

Order of the
Inter-American Court of Human Rights*
of July 3, 2007
Case of the Serrano Cruz Sisters v. El Salvador
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on merits, reparations, and costs (hereinafter, "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter, "the Court" or "the Inter-American Court") of March 1, 2005.
2. The Order issued in Compliance with Judgment by the Court on September 22, 2006, in which it:

DECLAR[ED]:

1. That, as indicated in Considering paragraph 9 of th[e] Order, the State has complied totally with:
 - (a) Establishment of a link to the complete text of the Judgment on merits, reparations, and costs on the search web page (*ninth operative paragraph of the Judgment of March 1, 2005*);
 - (b) Payment to Suyapa Serrano Cruz of the amount established in paragraph 152 of the Judgment [...], for the expenses related to pecuniary damage suffered by the next of kin of the victims, some of which were assumed by the *Asociación Pro-Búsqueda* (*twelfth operative paragraph of the Judgment of March 1, 2005*);
 - (c) Payment of the amounts established in paragraph 160 of the Judgment [...], as compensation for the non-pecuniary damage caused to the victims and their next of kin, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, and Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all Serrano Cruz (*thirteenth operative paragraph of the Judgment of March 1, 2005*). If the amounts deposited in favor of Ernestina and Erlinda Serrano Cruz are not claimed by them within ten years, the State shall proceed as established in paragraph 210 and in the nineteenth operative paragraph of the Judgment [...] ; and
 - (d) The organization of a public act acknowledging its responsibility for the violations declared in the Judgment, and in reparation to the victims and their next of kin (*eighth operative paragraph of the Judgment of March 1, 2005*).
2. That, as indicated in the eleventh Considering paragraph of th[e] Order, the State has complied partially with:
 - (a) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*; and
 - (b) Payment of the amounts established for reimbursement of costs and expenses (*fourteenth operative paragraph of the Judgment of March 1, 2005*).

* Judge Diego García-Sayán excused himself from hearing the present case, pursuant to Articles 19(2) of the Statute and Article 19 of the Rules of Procedure of the Inter-American Court of Human Rights. Consequently, he did not participate in the delivery of the Judgment or in this order.

3. That, as indicated in Considering paragraphs 10 and 12 of th[e] Order, it will maintain open the procedure of monitoring compliance with the aspects pending compliance in this case. They are:

(a) That the State should carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure* that prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and shall publicize the result of the criminal proceedings (*sixth operative paragraph of the Judgment of March 1, 2005*);

(b) Establishment of a national commission to trace young people who disappeared during the armed conflict when they were children, with the participation of civil society (*seventh operative paragraph of the Judgment of March 1, 2005*);

(c) Creation of a genetic information database that allows genetic data that can contribute to determining and clarifying the identification and the relationship of the disappeared children and their next of kin to be obtained and conserved (*seventh operative paragraph of the Judgment of March 1, 2005*);

(d) Designation of a day dedicated to the children disappeared during the internal armed conflict for different reasons (*tenth operative paragraph of the Judgment of March 1, 2005*);

(e) Provision, free of charge, through its specialized health institutions, of the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and informing the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and providing them with the treatment. If Erlinda and Ernestina are found alive, the State shall also provide them with the said medical and psychological treatment (*eleventh operative paragraph of the Judgment of March 1, 2005*);

(f) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*);

(g) Publication of the parts of the Judgment on merits, reparations, and costs ordered by the Court together with all the opinions that the Judges attached to the Judgment, as established in Considering paragraph 10 of th[e] Order; and

h) The payment for costs and expenses in favor of the *Asociación Pro-Búsqueda* (*fourteenth operative paragraph of the Judgment of March 1, 2005*).

AND DECIDE[D]:

1. To require the State to adopt all necessary measures to fulfill effectively and promptly the aspects pending compliance ordered by the Court in the Judgment on merits, reparations, and costs of March 1, 2005, and in th[e] order, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court, by January 19, 2007, at the latest, a report indicating the measures adopted to comply with all the reparations ordered by the Court that are still pending compliance, as specified in the tenth and twelfth Considering paragraphs and in the second and third declarative paragraphs of this order.

3. To request the representatives of the victims and their next of kin and the Inter-American Commission to submit their observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

4. To continue monitoring the matters pending compliance with regard to the Judgments on merits, reparations, and costs of March 1, 2005.

