650 to 1652), and Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139).

<sup>208</sup> It is on record that between the years 2001 and 2007, the investigative activity consisted of: a) checking with the Guatemalan immigration offices if there was any record of Mayra Gutiérrez entering or leaving the country, and determining her current place of residence; b) determine if Mayra Gutiérrez had used a false identity and false documents to leave Guatemala; c) examine the details of the incoming and outgoing calls from Mayra Gutiérrez's telephone number before and after her disappearance; d) locate the location of certain telephone numbers in Mexico and El Salvador, who supposedly received telephone calls from the telephone installed in the house of Mayra Gutiérrez; e) receive statements from people; f) find out if Mayra Gutiérrez was listed in the databases of guerrilla organizations; and g) request information and proceed to remove the female corpses identified as XX; and h) request information from UNICEF on whether Mayra Gutiérrez collaborated with that organization in a study on adoptions in Guatemala. (supra paras. 66 to 82 and 98 to 105).

alleged forced disappearances of his brother Julio Roberto Gutiérrez and his sister Brenda Mercedes Gutiérrez, who had supposedly been part of guerrilla groups and were a teacher and student, respectively, at the University of San Carlos (supra para. 45).

165. In addition, there is no evidence that further investigative efforts were made around the investigations carried out by Mayra Gutiérrez on the adoption and trafficking of girls and boys in Guatemala, nor if their content could have put their safety at risk, despite the fact that Through the interviews conducted by the PNC investigators, it was documented that Mrs. Gutiérrez had participated in at least two works that were delivered, one to the International Social Service (SSI) based in Geneva, Switzerland, and another to UNICEF (supra paras. 44 , 51 and 60). Even more, It is clear that the prosecutor of the Public Ministry reported on March 28, 2016 that said hypothesis was ruled out because the aforementioned investigation "did not have a high-profile connotation and during its development there were no indications of threats or intimidation that could indicate that his disappearance could be related to that investigation."<sup>209</sup> However, these statements were made without establishing what elements were taken into consideration or what mechanisms were used by the authorities that would have allowed them to reach that conclusion, especially considering that this line of investigation could eventually implicate state agents. and/or private agents.

166. Similarly, the investigation obtained information on Mayra Gutiérrez's membership in guerrilla groups during a period of the Guatemalan armed conflict. However, the only investigative efforts carried out in this regard focused, in April and May 2000, on the possibility that she met the guerrillas (supra paras. 56 to 58 and 67), without efforts being made to investigate. whether said membership could have provoked actions against it by other actors<sup>210</sup>.

167. Thus, in the criminal investigation, only two lines of investigation were expressly open and in force, one on the presumed "self-disappearance"<sup>211</sup>, and the other on the presumed "motivation of passion"<sup>212</sup>.

<sup>209</sup> Cf. Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139).

<sup>210</sup> On April 26, 2000, in a meeting held by the PNC investigators and the Public Ministry investigators assigned to the case, opinions and information were exchanged, "with the purpose of further investigating the investigation" and, among other things, indicated that it was believed that the motive for the disappearance was "SENTIMENTAL POLITICAL, since there is currently no war in Guatemala and the aid from International missions for Guatemalan Non-Governmental Institutions is ending, such as MUJERES ANGUSTIADAS, FAMDEGUA, GAM and others". Likewise, it was held "that the case of Mayra Gutiérrez was already sent to Geneva, Switzerland, with the purpose of making other countries believe that in Guatemala, there are still ENFORCED DISAPPEARANCES, so that the international missions continue sending [e]conomic aid to these institutions." Report of the PNC investigators of June 9, 2000 (evidence file, folio 5873).

On March 28, 2016, the tax agent informed the Private and Strategic Affairs Secretary of the Public Prosecutor's Office that on the hypothesis of the political motivation "regarding that some people from the family, professional and personal environment [...] linked [Mayra Gutiérrez] with the organization Unidad Revolucionaria Nacional Guatemalteca –URNG-, in the eighties with the Guerrilla Army of the Poor and[,] later[,] [...] [with] the New Nation Alliance, which could be related to his disappearance with these circumstances and with the internal armed conflict, however, based on the elements of conviction accumulated throughout the investigation, it is established that there is insufficient evidence to indicate that there was direct or indirect participation by members of the security forces of the [S]tate in the disappearance." Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139).

The Court notes that these affirmations were exposed without establishing what the alleged elements of conviction accumulated in the investigation would have been.

<sup>211</sup> On February 20, 2001, the tax agent reported that "SELF-DISAPPEARANCE: (Non-criminal Figure)", "is yet to be established in accordance with the results of the investigation." For their part, on August 10, 2000 and February 22, 2001, the prosecutor of the Public Ministry and the investigating agent of the PNC expressed the possibility that Mayra Gutiérrez was living outside of Guatemala. Cf. Report of the fiscal agent of February 20, 2001 (evidence file, folios 1650 to 1652); Expansion report of the prosecutor of the Public Ministry of August 10, 2000 (evidence file, folios 6131 and 6132), and Note from the Guatemalan National Civil Police of February 22, 2001 (evidence file, folios 1659 to 1661).

<sup>212</sup> On March 28, 2016, the assigned fiscal agent informed the Secretary for Private and Strategic Affairs of the Public Ministry that "[d]uring the course of the investigation, the hypothesis was developed that the disappearance [...] could be motivated by passion , derived from the sentimental relationship that [Mayra Gutiérrez] had with [Mr. A] and with



168. In turn, in the special investigation procedure it is stated that as of May 2, 2001 the thesis of political kidnapping by State security forces or by ex-guerrilla elements was ruled out, and that the only and valid hypothesis was followed. , plagiarism or kidnapping for "passionate motives"<sup>213</sup>, based on the fact that "without a doubt the breach of the pact" of "loyalty stipulated within the free relationship that he had [with Mr. A]" and "jealousy and fear of HIV contagion determined" his actions<sup>214</sup>. In these circumstances and under the hypothesis of "passionate motive", the investigation was carried out, which lasted for more than 12 years with multiple requests for extensions from the Office of the Human Rights Ombudsman to submit their respective reports (supra para. 106). , which were granted for years without any control mechanism<sup>215</sup>. It was not until August 9, 2013 that the Human Rights Ombudsman informed the Criminal Chamber of the Supreme Court of Justice that "there are sufficient indications that there was no direct participation, acquiescence or tolerance on the part [...] [of] agents of the State in the facts investigated"<sup>216</sup>, and on September 12, 2013, he submitted his Final Report to the latter, in which he indicated that the special investigation procedure "should be considered concluded because, based on the investigation, it cannot be speak of forced disappearance carried out by state agents or by third parties with their acquiescence and consent, and as a consequence, the mandate granted to this institution must be declared expired and the proceedings of the common criminal process before the Public Ministry must be followed."<sup>217</sup> Thus, the Court notes that conclusions were made on a hypothesis not investigated during those 12 years, that is, a possible forced disappearance.

169. In this regard, the Court reiterates that the gender stereotype refers to a pre-conception of attributes, behaviors or characteristics possessed or roles that are or should be performed by men and women respectively, and that it is possible to associate the subordination of women to practices based on socially dominant and persistent gender stereotypes. In this sense, its creation and use becomes one of the causes and consequences of gender violence against women, conditions that are aggravated when they are reflected, implicitly or explicitly, in policies and practices, particularly in the reasoning and the language of state authorities.

170. The influence of discriminatory sociocultural patterns can result in a disqualification of the credibility of the victim during the criminal process in cases of violence and

Luis Felipe Figueroa Molina, pointing in favor of this hypothesis, the simultaneity of the sentimental relationships before his disappearance, his relationship with Mr. [A] having ended a few days before [the] disappearance, and his insistence that the relationship to be continue. [...] [C]urrently it is not possible to rule out passionate motivation, so this hypothesis continues to be valid". Report of the fiscal agent of March 28, 2016 (evidence file, folios 5138 and 5139).

<sup>213</sup> In the special investigation procedure carried out by the Human Rights Ombudsman, it is clear that as of May 2, 2001, that is, one year after the disappearance of Mayra Gutiérrez, plagiarism or kidnapping for "passion motive", ruling out any other investigative theses. In this regard, the Prosecutor reported that said hypothesis resulted "from the analysis of the statements of the witnesses, documentary evidence and the statement of the implicated Mr. [A]." Said information was confirmed by the Human Rights Ombudsman through a report submitted on September 9, 2004. Cf. Report of the Human Rights Ombudsman of May 2, 2001 (evidence file, folios 5551 to 5557).

<sup>214</sup> Cf. Report of the Human Rights Ombudsman of May 2, 2001 (evidence file, folios 5551 to 5557).

<sup>215</sup> The Court notes that because the file does not fully document the steps taken in the investigations carried out by the Human Rights Ombudsman, this Court is not clear about the steps taken or the reasons why that they lasted over time.

<sup>216</sup> Report of the Human Rights Ombudsman received on August 9, 2013 (evidence file, folios 5994 and 5995).

<sup>217</sup> Report of the Human Rights Ombudsman received on September 12, 2013 (evidence file, folios 6009 and 6010).

<sup>218</sup> Cf. Case of González et al. ("Campo Algodonero") v. Mexico, para. 401, and Case of Velásquez Paiz et al. v. Guatemala, para. 180.

a tacit assumption of her responsibility for the facts, be it because of her way of dressing, because of her job occupation, sexual conduct, relationship or kinship with the aggressor, which translates into inaction on the part of prosecutors, police officers and judges before complaints of violent acts. This influence can also negatively affect the investigation of the cases and the evaluation of the subsequent evidence, which can be marked by stereotyped notions about what should be the behavior of women in their interpersonal relationships. Thus, according to certain international guidelines on violence against women and sexual violence, evidence relating to the victim's sexual history is in principle inadmissible,

171. On this point, the Court already indicated in the *Velásquez Paiz et al.* Case that "the concept of crime of passion is part of a stereotype that justifies violence against women. The qualifier 'passionate' places the accent on justifying the conduct of the aggressor". For example, "she killed her out of jealousy", 'in a fit of rage', are expressions that promote condemnation of the woman who suffered violence. The victim is blamed and the violent action of the aggressor is supported"<sup>220</sup>. In this sense, the Court rejects any state practice by which violence against women is justified and blamed for it, since evaluations of this nature show a discretionary and discriminatory criterion based on the behavior of the victim by the just being a woman. Consequently,

172. In this regard, it is worth insisting in general on the need to disqualify the practice of devaluation of the victim based on any negative stereotype, suitable for blaming a victim, and neutralize the devaluation of possible perpetrators.

173. The Court recognizes that personal prejudices and gender stereotypes affect the objectivity of state officials in charge of investigating the complaints that are presented to them, influencing their perception to determine whether or not an act of violence occurred, in their assessment of credibility. of the witnesses and of the victim herself. Stereotypes "distort perceptions and lead to decisions based on preconceived beliefs and myths, rather than facts," which in turn can lead to the denial of justice, including the re-victimization of the complainants<sup>222</sup>. When stereotypes are used in investigations of violence against women, the right to a life free of violence is affected, even more so in cases in which these stereotypes by legal operators prevent the development of appropriate investigations, denying, in addition, the right of access to justice for

<sup>219</sup> Cf. *Case of Véliz Franco et al. v. Guatemala*, para. 209. Article 54 of the Council of Europe Convention on preventing and combating violence against women and domestic violence establishes that "the Parties shall adopt the legislative or other measures necessary so that in any civil or criminal procedure, the Evidence relating to the sexual history and behavior of the victim is not admitted unless it is pertinent and necessary. The Rules of Procedure and Evidence of the International Criminal Court have also ruled on the importance of not inferring consent on the part of the victim in cases of sexual violence. Thus, for example, "credibility, the honor or sexual availability of the victim or a witness may not be inferred from the sexual nature of the victim's or a witness's prior or subsequent behavior" and "evidence of prior sexual behavior [is] inadmissible [... ] of the victim". Cf. *The Rules of Procedure and Evidence of the International Criminal Court*, rules 70 and 71.

<sup>220</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala*, para. 187, citing the expert opinion rendered before a notary public (affidavit) by Alberto Bovino in that case.

<sup>221</sup> Cf. Written expert opinion of Julissa Mantilla (evidence file, folios 6735 and 6736) citing: Human Rights Committee, General Observation 32: The right to a fair trial and to equality before courts of justice, 2007, para. twenty-one; Committee for the Elimination of Discrimination against Women, General Recommendation 33 on women's access to justice, 2015, paras. 26 and 27, and Committee for the Elimination of Discrimination against Women, case of Karen Tayag Vertido v. Philippines, Communication 18/2008, 2010, para. 8.4.

<sup>222</sup> Cf. Committee for the Elimination of Discrimination against Women, General Recommendation 33 on women's access to justice, 2015, para. 26.

women. In turn, when the State does not develop concrete actions to eradicate them, it reinforces and institutionalizes them, which generates and reproduces violence against women<sup>223</sup>.

174. In relation to the present case, the expert witness Julissa Mantilla indicated, during the public hearing, that once "the State centralizes itself in a single line saying that it was a crime of passion [...] the responsibility of the aggressor is removed and the It focuses on the victim, and that in some way, due to her personal relationships, due to her lifestyle, she had led to the consequences of her disappearance." Specifically, expert witness Mantilla highlighted the specific implications of the investigation. "[In the first place, by saying that] the cause of this violation of human rights was a private agent, the importance of the fact is minimized [...]. Secondly, when this hypothesis based on a stereotype is already established, the entire line of investigation and all the evidence and all the information is aimed at justifying this hypothesis [...]. The third element is [...] that 16 years have passed and there is no further information and also the State has not changed its line of investigation [...]. And the [fourth] element [is] the invisibility of other possible violations of human rights"<sup>224</sup>.

175. closing other possible lines of investigation on the circumstances of the case and identification of the perpetrators<sup>225</sup>. In the particular case of Mayra Gutiérrez, the use of a stereotype is observed to blame the victim for what happened, excluding the other hypotheses and discarding any other line of investigation, such as that related to the work carried out by the alleged victim on the adoption and trafficking of girls and boys in Guatemala and the complaint about their alleged forced disappearance.

176. The Court reiterates that judicial inefficiency in individual cases of violence against women fosters an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message according to which violence against women can be tolerated and accepted, which favors its perpetuation and the social acceptance of the phenomenon, the feeling and sensation of insecurity of women, as well as a persistent distrust of them in the justice administration system. Said inefficiency or indifference constitutes in itself discrimination against women in access to justice<sup>226</sup>.

177. Consequently, as it has done previously,<sup>227</sup> this Court considers that the aforementioned investigative omissions related to the failure to follow logical lines of investigation, were a direct consequence of a common practice of the authorities in charge of the investigation, oriented towards a stereotyped assessment of the victim, which together with the absence of administrative and/or jurisdictional controls that would make it possible to verify the investigations in this type of case, as well as the rectification of the

<sup>223</sup> Cf. Written expert opinion of Julissa Mantilla (evidence file, folio 6738), and Expert opinion of Julissa Mantilla rendered at the public hearing held on August 24, 2016.

<sup>224</sup> Cf. Expert opinion of Julissa Mantilla rendered at the public hearing held on August 24, 2016.

<sup>225</sup> Cf. Case of Veliz Franco et al. v. Guatemala, paras. 90, 210 to 212, and Case of Velásquez Paiz et al. v. Guatemala, paras. 49, 210 to 212.

<sup>226</sup> Cf. Cf. Case of González et al. ("Campo Algodonero") v. Mexico, paras. 388 and 400, and Case IV v. Bolivia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 317.

<sup>227</sup> Cf. Case of Velásquez Paiz et al. v. Guatemala, para. 191.

irregularities presented, affected the objectivity of said authorities, denying, in addition, the right of access to justice of Mrs. Mayra Gutiérrez and her next of kin.