[...]

3. The brief of October 6, 2006, in which the *Asociación Pro-Búsqueda* and the Center for Justice and International Law (CEJIL), representatives of the victims and their next of

kin (hereinafter “the representatives”) expressed their concern regarding the State’s failure to comply with the measures of reparation in relation to medical and psychological treatment, creation of a genetic information database, and establishment of a national tracing commission.

4. On January 9, 2007, the Office of the Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) of the State of El Salvador submitted a document entitled “Second Report of the [said] Ombudsman [...] regarding compliance by the State of El Salvador with the Judgment issued by the Court [...] in the case of the sisters Ernestina and Erlinda Serrano Cruz.”

5. The brief of January 24, 2007, and its appendixes, in which the State presented the report on Compliance with Judgment, in response to the request contained in the second operative paragraph of the Order of September 22, 2006 (*supra* Having seen paragraph 2). Also, the communication of November 28, 2006, and its appendixes, in which El Salvador advised that it had paid the *Asociación Pro-Búsqueda* the relevant amount to reimburse its costs and expenses. In brief, El Salvador indicated that:

(a) Regarding the obligation to investigate and undertake a genuine search for the victims, it referred to the criminal proceedings before the Chalatenango Trial Court and the measures taken;

(b) Regarding the “establishment of a national commission to trace young people who disappeared during the armed conflict when they were children, with the participation of civil society”:

i) It referred to the work undertaken by the Inter-institutional Commission for Tracing Disappeared Children as a Consequence of the Armed Conflict (hereinafter “Inter-institutional Tracing Commission”) since January 2006; to the investigations it has carried out, and to the professionals who are members of the Commission, and indicated, *inter alia*, that of “the 79 cases registered, 52 have been investigated, and 17 cases have been resolved”;

ii) It referred to the different State institutions that have responded to the requests for information by the Inter-institutional Tracing Commission. They included the Second Court for the Protection of Minors, the Office of the Public Prosecutor (*Procuraduría General*) of the Republic, the National Register of Natural Persons (RNPN), the Ministry of Foreign Affairs, the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA), the Ministry of Governance, and the Ministry of National Defense. Support had also been received from the consulates of El Salvador in several countries;

iii) “To ensure that governmental institutions provide the required information, each institution that forms part of the Commission has appointed a liaison person within the institution, which permits them to have easy access to the information requested during the investigations,” and “the heads of the institutions which are members of the commission have expressed their willingness and commitment to provide the information requested.”

iv) "Regarding the independence and impartiality of the Committee's work, [...] both the decree creating it and the rules of procedure establish the way in which it should undertake its activities"; "this guarantees that it will respect its mandate." "Even though the institutions and agencies collaborate towards a common goal, [...] they each maintain their independence";

v) Regarding the participation of civil society, in October 2005, the Ministry of Foreign Affairs requested the Director of the *Asociación Pro-Búsqueda* at that time to reconsider his decision not to take part in the Inter-institutional Commission and told him that "it would be willing to submit the corresponding reforms to the consideration of the President of the Republic, to formalize the full membership of the *Asociación Pro-Búsqueda* in the Commission." However, no reply had been received;

(c) Regarding the creation of a web page to trace those who disappeared, "for clarity and ease of use, [...] the section corresponding to the physical description of Ernestina and Erlinda Serrano Cruz includes the description that appears in the Judgment of March 1, 2005, under roman numeral I, entitled 'Facts alleged in the Application'; in a separate section, information about the next of kin of Erlinda and Ernestina Serrano Cruz has been included; that is to say, the names of their siblings José Fernando, Arnulfo, Oscar, Suyapa, Martha and María Rosa are included. Out of concern for the privacy of the Serrano Cruz family, a note has been included stating that they are represented by the *Asociación Pro-Búsqueda*, so that any communication with the family can be made through the Association, whose telephone number is included";

(d) Regarding the creation of a genetic information database, it referred to measures taken in order to sign a future cooperation agreement with the Universidad Nacional Autónoma de México, "so that this center of education may collaborate in the creation of a genetic data bank." "Based on the inter-institutional cooperation agreement between the Supreme Court of Justice and the Ministry of Foreign Affairs of El Salvador, measures to implement this aspect will continue";