*iii. Other lack of due diligence and reasonable time*

178. Third, there are other lacks of due diligence in the file that are described below.

179. First, it is clear that in the criminal investigation various procedures for recognition, removal and exhumation of the bodies of women buried as XX were requested after April 7, 2000 (supra paras. 66, 71, 78 and 82), as well as procedures to obtain the individual characteristics of Mayra Gutiérrez (supra paras. 65 and 74). However, the Court is not clear about the progress and concrete results of these proceedings. Specifically, there is no information on whether a database has been prepared on the individual characteristics, the biological and genetic profile, as well as the objects and personal documents carried, of the corpses of women buried as XX and of Mrs. Mayra Gutiérrez, in order to compare the data and establish a positive identification.

180. Second, it should be noted that the line of investigation that linked Mr. A to the disappearance of Mayra Gutiérrez also presented serious deficiencies. In this regard, it is clear that on April 13, 18 and 26, 2000 said person stated that he was a friend and sentimental partner of Mayra Gutiérrez, that the last time he saw her was on April 3, 2000 at the University of San Carlos, that the last time he spoke with her was by telephone on April 6, 2000, and that that day he left for Honduras to give a workshop, returning to Guatemala on April 9, 2000. Regarding this aspect, on the 16th, On April 24 and 26, 2000, PNC investigators verified the migratory movement of Mr. A, "establishing that said person was indeed abroad at the time of [Mayra Gutiérrez]'s disappearance." Nevertheless, Due to the alleged contradictions as to whether he had left on April 6, 2000 for the Republic of Mexico or for the Republic of Honduras,<sup>228</sup> as of April 12 and 25, 2000, investigators from the Public Ministry and the PNC they were the main suspect and responsible for the disappearance<sup>229</sup>. However, it was not until February 1, 2002 that Mr. D's statement was obtained in the sense that from April 6 to 9, 2000, Mr. A was in the Republic of Honduras for the purpose of giving a workshop<sup>230</sup>. In addition, although on July 6, 2001, Mr. A was declared in absentia and his arrest was ordered,<sup>231</sup> for more than As of April 12 and 25, 2000, investigators from the Public Ministry and the PNC had him as the main suspect and person responsible for the disappearance<sup>229</sup>. However, it was not until February 1, 2002 that Mr. D's statement was obtained in the sense that from April 6 to 9, 2000, Mr. A was in the Republic of Honduras for the purpose of giving a workshop<sup>230</sup>. In addition, although on July 6, 2001, Mr. A was declared in absentia and his arrest was ordered,<sup>231</sup> for more than

<sup>228</sup> Cf. Report of the PNC investigators of April 25, 2000 (evidence file, folio 6062); Report of the prosecutor of the Public Ministry of January 18, 2002 (evidence file, folio 6323); Document addressed to the First Criminal Justice of the Peace on Duty on April 28, 2000 (evidence file, folios 6072 to 6074), and Brief of the Human Rights Ombudsman (evidence file, folio 5556).

<sup>229</sup> Cf. Note from the Public Ministry of April 12, 2000 (evidence file, folio 6037), and Report of the PNC investigators of April 25, 2000 (evidence file, folio 6062).

<sup>230</sup> In this regard, it explained that "we picked him up on April 6, two thousand at the SAN PEDRO SULA airport in the [R]epublic of Honduras, approximately twenty hours after the flight [from] Guatemala to Honduras," and that the workshop had been carried out "with approximately fifteen people". Cf. Statement of Mr. D before the prosecutor of the Public Ministry on February 1, 2002 (evidence file, folios 6325 and 6326).

<sup>231</sup> On May 2, 2001, the Human Rights Ombudsman asked the controlling Judge to order the statement of Mr. A "for the crime of plagiarism or kidnapping." In response, said Judge summoned Mr. A to receive his statement as defendant on May 15 and July 3, 2001, without his having appeared. Therefore, the Prosecutor asked the controlling Judge to order his rebellion, arrest and arrest warrant. On July 6, 2001, said Judge declared Mr. A in absentia and ordered his arrest as "indicted for the crime of concealing himself." The decision of July 6, 2001 was appealed by Mr. A, without the appeal being heard as it was not appealable. Additionally, his defense attorney filed the exception of lack of action within the criminal proceeding, which was declared inadmissible on September 21, 2004. Since his arrest was ordered, the Human Rights Ombudsman reported that it was presumed that Mr. A would be in Mexico City. Cf. Report of the Human Rights Ombudsman of April 30, 2001 (evidence file, folio 5560); Note of the Second Criminal First Instance Judge of June 21, 2001 (evidence file, page 6288); Report of the Public Ministry of August 6, 2002 (evidence file, page 6342); Note of the Second Criminal First Instance Judge of October 2, 2003 (evidence file, page 5531); Brief from the Human Rights Ombudsman received on the Human Rights Ombudsman reported that Mr. A was presumed to be in Mexico City. Cf. Report of the Human Rights Ombudsman of April 30, 2001 (evidence file, folio 5560); Note of the Second Criminal First Instance Judge of June 21, 2001 (evidence file, page 6288); Report of the Public Ministry of August 6, 2002 (evidence file, page 6342); Note of the Second Criminal First Instance Judge of October 2, 2003 (evidence file, page 5531); Brief from the Human Rights Ombudsman received on the Human Rights Ombudsman reported that Mr. A was presumed to be in Mexico City. Cf. Report of the Human Rights Ombudsman of April 30, 2001 (evidence file, folio 5560); Note of the Second Criminal First Instance Judge of June 21, 2001 (evidence file, page 6288); Report of the Public Ministry of August 6, 2002 (evidence file, page 6342); Note of the Second Criminal First Instance Judge of October 2, 2003 (evidence file, page 5531); Brief from the Human Rights Ombudsman received on page 6288); Report of the Public Ministry of August 6, 2002 (evidence file, page 6342); Note of the Second Criminal First Instance Judge of October 2, 2003 (evidence file, page 5531); Brief from the Human Rights Ombudsman received on page 6288); Report of the Public Ministry of August 6, 2002 (evidence file, page 6342); Note of the Second Criminal First Instance Judge of October 2, 2003 (evidence file, page 5531); Brief from the Human Rights Ombudsman received on

For 15 years this line of research has remained inactive, without reaching a conclusion on it.

181. Third, it emerges from the file that on January 21, 2004, a statement was received from Mayra Gutiérrez's brother, Armando Gutiérrez, who named Mr. C, Head of the Technical Evaluation Office of the University of San Carlos in in the year 2000, because Mrs. Gutiérrez realized that he "had stolen money that had to be invested in the infrastructure of said center," for which reason it constituted "a great and serious obstacle for the Rectorry" (*supra* para. 77). In response, and only three years later, on August 17, 2007, Mr. C filed a statement with the prosecutor of the Public Prosecutor's Office,<sup>232</sup> without any subsequent investigations in this regard.

182. Fourth, the investigative activity of the Public Ministry progressively decreased until it reached absolute inactivity. Thus, after 2007 there is no record of the practice of any subsequent procedure.

183. Finally, the Court recalls that the right of access to justice requires that the determination of the facts under investigation be made effective within a reasonable period of time. This Court has indicated that the "reasonable term" referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the proceeding that is carried out until the final judgment is delivered<sup>234</sup>. In this regard, in this case, a period of ten years has been verified without activity by the Public Ministry<sup>235</sup> and the case remains in the investigation stage, more than 17 years after the disappearance of Mrs. Mayra Gutiérrez. Therefore, it is clear that the duty to investigate has not been fulfilled within a reasonable period of time.

*iv. Conclusions regarding the lack of due diligence, follow-up of lines of investigation and reasonable time*

184. Due to all of the foregoing, the Court considers that from the early stages of the investigation there were lacks of due diligence in the follow-up given to the information collected. Likewise, in the present case, a stereotyped assessment of Mayra Gutiérrez was made, she prejudged herself on the motive, focusing the investigation on her personal relationships and lifestyle. Negative gender prejudices and stereotypes affected the objectivity of the agents in charge of the investigations, closing possible lines of investigation into the circumstances of the case. In addition, the investigation into the disappearance of Mayra Gutiérrez has been characterized by the absence of administrative and/or jurisdictional controls that make it possible to rectify her irregularities. All this resulted in the

September 9, 2004 (evidence file, page 5592); Brief from the Human Rights Ombudsman received on February 2, 2005 (evidence file, folio 5604); Report of the prosecutor of the Public Ministry of March 28, 2016 (evidence file, folio 5138); Report of the Human Rights Ombudsman of August 9, 2013 (evidence file, folio 5995), and Brief from the fiscal agent received on August 10, 2001 (evidence file, folio 6290).

<sup>232</sup> Cf. Preliminary Investigation Report of the National Civil Police (evidence file, folios 3306 to 3308), and Statement rendered by Mr. C (evidence file, folio 3725).

<sup>233</sup> Cf. Case of Radilla Pacheco v. Mexico, para. 191, and Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330, para. 157.

<sup>234</sup> Cf. Case of Suárez Rosero v. Ecuador. Background. Judgment of November 12, 1997. Series C No. 35, para. 71, and Case of Andrade Salmón v. Bolivia, para. 157.

<sup>235</sup> After 2007, only steps were taken by the Human Rights Ombudsman, such as requests for extension (*supra* para. 106) and requests for information to the General Directorate of Migration, the National Compensation Program, the National Civil Police, the National Registry of Persons, the Unified Tax Registry of the Superintendence of Tax Administration, Telecommunications of Guatemala and the Regional Information Center of Mesoamerica. Note from the Human Rights Ombudsman of November 7, 2012 to the General Directorate of Migration (evidence file, folio 4826); Note from the Human Rights Ombudsman of November 2, 2012 to the National Compensation Program (evidence file, page 4827); Note from the Human Rights Ombudsman of November 2, 2012 to the Mesoamerica Regional Information Center (evidence file, folio 4828), and Report of the Human Rights Ombudsman of October 15, 2012 (evidence file, folios 5943, 5947, 5949 and 5950).

case was not investigated seriously, rigorously or exhaustively, remaining in impunity for more than 17 years, which constituted a form of discrimination in access to justice for reasons of gender. In the present case, the deficiencies, shortcomings, and omissions in the investigation represent a violation of the requirement of due diligence and the reasonable period of time in the investigation and criminal prosecution of the disappearance of Mayra Gutiérrez.

185. For all these reasons, in the framework of the investigations in this case, the State violated both the right to equal protection of the law (Article 24) and the duty to respect and guarantee without discrimination the rights contained in the American Convention (Article 1(1) ), without it being necessary to make a distinction between the two forms of discrimination, as well as Articles 8.1 and 25 of the American Convention, in relation to Article 1.1 of the treaty, and with Article 7.b of the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women ("Convention of Belém do Pará"), to the detriment of Mayra Angelina Gutiérrez Hernández and her relatives.

### ***B.2. Investigation into the complaint of an alleged forced disappearance***

186. Whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, a criminal investigation should be launched. This obligation is independent of the filing of a complaint, since in cases of forced disappearance international law and the general duty to guarantee impose the obligation to investigate the case *ex officio*, without delay, and in a serious, objective and effective manner. in such a way that it does not depend on the procedural initiative of the victim or their relatives or on the private contribution of evidence. The State must provide the corresponding authorities with the logistical and scientific resources necessary to collect and process the evidence and, in particular, of the powers to access the relevant documentation and information to investigate the facts denounced and obtain clues or evidence of the location of the victims. All state authorities are obliged to collaborate in the collection of evidence, so they must provide the trial judge, prosecutor or other judicial authority with all the information required and refrain from acts that imply obstruction to the progress of the investigative process<sup>236</sup>. In the case of human rights violations, state authorities cannot rely on mechanisms such as state secrecy or the confidentiality of information, or for reasons of public interest or national security, to stop providing the information required by the judicial authorities. or administrative authorities in charge of the pending investigation or proceeding<sup>237</sup>.

187. In particular, in the case of a complaint of forced disappearance, this Court has considered that the writ of habeas corpus or habeas corpus represents the ideal means to guarantee freedom, control respect for the life and integrity of the person, and prevent their disappearance or the indeterminacy of his place of detention<sup>238</sup>. However, these remedies must not only exist formally in the law, but must also be effective<sup>239</sup>, and to be effective they must meet the objective of obtaining a decision on the legality of the arrest or detention without delay<sup>240</sup>, without being considered effective. those

<sup>236</sup> Cf. Case of Velásquez Rodríguez v. Honduras. Merits, para. 177, and Case of Vásquez Durand et al. v. Ecuador, paras. 149 and 203.

<sup>237</sup> Cf. Case of Myrna Mack Chang. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 180, and Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, para. 202.

<sup>238</sup> Cf. Habeas corpus under suspension of guarantees (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35, and Case of García and family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C No. 258, para. 142.

<sup>239</sup> Cf. Case of Velásquez Rodríguez. Merits, para. 63, and Case of Vélez Loo v. Panama. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 129.

<sup>240</sup> Cf. Case of Acosta Calderón v. Ecuador, para. 97, and Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, para. 281.

resources that, due to the general conditions of the country or even due to the particular circumstances of a given case, are illusory<sup>241</sup>.

188. Based on the standards indicated, the Court will proceed to analyze the arguments presented by the parties and the Commission in the following order: a) the manner in which the habeas corpus remedies were processed and resolved; b) the circumstances under which the hypothesis of an alleged forced disappearance was ruled out in the criminal investigation; c) the omission to include in the criminal investigation and in the special investigation procedure the declassified file of the Army in the year 2000 that would contain databases elaborated by the military intelligence services, and d) the conclusions of this section will be made.

189. In the first place, in the present case it is clear that after the disappearance of Mayra Gutiérrez two writs of habeas corpus were filed on April 11 and May 3, 2000, and one more between April and May 2000. Said writs were settled respectively on June 1, 2000, May 15, 2000 and March 23, 2001, that is, in periods of 51 days, 12 days and more than 10 months. The first two appeals were declared "admissible" and "admissible" respectively, ordering the Public Ministry to initiate the "investigation of the whereabouts" of Mrs. Gutiérrez, and the third appeal was declared "dismissed" without ordering "the investigations of the case because the Public Prosecutor is already in charge of an investigation into the disappearance of the person shown."<sup>242</sup> Within the framework of the three appeals filed, the judicial authorities officiated at various courts, State security institutions, and public agencies, and in all cases the response received from the authorities was that there was no information related to the disappearance. Likewise, the judiciary carried out verifications and searches in detention centers, police stations and military barracks, whose facilities they toured and/or reviewed with negative results, and in some of them Mayra Gutiérrez was called "loudly", without obtaining a response (supra paras 89, 92 and 94, as well as footnotes 108 and 112).

190. In this regard, the Court does not have information about the reasons why the centers were chosen where the verifications, searches, and tours of the facilities were carried out, and because the complete file of habeas corpus resources is not available, There is also no information on how many centers were verified or what type of procedures were carried out in them. Likewise, there is no clarity regarding the reasons why the centers where the "voice" review was carried out were chosen, appearing to be a mere random selection<sup>243</sup>. In this sense, although the habeas corpus resources could have been suitable for investigating and determining the whereabouts of Mayra Gutiérrez or making important progress in this regard, Due to the fact that the judicial activity was limited to the mere formal verification of the lack of detention of the disappeared person, said remedies were not carried out diligently. In addition, with respect to the third appeal resolved on March 23, 2001, the Court notes that the investigations carried out up to that moment by both the Human Rights Ombudsman and the Public Ministry were not examined, in order to shed light on the aspects in which the search procedures could be directed. Neither was an effort made to determine which authorities could be required to provide specific information related to the disappearance. The Court notes that the investigations carried out up to that moment by both the Human Rights Ombudsman and the Public Prosecutor's Office were not examined, in order to shed light on the aspects in which the search procedures could be directed. Neither was an effort made to determine which authorities could be required to provide specific information related to the disappearance. The Court notes that the investigations carried out up to that moment by both the Human Rights Ombudsman and the Public Prosecutor's Office were not examined, in order to shed light on the aspects in which the search procedures could be directed. Neither was an effort made to determine which authorities could be required to provide specific information related to the disappearance.