(e) Regarding the publication of the corresponding parts of the Judgment, they were published on December 29, 2006, in "*La Prensa Gráfica*", a newspaper with widespread national circulation. This publication consisted of the parts of the Judgment on merits, reparations, and costs ordered by the Court, and included all the separate opinions of the Judges. The necessary measures have been taken to ensure publication in the official gazette of El Salvador;

(f) Regarding the designation of a day dedicated to the children disappeared during the internal armed conflict for different reasons, by Legislative Decree Number 197 of January 5, 2007, the Legislative Assembly established that March 29 of every year would be the "Day dedicated to the children disappeared during the armed conflict";

(g) Regarding the medical and psychological treatment required by the victims' next of kin:

i) It indicated that, since 2005, it has provided them with medical care, and referred specifically to the different ailments of the next of kin, and to the tests, treatment, and surgery they have required. It also indicated that "it has continued to provide transportation and food to the Serrano Cruz family

in their journeys from their place of residence in Chalatenango to the various centers where they have their medical appointments. Likewise, it has provided the medicines and/or the equipment recommended by the doctors who have attended them. At every "appointment scheduled for the Serrano Cruz family, a representative of the Ministry of Foreign Affairs is present to ensure that no problems arise during their appointments," and "in those cases in which a problem has arisen, the representative of the Ministry of Foreign Affairs has resolved it (by obtaining doctors appointments, administrative assistance, and medicine)";

ii) "The State has institutions that provide psychological and psychiatric care with duly qualified personnel; however, given the insistence of the representatives of the Serrano Cruz family that this care be provided by a private institution, that is, the Department of Psychology of the Universidad Centroamericana José Simeón Cañas, and given that the State finds that the specialized care they need can be provided by a private specialist, it has decided to hire the professional services of a psychologist with the professional capacity to provide the treatment needed by the Serrano Cruz family"; and

(h) Regarding the reimbursement of costs and expenses to the *Asociación Pro-Búsqueda*, the State had expressed its willingness to make this payment as of late March 2006. Nevertheless, it was unable to make the payment until September 27, 2006, "owing to administrative reasons within the *Asociación Pro-Búsqueda*," since it had not presented "the appropriate credential establishing the identity of the Association's legal representative";

6. The brief of February 27, 2007, and its appendixes, in which the representatives submitted observations on the State's report of January 24, 2007 (*supra* Having seen paragraph 5). In summary, they indicated that:

(a) Regarding the obligation to investigate and to undertake a genuine search for the victims, none of the investigative measures taken by the First Trial Court of Chalatenango has been taken at the initiative of that court or of the Office of the Prosecutor General (*Fiscalía General*) of the Republic. They also indicated that important investigative measures were never taken. The State "has not promoted the appropriate classification of the crime of forced disappearance, nor has it taken the necessary measures to ratify the Inter-American Convention on Forced Disappearance of Persons";

(b) Regarding the establishment of a national tracing commission:

i) The representatives recognized the positive results obtained by the Inter-institutional Tracing Commission. However, the State has again failed to report on whether this Commission complies with each of the parameters for its operations that the Court established in the Judgment, as required by the Court in its Order of September 22, 2006;

ii) The Inter-institutional Tracing Commission "operates without any modification or adjustment to the parameters decided by the Court in relation to its independence, impartiality, capacity to demand information from public and private institutions, and the active participation of civil society organizations working in the relevant area";

iii) "It is a cause for concern that, according to information obtained by the *Asociación Pro-Búsqueda*, DNA testing has not always been used to confirm the biological relationship of those found with their alleged families."

(c) Regarding the creation of a web page to trace those who disappeared, the actions taken by the State "do not demonstrate that any work has been done to establish and develop an international tracing network, as ordered in the Judgment." "Due to the lack of publicity, the page is difficult to access" and "it is only possible to access the page by knowing the electronic address, since it has not been linked to Internet search engines";

(d) Regarding the creation of a genetic information database, the State "does not indicate any concrete measure that could be considered to show that it has made sufficient efforts to create [this] database";

(e) Regarding the publication of the corresponding parts of the Judgment, "the State "published them in "*La Prensa Gráfica*" newspaper, and the representatives request that the Court "consider this measure fulfilled";

(f) Regarding the obligation to designate a day dedicated to the children disappeared during the internal armed conflict for different reasons, the representatives requested that the Court "consider this measure fulfilled";

(g) Regarding the medical and psychological treatment needed by the victims' next of kin:

i) "The delay in granting medical appointments, lack of medical supplies, and lack of medicines persists." In addition, the representatives noted that "contrary to the information provided by the State, the medical assistance provided to the Serrano Cruz family has been abandoned progressively, culminating in the current suspension of assistance." In October 2006, the Human Rights Unit of the Ministry of Foreign Affairs informed *Pro-Búsqueda* "that provision of medical care by hospital staff designated for this purpose had been coordinated with the health authorities, so that the constant presence of officials of the Ministry of Foreign Affairs could be dispensed with." However, "[t]his measure was never taken, and therefore *Pro-Búsqueda* had to intervene directly in order to obtain the medical care under the national health database, with limited success." "The provision of food and transportation for the trips to the medical appointments of the Serrano Cruz siblings ceased" in December 2006, and "the assistance provided to Fernando Serrano Cruz at the School for the Blind has been suspended";

ii) "It is essential that the opinion of the beneficiaries be taken into account before appointing the professional or institution that will provide psychological treatment, in order to inspire the necessary trust and credibility so that the psychological care may produce the desired effects." The representatives requested that the Court "require the State to appoint the personnel responsible for providing psychological care to the beneficiaries by mutual agreement with the latter and their representatives";

(h) Regarding the obligation to pay the *Asociación Pro-Búsqueda* the amount established for costs and expenses, "[t]he State made the payment for costs and expenses to the *Asociación Pro-Búsqueda* on September 27, 2006, in the terms

ordered by the Court." "Nevertheless, the State has not made the payment for the interest accrued on the compensation paid to the Serrano Cruz family, and the procedural costs and expenses paid to the *Asociación Pro-Búsqueda*, while these payments were deposited in banking institutions."

7. The brief of March 13, 2007, in which the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission") submitted its observations on the State's report of January 24, 2007 (*supra* Having seen paragraph 5). In brief, the Commission indicated that:

(a) Regarding the duty to investigate and undertake a genuine search for the victims, the State must undertake all necessary measures to carry out diligent investigations within a reasonable time. It "is very concerned about the lack of genuine proceedings and concrete results";

(b) Regarding the establishment of a national tracing commission, it "appreciates the measures taken to trace the young people who disappeared during the armed conflict when they were children; however, [...] the State is obligated to ensure that the tracing committee complies with the parameters established by the Court, and to report to the Court in this regard." There is a "lack of detailed information regarding: the initiatives and actions undertaken by the national tracing commission to find the Serrano Cruz sisters [...]; the lack of documentation on the evaluation of shortcomings in the initiative called the 'Prosecutor's Panel' (*mesa del Procurador*) [...]; the mechanisms that would permit the national tracing commission to demand access to and the supply of relevant information from State institutions and authorities [...]; information on the independence and impartiality of the tracing commission [...]; information on the participation of civil society on an equal footing with the other members of the tracing commission – and on the initiatives adopted in order to effectively and in good faith obtain the greatest collaboration possible from institutions involved in the issue of disappeared children";

(c) Regarding the creation of a web page to trace those who disappeared, it "has verified the inclusion of the information referred to by the State and acknowledges its importance; nevertheless, it considers it essential that the information included on the web page should be as complete and clear as possible, in order to achieve the objective of determining the whereabouts of the Serrano Cruz sisters." It is "extremely important that the State make an effort to contact the sisters' next of kin, or the latter's representatives, in order to coordinate the inclusion of the information they consider useful, relevant, and effective for tracing Ernestina and Erlinda." It is important that "the State report on the efforts made to complete the internal coordination and linkages that [...] will make this page effective in practice." It "concurs with the representatives that it is essential that this web page to trace those who disappeared be widely publicized and easy to access";

(d) Regarding the creation of a genetic information database, it notes with "concern the very preliminary measures taken by the State";

(e) Regarding the publication of the corresponding parts of the Judgment, it confirms "the publication made in '*La Prensa Gráfica*'";

(f) Regarding the obligation to designate a day dedicated to the children who disappeared during the internal armed conflict for different reasons, it appreciates the designation made by the State and the modification made, in order to mention the phenomenon of disappearance explicitly”;