191. Secondly, in the present case it has been established that in the framework of the criminal investigation information was received that linked the disappearance of Mayra Gutiérrez to an alleged illegal detention and forced disappearance carried out by state agents. Without

242 Habeas corpus resolutions of May 15 and June 1, 2000, and March 23, 2001 (evidence file, folios 5410, 5411, 5428, 5429, 2565 and 2966).

243 Mutatis mutandis, Case of García and family v. Guatemala, para. 143.



However, the prosecutor of the Public Ministry reported on August 25, 2000, December 7, 2000, and February 20, 2001 that, among other things, said hypotheses were ruled out based on the results of the two writs of habeas corpus that established that "she is not in any place of detention, such as the police stations, stations, or substations of the National Civil Police, [and] women's preventive centers," for which reason she considered that "an illegal detention cannot be established." In addition, given that "at no time has there been any news of a corpse that meets the same characteristics as [...] Mayra Gutiérrez", and that in "the [p]ersonal exhibits, it was established that it is not hidden in no State Institution", estimated that "one cannot speak of a forced disappearance"<sup>244</sup> (supra para. 162 and footnote 204). Consequently, although the criminal investigation has remained open for 17 years, it was not until the first year after it began that a possible forced disappearance was ruled out.

192. For the Court, two aspects are fundamental in terms of the lines and hypotheses of investigation regarding a possible illegal detention and/or forced disappearance ruled out in the criminal investigation. First, it has been established in this Judgment that the two writs of habeas corpus decided at the domestic level on May 15 and June 1, 2000 were respectively declared "admissible" and "admissible", ordering the initiation of the "investigation of the whereabouts" of Mrs. Mayra Gutiérrez for the Public Ministry. Therefore, given that what was appropriate according to what was resolved was to continue with the investigation, it is clear that ruling out research lines and hypotheses based on the results of said appeals was not appropriate in the present case. Even more, when even the third writ of habeas corpus resolved on March 23, 2001 did not order the investigations of the case because the Public Ministry was already in charge of an investigation into the disappearance of the person exhibited (supra para. 189). Second, as previously mentioned, by August 23, 2000, the prosecutor had already ruled out the possibility that what happened to the alleged victim could constitute a forced disappearance, because "at no time has there been any news of a dead body that has the same characteristics as [...] Mayra Gutiérrez" (supra para. 191). About, In its jurisprudence, this Court has been emphatic in recognizing that one of the characteristics of forced disappearance that differs from extrajudicial execution is precisely the refusal of the State to recognize that the victim is under its control and to provide information in this regard for the purpose of to generate uncertainty about his whereabouts, life or death<sup>245</sup>. In this sense, the lack of a corpse is not a sufficient reason to rule out the possible forced disappearance of the victim in the criminal investigation.

193. Thirdly, it emerges from the file that in May 2000 the Secretariat for Strategic Analysis of the Presidency of the Republic (SAE) declassified an Army file and handed it over to the Office of the Human Rights Ombudsman<sup>246</sup>. The complete electronic copy of the files was also publicly delivered to the Attorney General and Head of the Public Ministry for the corresponding legal purposes. For his part, "the Human Rights Ombudsman opened a consultation office where citizens could go to find out if there was anything on them and what information might have been recorded." Said file would contain the record of about 650,000 people corresponding to the period from 1954 to December 1999, "which was the last date of entry of information found in said files," as explained by the then Secretary of the SAE<sup>247</sup>. The file consists of three databases identified as "Persons", "Additional" and "Catalog". The Rights Ombudsman

<sup>244</sup> Cf. Brief from the Public Ministry received on August 25, 2000 (evidence file, folio 5444); Hearing of the special investigation procedure of December 7, 2000 (evidence file, folio 5497), and Report of the fiscal agent of February 20, 2001 (evidence file, folios 1650 to 1652).

<sup>245</sup> Cf. Case of Velásquez Rodríguez v. Honduras. Merits, para. 157, and Case of Vásquez Durand et al. v. Ecuador, paras. 105, 126, 133 and 136.

<sup>246</sup> Cf. Brief of the Human Rights Ombudsman forwarded to the Inter-American Court on January 23, 2017 (merits file, folios 1014 to 1017).

<sup>247</sup> Cf. Sworn statement before a notary public of Edgar Armando Gutiérrez Girón on October 18, 2016 (evidence file, folios 6702 and 6703).

Humanos explained that the name of Mayra Angelina Gutiérrez Hernández appears and has been assigned the "person code 152397", however, no record related to her person code was found in the "additional" table, in addition, a table is missing that allows the table "catalog" to be related to the tables "persons" and "additional" (supra paras. 127 and 128).

194. This Tribunal recognizes and appreciates the efforts made by Guatemala to preserve the aforementioned Army file, and prevent its theft or destruction so that the perpetrators of human rights violations go unpunished. In the same way, it is of special importance that consultation of the same has been facilitated through the Office of the Human Rights Ombudsman in the interest of the victims, their relatives and the general public. All of this is a significant contribution to strengthening the main internal mechanisms for the protection of rights and the consolidation of a democratic society. However, the Court notes that despite the fact that the aforementioned file was declassified more than 17 years ago, to date there is no evidence that the State has delved into its origin and purpose, nor the reasons and consequences of the existence of said registry and file, nor that efforts have been made to fully decipher or interpret its content. Indeed, the act of declassifying a file does not imply per se lifting the cloak of State secret when the pertinent efforts have not been made to allow access to the information it contains<sup>248</sup>.

195. In the specific case of the disappearance of Mayra Gutiérrez, the information provided by the Human Rights Ombudsman regarding the aforementioned Army file suggests that she was monitored by military agents, but without clarity regarding the period of affectation of it or the extent to which it is related to its disappearance. It is clear that the lack of information in this regard is due to the State's failure to understand the content, scope, and relevance of the aforementioned file. Likewise, it should be noted that despite the fact that the Army file was made public in the year 2000, there is no record that the criminal investigation of the Public Ministry or the Office of the Human Rights Ombudsman determined whether it was useful for the case or that it was incorporated into the procedure.

196. Based on all of the foregoing, the Court concludes that despite the complaint of an alleged forced disappearance in the context of three habeas corpus<sup>249</sup>, in the criminal investigation of the Public Ministry and the special investigation procedure of the Office of the Human Rights Ombudsman, there has not been a diligent, serious and conducted investigation strategy taking into account the complexity of this type of event. More than 17 years after the disappearance of Mayra Gutiérrez, it has not been possible to clarify what happened or locate her whereabouts. Therefore, the Court considers that the State is internationally responsible for the violation of Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of the treaty, to the detriment of Mayra Angelina Gutiérrez Hernández and her family members.

<sup>248</sup> Cf. Set of updated principles for the protection and promotion of human rights through the fight against impunity (E/CN.4/2005/102/Add.1) of February 8, 2005, Principle 5. Guarantees for enforce the right to know.

<sup>249</sup> This Court is aware that in previous cases in which the forced disappearance of the victims concluded, it considered it appropriate to analyze the arguments related to the effectiveness of the habeas corpus or habeas corpus remedies in relation to Article 7(6) of the American Convention. In this regard, the cases *Anzualdo Castro v. Peru* Case may be consulted. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 77; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 157; *Case of Rochac Hernández et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 162, and *Case of the Rural Community of Santa Bárbara v. Peru*, para. 231. However,

### ***B.3. Effects on the next of kin of Mayra Angelina Gutiérrez Hernández***

197. The Court recalls that in the present case it was not possible to conclude that Mayra Gutiérrez was a victim of forced disappearance (*supra* paras. 134 to 136), consequently, in accordance with its jurisprudence, the *iuris tantum* presumption regarding the violation of the personal integrity of direct relatives of a victim of forced disappearance is not applicable<sup>250</sup>. In this sense, the violation of the personal integrity of the next of kin must be proven, and in this regard, the representatives and the Commission have not alleged specific damages nor have they provided evidence in this regard. It should be noted that the Commission limited itself to alleging said violation given the effects on the next of kin of Mayra Gutiérrez due to the impunity in which this case has been maintained for more than 17 years, however, These affectations have already been analyzed throughout this chapter and it was considered that derived from them, Articles 8.1, 24 and 25 of the American Convention were violated, in relation to Article 1.1 of the treaty, and with Article 7.b of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (“Convention of Belém do Pará”), to the detriment of Mayra Gutiérrez and her family, and said violations will be taken into account when establishing the corresponding reparations for the violations declared in his detriment. Consequently, the Court deems that in the present case the alleged violation of Article 5 of the American Convention was not proven. and with article 7.b of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (“Convention of Belém do Pará”), to the detriment of Mayra Gutiérrez and her family, and said violations will be taken into account when establish the corresponding reparations for the violations declared to their detriment. Consequently, the Court deems that in the present case the alleged violation of Article 5 of the American Convention was not proven. and with article 7.b of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (“Convention of Belém do Pará”), to the detriment of Mayra Gutiérrez and her family, and said violations will be taken into account when establish the corresponding reparations for the violations declared to their detriment. Consequently, the Court deems that in the present case the alleged violation of Article 5 of the American Convention was not proven.