(g) Regarding the obligation to provide medical and psychological treatment, it “appreciates the efforts made by the State [...]”; however, it notes with grave concern the information on the suspension of some of the services that were being provided to the beneficiaries of the reparations.” It “awaits pertinent information regarding the contradictions between the State’s report and the observations of the representatives”; and

(h) Regarding the obligation to pay the *Asociación Pro-Búsqueda* the amount established for costs and expenses, it “notes the information submitted by the representatives and hopes that the obstacles to payment of the accrued interest can be overcome as soon as possible, because the right to payment of costs and expenses existed from the time the period allowed for making this payment expired and the amounts were consigned to a banking institution.”

8. The brief of June 19, 2007, in which the representatives asked the Court to “convene a public hearing on Compliance with Judgment during its seventy-sixth regular session.”

CONSIDERING:

1. That it is an inherent attribute of the jurisdictional functions of the Court to monitor compliance with its decisions.

2. That El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the compulsory jurisdiction of the Court on June 6, 1995.

3. That, Article 68(1) of the American Convention establishes that “[t]he States Parties to the Convention undertake to comply with the Judgment of the Court in any case to which they are parties.” Consequently, the States must ensure that the Court’s rulings are implemented at the domestic level.¹

4. That, in view of the final and unappealable character of the Judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State

5. That the obligation to comply with the decisions in the Court’s Judgments corresponds to a basic principle of the law of the international responsibility of the State,

¹ Cf. *Case of the Sawhoyamaya Indigenous Community*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, second Considering paragraph; *Case of Yatama*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006 third Considering paragraph; and *Case of Cesti Hurtado*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, third Considering paragraph.

supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated, and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal databases. This principle is applicable with regard not only to the substantive norms of human rights treaties (that is, those which contain provisions on the protected rights), but also with regard to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations established by the Court. These obligations include the State's duty to report to the Court on the measures adopted to comply with the measures ordered by the Court in its decisions. The opportune observance of the State's obligation to report to the Court on how it is complying with each of the elements ordered by the Court is fundamental for assessing the status of compliance with the Judgment as a whole.⁴

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* *

8. That, when monitoring full compliance with the Judgment on merits, reparations, and costs in this case, and after examining the information provided by the State, the Inter-American Commission, and the representatives of the victims and their next of kin in their respective briefs on compliance with the reparations (*supra* Having seen paragraphs 5 to 7), the Court has determined which of the decisions in the Judgment that have been complied with either completely or partially by El Salvador, and also the reparations that remain pending. The Court appreciates the fact that the State has submitted information on all the reparations it ordered.

9. That the Court has verified that El Salvador has complied with:

(a) "Designation of a day dedicated to the children disappeared during the internal armed conflict for different reasons" (*tenth operative paragraph of the Judgment of March 1, 2005*). The State has declared March 29 every year as the

² Cf. *Case of the Sawhoyamaya Indigenous Community*. Compliance with Judgment, *supra* note 1, third Considering paragraph; *Case of Yatama*. Compliance with Judgment *supra* note 1, fifth Considering paragraph; and *Case of Cesti Hurtado*, Compliance with Judgment, *supra* note 1, seventh Considering paragraph.

³ Cf. *Case of the Sawhoyamaya Indigenous Community*. Compliance with Judgment, *supra* note 1, fourth Considering paragraph; *Case of Yatama*. Compliance with Judgment, *supra* note 1, sixth Considering paragraph; and *Case of Cesti Hurtado*, Compliance with Judgment *supra* note 1, eighth Considering paragraph.

⁴ OAS General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session held on June 5, 2007, entitled: "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights."

"Day dedicated to the children disappeared during the armed conflict" (*supra* Having seen paragraphs 5(f), 6(f) and 7(f)), mentioning the phenomenon of disappearances explicitly in the name of the day;

(b) Payment of the amounts established for the reimbursement of costs and expenses (*fourteenth operative paragraph of the Judgment of March 1, 2005*).⁵ According to the State and the representatives, the State paid the costs and expenses due to the *Asociación Pro-Búsqueda* on September 27, 2006 (*supra* Having seen paragraphs 5(h) and 6(h)). From the information submitted by the State (*supra* Having seen paragraph 5(h)) and the representatives,⁶ the Court has determined that the State had advised its willingness to make the payments of the costs to Pro-Búsqueda as of late March 2006;⁷ however for administrative reasons within the Association, the payment could not be made. Consequently, the State deposited the amount in a bank savings account, until the payment could be made. In this regard, in their brief of February 27, 2007 (*supra* Having seen paragraph 6(h)), the representatives indicated that the State "had not paid the interest accrued on the compensation paid to the Serrano Cruz family and on the procedural costs and expenses of the *Asociación Pro-Búsqueda*, while this was deposited in the bank." In this regard, the Court recalls that paragraph 216 of the Judgment, stipulated that "if the State should delay payment, it shall pay interest on the amount owed, corresponding to banking interest on arrears in El Salvador"; therefore, if the delay in making the said payment to Pro-Búsqueda cannot be attributed to the State but rather to the Association, the State does not have to pay interest on it, but only on the amount established in paragraph 207 of the Judgment, since the State did not delay payment.

10. That the Court has verified that El Salvador has partially complied with its obligation:

(a) To create a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*). Taking into account the contents of its Order of September 22, 2006,⁸ and the information that the State subsequently added to the page (*supra* Having seen paragraph 5(c)), the Court considers that, in general terms, the web page created by the State is in compliance with the parameters stipulated in paragraphs 189 to 191 of the Judgment. Nevertheless, the Court considers that the State should present information on the measures it has adopted to promote the establishment and development of an international search network, in the terms of paragraph 191 of the Judgment.⁹

⁵ In its Order of September 22, 2006 (*supra* Having seen paragraph 2), the Court decided that the State had partially complied with the reimbursement of costs and expenses, since it had paid the amount corresponding to CEJIL and the payment to the *Asociación Pro-Búsqueda* remained pending.

⁶ Cf. *Case of the Serrano Cruz Sisters*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Having seen paragraph 7(a) and Considering paragraph 11(b).

⁷ On March 30, 2006, the period of one year established in the Judgment for the State to pay the compensation for costs and expenses expired.

⁸ Cf. *Case of the Serrano Cruz Sisters*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph 11(a).

⁹ In paragraph 191 of the Judgment, the Court decided that it "considered it essential that, using this web page, the State should adopt the necessary measures to coordinate national links with the different governmental

(b) To publish within six months, at least once in the official gazette and in another national newspaper, Chapter 1, entitled "Introduction of the case," Chapter III, entitled "Jurisdiction" and Chapter VI, entitled "Proven facts," as well as the operative paragraphs of the Judgment on merits, reparations, and costs (*ninth operative paragraph of the Judgment of March 1, 2005*). The State has complied with its obligation to make the publication in a national newspaper (*supra* Having seen paragraphs 5(e), 6(e) and 7(e)), taking into account the content of the Order of the Court of September 22, 2006.¹⁰ The State's confirmation regarding the publication in the official gazette of El Salvador remains pending (*supra* Having seen paragraph 5(e)).

11. That the Court considers it essential that the State submit updated information on the following matters pending compliance:

(a) The obligation to carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure*, which prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and shall publicize the result of the criminal proceedings (*sixth operative paragraph of the Judgment of March 1, 2005*). The State provided information on the measures and actions taken in the criminal proceedings before the First Trial Court of Chalatenango (*supra* Having seen paragraph 5(a)). However, in their observations, both the representatives and the Inter-American Commission agreed that the State had not acted with due diligence (*supra* Having seen paragraph 6(a) and 7(a));

(b) The "establishment of a national commission to trace young people who disappeared during the armed conflict when they were children, with the participation of civil society (*seventh operative paragraph of the Judgment of March 1, 2005 and paragraphs 184 and 188 of the said*):

i) El Salvador has not provided all the information needed to evaluate whether the Inter-institutional Commission complies with each parameter for its functioning established by this Tribunal in the Judgment. Both the representatives and the Inter-American Commission have stated that this Inter-institutional Commission does not comply with these parameters (*supra* Having seen paragraph 6(b) and 7(b)). Therefore, the Court considers that the State must provide a detailed report on compliance with the parameters established in paragraphs 185 to 188 of the Judgment;

ii) In the case of the Serrano Cruz sisters, based on the observations of the representatives and the Commission, the Court has verified that the

and non-governmental authorities and institutions mentioned above, and also international links with the web pages of other States, national institutions or associations, and international organizations engaged in trying to trace children and young people who have disappeared, in order to promote, participate and collaborate in the establishment and development of an international search network" (underlining added).