## **VIII REPAIRS**

### **(Application of Article 63.1 of the American Convention)**

198. Based on the provisions of Article 63(1) of the American Convention,<sup>251</sup> the Court has indicated that any violation of an international obligation that has produced damage entails the duty to adequately repair it, and that this provision includes a customary norm that constitutes one of the fundamental principles of contemporary International Law on the responsibility of a State<sup>252</sup>.

199. The reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not feasible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and repair the consequences that the violations produced<sup>253</sup>. Therefore, the Court has considered the need to grant various reparation measures, in order to compensate the damages in an integral manner, for which reason, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition have special relevance for the damages caused<sup>254</sup>.

250 The Court has affirmed, on repeated occasions, that the next of kin of the victims of human rights violations can be, in turn, victims. In cases that involve a serious violation of human rights, such as massacres, forced disappearances of persons, extrajudicial executions, or torture, this Court has considered that the Commission or the representatives do not need to prove the violation of mental or moral integrity, since a *iuris tantum* presumption operates. Such a presumption results in a reversal of the argumentative load, in which it is no longer appropriate to prove the violation of the right of such “direct relatives”, but rather it is up to the State to disprove it. Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 119, and Case of Quispialaya Vilcapoma v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2015. Series C No. 308, para. 244.

251 Article 63.1 of the Convention establishes: “When it decides that there was a violation of a right or freedom protected in [the] Convention, the Court will order that the injured party be guaranteed the enjoyment of his violated right or freedom. It will also provide, if appropriate, that the consequences of the measure or situation that has configured the violation of those rights and the payment of fair compensation to the injured party be repaired.

252 Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25, and Case of Acosta et al. v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334, para. 209.

253 Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, para. 26, and Case of Acosta et al. v. Nicaragua, para. 210.

254 Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No.

200. The Court has established that the reparations must have a causal link with the facts of the case, the declared violations, the proven damages, as well as the measures requested to repair the respective damages<sup>255</sup>. Likewise, the reparations must include an analysis that contemplates not only the right of the victim to obtain reparation, but also incorporates a gender perspective, both in its formulation and in its implementation<sup>256</sup>.

201. In consideration of the violations of the Convention declared in the previous chapters, the Court proceeds to analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its jurisprudence in relation to the nature and scope of the obligation to make reparation, in order to order the measures aimed at making reparation for the damages caused to the victims<sup>257</sup>.

### **A. Injured Party**

202. This Tribunal reiterates that, under the terms of Article 63.1 of the Convention, those who have been declared victims of the violation of a right recognized therein are considered to be injured parties. Therefore, this Court considers as the "injured party" Mayra Angelina Gutiérrez Hernández, Ángela María del Carmen Argüello Gutiérrez, Nilda Gutiérrez Hernández and Armando Gutiérrez, who in their capacity as victims of the violations declared in this Judgment, will be creditors of the that the Court orders below.

### **B. Obligation to investigate the facts and identify, prosecute and, where appropriate, punish those responsible, and determine the whereabouts of Mayra Gutiérrez**

203. The Commission requested that the State be ordered to develop and complete an impartial, complete, and effective judicial investigation, expeditiously, in order to establish the circumstances in which Mayra Gutiérrez disappeared; exhaustively explore and exhaust the logical lines of investigation, and identify and, if applicable, punish all the people who participated in the events. It also requested that the corresponding administrative, disciplinary, or criminal measures be available for the actions or omissions of state officials that contributed to the denial of justice and impunity in the case. In addition, it requested that an exhaustive search be ordered into the fate or whereabouts of Mayra Gutiérrez, and finally,

204. The representatives asked the Court to order that: a) an investigation be carried out immediately, impartially, and effectively to establish the identity of the material and intellectual authors of the violations of the human rights of Mayra Gutiérrez, and, if applicable, initiate a proceeding penalty against him; b) the petitioners and the Commission be informed every six months on the progress made to find those responsible; c) the State of Guatemala, the Ministry of National Defense and the Ministry of the Interior allow the complainants and the Office of the Human Rights Ombudsman access to all files, documents, reports, audiovisual material and microfilm of the different government security forces that were allegedly involved in the process of detention and forced disappearance of Mayra Gutiérrez; d) the State informs the family of the victim, within a period of 12 months,

88, paras. 79 to 81, and Case of Vásquez Durand et al. v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 332, para. 187.

<sup>255</sup> Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 110, and Case of Vásquez Durand et al. v. Ecuador, para. 188.

<sup>256</sup> Cf. Case. IV Vs. Bolivia Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 326.

<sup>257</sup> Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, paras. 25 to 27, and Case of Acosta et al. v. Nicaragua, para. 211.

about his whereabouts, indicating where he is if he is still alive or, if he has already died, that his remains be located and delivered to his family for a Christian burial, certifying their authenticity by means of a DNA test; and e) the State continues to promote the investigation of the case through a promotion committee, made up of the representatives, the Public Prosecutor's Office, the Judiciary, and the Human Rights Ombudsman's Office.

205. The State argued that the facts of the case occurred between individuals and were processed at the appropriate procedural moment, making use of the resources and procedures regulated in domestic legislation, which were implemented efficiently and effectively according to the possibilities of the State, concluding that at no time was there participation, acquiescence or tolerance on the part of agents of the State security forces or third parties who acted with the acquiescence or consent of the latter. He maintained that the appropriate investigation has been carried out and an alleged perpetrator was identified, against whom an arrest warrant was issued and that his execution has not been possible because the defendant is a fugitive from justice. In his closing written arguments,

206. Taking into account the conclusions of Chapter VII of this judgment, the Court establishes that the State must, within a reasonable time, effectively conduct the investigation, free of negative gender stereotypes, and, where appropriate, continue and/or open the investigation or investigations. corresponding criminal proceedings, to identify, prosecute and, where appropriate, punish those responsible for the disappearance of Mayra Gutiérrez, in accordance with the criteria indicated in this Judgment (*supra* paras. 147 to 196).

207. In particular, without prejudice to other lines of investigation that the authorities deem pertinent to investigate, the State must undertake or continue specific lines of investigation regarding: i) the possibility that what happened to Mrs. Gutiérrez Hernández constituted a forced disappearance; ii) the possible relationship between the disappearance of Mrs. Gutiérrez and the databases prepared by the military intelligence services in which her name is found; and iii) the possibility that her disappearance was related to her investigations into irregular adoptions in Guatemala.

208. The investigation must provide the next of kin of the victim with information on the progress of the investigation, in accordance with domestic legislation and, where appropriate, adequate participation in the criminal process. In addition, the State must ensure that the persons in charge of the investigation and the criminal proceedings, as well as other persons involved, such as witnesses, experts, or relatives of the victim, have the due security guarantees.

209. On the other hand, the Court notes that Guatemala has taken steps to determine the whereabouts of Mayra Gutiérrez. Mrs. Gutiérrez disappeared more than 17 years ago, so it is a fair expectation of her next of kin that the State undertake effective actions to find her whereabouts, and that it adopt the necessary measures when appropriate. Thus, the Court orders that the State must continue with the search for her, for which it must make all possible efforts as soon as possible. In particular, it must compare the corpses identified as "XX" throughout the investigations with the individual characteristics and biological profile of Mayra Gutiérrez (sex, age, height, DNA information, etc.), creating for this purpose the databases or records that are necessary

<sup>258</sup> Cf. *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs*. Judgment of August 26, 2011. Series C No. 229, para. 166.

for such purposes. In the event that Mrs. Gutiérrez is found dead, the State must identify the remains, and they must be handed over to her next of kin, after genetic verification of filiation or recognition by the appropriate and appropriate means, as the case may be, at the greatest shortly and at no cost to said relatives. The State must cover the funeral expenses, if applicable, in agreement with the next of kin<sup>259</sup>.

***C. Non-repetition measure: implement permanent programs and courses to officials***

210. Because in this Judgment it was declared that the State failed to comply with its duty to effectively investigate the disappearance of Mayra Gutiérrez by applying negative gender stereotypes that blamed the victim, the Court recalls what was ordered by this Court in the cases of Veliz Franco et al.<sup>260</sup> and Velásquez Paiz and others,<sup>261</sup> both against Guatemala. These established that the State must, within a reasonable time, implement permanent programs and courses for public officials belonging to the Judiciary, the Public Ministry and the National Civil Police, who are linked to the investigation of acts of homicide of women, on standards in prevention matter,

***D. Satisfaction measure: publication of the Judgment***

211. The representatives asked the Court to order the State to publish the operative part of the Judgment, both in the official gazette and in a private newspaper with the largest circulation in the country. Neither the Commission nor the State ruled on this point.

212. The Court orders the State to publish in a legible font size and within a period of six months, counted from the notification of this Judgment: a) the official summary of the Judgment prepared by the Court, for a single time, in the Official Gazette and in a widely circulated national newspaper, and b) this Judgment in its entirety, available for at least one year, on an official State website. The State must immediately inform this Court once it proceeds to carry out each one of the publications ordered, regardless of the one-year term to present its first report provided in operative paragraph 13 of this Judgment<sup>263</sup>.

***E. Other measures requested***

213. The representatives requested that the State be ordered to: i) promote the initiative called "Memorial de la Concordia", through which the construction of memorial-cultural spaces would be promoted in which all the victims of the internal armed confrontation are dignified; ii) manage a piece of land in the La Verbena cemetery in the capital city; iii) build a monument in memory of the more than 45,000 Guatemalan men and women forcibly disappeared during the internal armed conflict, and iv) implement effective actions, through the Executive, to promote bill 3590, which would seek to create the National Commission Search for Missing Persons and already

<sup>259</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 124, and Case of Vásquez Durand et al. v. Ecuador, para. 210.

<sup>260</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, para. 275.

<sup>261</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala*, para. 258.

<sup>262</sup> The supervision of the implementation of this reparation measure is carried out within the framework of the supervision procedures of the aforementioned cases. *Veliz Franco and others* and *Velásquez Paiz et al.*

<sup>263</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. para. 79, and Case of Vásquez Durand et al. v. Ecuador, para. 212.

would find in the Congress of the Republic of Guatemala. The State did not make a timely decision in this regard<sup>264</sup>.

214. The Court considers that the causal link of the reparation measures requested with the violations declared in this Judgment has not been demonstrated, therefore it will not order them on this occasion. In particular, Initiative 3590 "Law on the Commission for the Search for Persons, Victims of Forced Disappearance and other forms of Disappearance" would grant competence to said Commission to hear the facts of forced disappearance and other forms of disappearance that occurred between 1960 and 1996<sup>265</sup>, that is, prior to the facts of this case.

***F. Compensatory Indemnity: non-pecuniary and material damage***

215. The Commission requested full reparation for the human rights violations declared in its Report on the Merits, both materially and morally.

***F.1. immaterial damage***

216. The representatives requested that Guatemala compensate Mayra Gutiérrez and her family for the moral damages caused. They indicated that the calculation of compensation for non-pecuniary damage amounts to Q. 400,000.00, considering that by not knowing the whereabouts of a relative, a victim of forced disappearance, the family suffers by imagining the cruel treatment and torture that may be causing them. As long as the person's whereabouts are unknown, the cycle of pain and mourning does not close, coupled with the feeling of helplessness of wanting to do something and not being able to do it to avoid the suffering of her loved one. They requested that the payment be made in cash to the daughter of Mrs. Gutiérrez<sup>266</sup>.

217. In its answer, the State refused to pay the amounts requested, since the facts of the case occurred between individuals. However, in his final written arguments, he maintained that no economic value can compensate or restore the life of a person, nor can it mitigate the pain and anguish suffered by his relatives and loved ones. Thus, due to the impossibility of being able to assess such pain and anguish, but taking into account the criteria of equity, he proposed to the family and representatives of Mayra Angelina Gutiérrez the amount of Q. 100,000.00 for non-pecuniary damage<sup>267</sup>.

218. The Court has developed in its jurisprudence the concept of non-pecuniary damage and has established that this "can include both the suffering and afflictions caused by the violation as well as the impairment of very significant values for people and any alteration, of a non-pecuniary nature, in the living conditions of the victims."<sup>268</sup> Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be the object of compensation, for the purposes of comprehensive reparation to the victim, by paying

<sup>264</sup> In its final written arguments, the State extemporaneously indicated that the request to order the promotion of bill 3590 is not consistent with the case, since this is not a case of forced disappearance. However, he stated that he is promoting the aforementioned Law before the Congress of the Republic.

<sup>265</sup> Cf. Law Initiative 3590, "Law on the Commission for the Search for Persons, Victims of Forced Disappearance and other forms of Disappearance", January 18, 2006, Article 10.

<http://old.congreso.gob.gt/archivos/iniciativas/registro3590.pdf>.

<sup>266</sup> In their final arguments brief, the representatives requested, extemporaneously, the payment of Q.500,000.00 for moral damages in favor of the daughter of Mayra Gutiérrez.

<sup>267</sup> In its final written arguments, the State indicated that, "[n]o having reached an agreement, this report on Final Arguments was forwarded," therefore the Court understands that the State's proposal was formulated autonomously to said agreement.

<sup>268</sup> Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84, and Case of Vásquez Durand et al. v. Ecuador, para. 212.

of an amount of money or the delivery of goods or services appreciable in money, that the Court determines in reasonable application of judicial discretion and in terms of equity<sup>269</sup>.

219. In Chapter VII.II of this Judgment, the Court established that the State failed in its duty to effectively investigate the disappearance of Mayra Gutiérrez, to the detriment of her and her next of kin. In consideration of the foregoing, this Court establishes in equity, for non-pecuniary damage, the amount of USD \$55,000.00 (fifty-five thousand United States dollars) in favor of Mayra Angelina Gutiérrez Hernández; the amount of USD \$20,000.00 (twenty thousand United States dollars) in favor of Ángela María del Carmen Argüello Gutiérrez and the amount of USD \$10,000.00 (ten thousand United States dollars) respectively in favor of his brothers Nilda and Armando Gutiérrez Hernández.

## ***F.2. Material damage***

220. The representatives requested that Guatemala compensate Mayra Gutiérrez and her family for the material damages caused. In particular, they requested the payment of Q.5,670,000.00 for lost earnings in favor of Mayra Gutiérrez, considering that she was 42 years old at the time she was disappeared, the life expectancy of Guatemalans was 69 years, and at the time Before her disappearance, she worked as a professor of psychology at the University of San Carlos of Guatemala and at the Mariano Gálvez University, for which reason the victim's salary currently amounts to fifteen thousand quetzales, exactly Q. 15,000.00<sup>270</sup>. Regarding consequential damage, they indicated that they did not have all the receipts or supporting documents that supported her claims,

221. In its answer, the State refused to pay the amounts requested, since the facts of the case occurred between individuals. In his final written arguments, he argued that said amounts are not supported by any financial actuarial technique, that they use disproportionate calculations and that they do not consider formulas but rather simple calculations for the number of years, taking the salary amount as something solid. However, he proposed the payment of Q.1,553,645.30 quetzales for lost profits, as well as Q.30,000.00 quetzales for consequential damages.

222. The Court has developed in its jurisprudence the concept of pecuniary damage and has established that it supposes "the loss or detriment of the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case"<sup>271</sup>.

223. Bearing in mind that this Court did not conclude that Mayra Gutiérrez was a victim of forced disappearance, nor that the State failed in its obligation to prevent her disappearance (*supra* paras. 121 to 142), it has not been established that the lost earnings of Mrs. Mayra Gutiérrez nor the consequential damage suffered by her family have a causal link with this case, therefore the Court will not order compensation for pecuniary damage on this occasion.

## ***G. costs and expenses***

<sup>269</sup> Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs, para. 53, and Case of Favela Nova Brasília v. Brazil, para. 288.

<sup>270</sup> In their final written arguments, the representatives submitted, extemporaneously, some "updated calculations" of pecuniary damage, as well as a list of positions and salaries at the Universidad San Carlos de Guatemala as of July 1, 2013. Thus, they requested the payment of Q. 12,644,000.00 for lost profits.

<sup>271</sup> Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43, and Case of Vásquez Durand et al. v. Ecuador, para. 227.



224. The representatives considered that the expenses incurred while accompanying the family of the alleged victim at the domestic level, as well as during the presentation of the case before the Commission and the Court, should be assessed in the Judgment, since the GAM decided to resign. to the collection of all the expenses, requesting the Court to allocate a symbolic amount at its discretion<sup>272</sup>. The State refused to pay the amounts requested, since the facts of the case occurred between individuals.

225. The Court reiterates that, in accordance with its jurisprudence, the costs and expenses are part of the concept of reparation, since the activities carried out by the victims in order to obtain justice, both nationally and internationally, imply expenditures that must be compensated. when the international responsibility of the State is declared by means of a conviction. Regarding the reimbursement of expenses, it is up to the Court to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceeding before the inter-American system, taking into account the circumstances of the case. specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, as long as their quantum is reasonable<sup>273</sup>. As it has indicated on other occasions, the Court recalls that the remittance of probative documents is not enough, but that the parties are required to make an argument that relates the evidence to the fact that is considered to be represented, and that, in the case of alleged disbursements economic, the items and the justification for them are clearly established<sup>274</sup>.

226. The representatives of the victims did not provide any element to prove the expenses incurred during the processing of this case. In this regard, the Court finds it reasonable to presume that the Mutual Support Group (GAM) made expenditures since August 2000, the year in which the petition was filed with the Inter-American Commission. The Court also notes that the representatives incurred expenses to attend the public hearing of the case held in Mexico City, Mexico, as well as expenses related to the exercise of their legal representation, such as the submission of briefs and communication expenses, among others, during the proceedings before this Court. Thus, the Court determines that the State must deliver the amount of USD \$20,000.00 (twenty thousand United States dollars) to the GAM,

#### ***H. Modality of fulfillment of ordered payments***

227. The State must pay the compensation for non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment directly to the persons indicated therein, within a period of one year from the notification of this Judgment. Judgment, without prejudice to the fact that you can advance the full payment in a shorter period of time.

228. In the event that the beneficiaries have died or die before the respective amount is delivered, it will be delivered directly to their heirs, in accordance with applicable domestic law.

272 Extemporaneously, in their final written arguments, the representatives requested the sum of Q 500,000.00 for costs.

273 Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 82, and Case of Zegarra Marín v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331, para. 229.

274 Cf. Case of Chaparro Álvarez and Lapo Iñiguez. vs. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs.

Judgment of November 21, 2007. Series C No. 170, para. 275, and Case of Zegarra Marín v. Peru, para. 230.

229. The State must comply with the monetary obligations by paying in dollars of the United States of America.

230. If for reasons attributable to the beneficiaries of the compensation or their heirs it is not possible to pay the determined amounts within the indicated period, the State will deposit said amounts in their favor in an account or certificate of deposit in a solvent Guatemalan financial institution, in dollars of the United States of America, and in the most favorable financial conditions allowed by legislation and banking practice. If the corresponding compensation is not claimed after ten years, the amounts will be returned to the State with the accrued interest.

231. The amounts assigned in this Judgment as compensation for non-pecuniary damages, and as reimbursement of costs and expenses must be delivered to the indicated persons in full, in accordance with the provisions of this Judgment, without reductions derived from eventual tax charges.

232. In the event that the State incurs in default, it must pay interest on the amount owed corresponding to the bank default interest in the Republic of Guatemala.

## **IX RESOLUTIVE POINTS**

233. Therefore

, THE COURT

DECIDES,

unanimously,

1. To reject the preliminary objection regarding the alleged lack of jurisdiction of the Court to rule on the Inter-American Convention on Forced Disappearance of Persons, in accordance with paragraph 18 of this Judgment.

2. To dismiss the preliminary objection regarding the alleged failure to exhaust domestic remedies, in accordance with paragraphs 22 to 26 of this Judgment.

3. Dismiss the preliminary objection regarding the alleged expiration of the Article Report 50 of the American Convention and the alleged lack of accreditation of the representatives, in accordance with paragraphs 30 to 34 of this Judgment.

**DECLARES,**

unanimously, that:

4. The State is responsible for the violation of the rights to equal protection of the law and non-discrimination, recognized in Articles 24 and 1.1 of the American Convention, as well as the violation of the rights to access to justice, judicial guarantees and judicial protection, in the terms of Articles 8.1 and 25 of the American Convention, in relation to Article 1.1 of said treaty, and with Article 7.b of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women ("Convention of Belém do Pará"), to the detriment of Mayra Angelina Gutiérrez Hernández and her next of kin, in accordance with paragraphs 147 to 185 of this Judgment.

5. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, in the terms of Articles 8.1 and 25 of the American Convention, in relation to Article 1.1 of said treaty, to the detriment of Mayra Angelina Gutiérrez Hernández and their next of kin, in accordance with paragraphs 186 to 196 of this Judgment.

6. The State is not responsible for the alleged violation of the rights to legal personality, life, personal integrity, and personal liberty established in Articles 3, 4, 5, and 7 of the American Convention, in relation to Articles I and II of the Inter-American Convention on Forced Disappearance of Persons, in accordance with paragraphs 122 to 136 of this Judgment.

7. The State is not responsible for the alleged violation of the rights to life and personal integrity established in Articles 4 and 5 of the American Convention, in relation to Article 1.1 thereof, in accordance with paragraphs 137 to 142 of this Judgment.

8. The State is not responsible for the alleged violation of the right to personal integrity established in Article 5 of the American Convention, to the detriment of the next of kin of Mayra Angelina Gutiérrez Hernández, in accordance with paragraph 197 of this Judgment.

**AND ARRANGES,**

unanimously, that:

9. This Judgment constitutes, per se, a form of reparation.

10. The State must, within a reasonable time, effectively conduct the investigation, free of negative gender stereotypes, and, where appropriate, continue and/or open the corresponding criminal proceedings or proceedings, to identify, prosecute and, where appropriate, punish those responsible for the disappearance of Mayra Gutiérrez, in accordance with paragraphs 206 to 209 of this Judgment.

11. The State must publish, in legible font size and within a period of six months from notification of this Judgment: a) the official summary of the Judgment prepared by the Court, once only, in the Official Gazette and in a national newspaper with wide circulation, and b) this Judgment in its entirety, available for at least a period of one year, on the official website of the State, in accordance with paragraph 212 of this Judgment.

12. The State must pay the amounts established in paragraphs 219 and 226 of this Judgment as compensation for non-pecuniary damages and for reimbursement of costs and expenses.

13. The State must submit a report to the Court, within a period of one year from the notification of this Judgment, on the measures adopted to comply with it.

14. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties under the American Convention on Human Rights, and will conclude this case once the State has fully complied with the provisions of the same.

IHR Court. Case of Gutiérrez Hernández et al. v. Guatemala. Judgment of the Inter-American Court of Human Rights of August 24, 2017.

Eduardo Ferrer Mac-Gregor  
Poisot Acting Chairman

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Hate Benedict

Eugenio Raul Zaffaroni

L. Patricio Pazmino Freire

Pablo Saavedra Alessandri  
Secretary

Communicate and execute,

Eduardo Ferrer Mac-Gregor Poisot Acting  
Chairman

Pablo Saavedra Alessandri  
Secretary