¹⁰ Cf. *Case of the Serrano Cruz Sisters. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2006, tenth Considering paragraph.

State's report makes no reference to any specific measure taken by the Tracing Commission to determine their whereabouts;

iii) In paragraph 186 of the Judgment, the Court ordered the State "to ensure that all its institutions and authorities are obliged to cooperate by providing information to the national tracing commission and by providing access to all files and records that could contain information on the possible fate of these young people." In this regard, the State reported on the measures taken to ensure that this information was supplied, but only referred to the institutions that form part of the Tracing Commission;

iv) The State has not complied with ensuring the "independence and impartiality of the members of the national tracing commission," as stipulated by the Court in paragraph 187 of the Judgment. Consequently, the State must provide information on the measures adopted to comply with this item; and

v) One of the essential characteristics of the operation of the Tracing Commission is that its members should include the State institutions that have showed an interest in resolving this problem, together with others based on their functions. Civil society should also be invited to participate through non-governmental organizations that work in tracing young people who have disappeared or that specialize in working with young people who were disappeared, such as the *Asociación Pro-Búsqueda*. Accordingly, the Court considers that the State must report on the measures adopted to address this issue, without limiting itself to reporting solely about the participation of the *Asociación Pro Búsqueda*.

(c) The creation of a genetic information database that allows genetic data that can contribute to determining and clarifying the identification and the relationship of the disappeared children and their next of kin to be obtained and conserved (*seventh operative paragraph of the Judgment of March 1, 2005*). Although the State has taken some measures to comply with this measure (*supra* Having seen paragraph 5(d)), the Court has determined that it has not yet created this information database. The Court considers it essential that the State report on the specific measures adopted to comply with this reparation;

(d) The provision free of charge, through its specialized health institutions, of the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, following an individual evaluation, and inform the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and provide them with the treatment. If Ernestina and Erlinda Serrano Cruz are found alive, the State shall also provide them with the said medical and psychological treatment:

i) The Court appreciates the different measures taken by the State to comply with its obligation to provide the medical treatment required by the next of kin of Erlinda and Ernestina Serrano Cruz, including the specific treatment, surgery and medicine they have needed according to their individual ailments; the transportation and food provided when they have

had to travel to medical centers, and the monitoring supplied by officials of the Ministry of Foreign Affairs (*supra* Having seen paragraph 5(g)). However, the representatives reported that some of these services provided to the beneficiaries had been suspended (*supra* Having seen paragraph 6(g)). Consequently, the Court considers that the State should refer to the said observations of the representatives when reporting on this matter and should also indicate the measures it has taken to ensure that the next of kin are attended adequately in health care establishments or specialized institutions, even when they are not accompanied by officials of the said Ministry;

ii) Regarding the psychological treatment, the State reported that, due to the representatives' request that the treatment be provided by a private institution, it "has decided to hire the professional services of a psychologist with the professional capacity to provide the required treatment" (*supra* Having seen paragraph 5(g)). The representatives indicated that the State should appoint this medical professional by mutual agreement with the beneficiaries of the reparation and their representatives (*supra* Having seen paragraph 6(g)). The Court notes that the reparation ordered by the Court consisted in the State providing this treatment through its own specialized health institutions; however, if the parties reach an agreement involving a change in the way this measure is provided, so that it is through private sector institutions or professionals, they should communicate this to the Court.

(e) The creation of a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*). When reporting on this matter, the State shall take into account the Court's indications in Considering paragraph 10(a) of this Order; and

(f) The publication, at least once, in the official gazette of Chapter 1, entitled "Introduction of the case," Chapter III, entitled "Jurisdiction" and Chapter VI, entitled "Proven facts," as well as the operative paragraphs of the Judgment on merits, reparations, and costs.

12. That the Court will consider the general status of compliance with the Judgment on merits, reparations, and costs of March 1, 2005, when it receives the pertinent information on the aspects of the reparations pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions conferred by Article 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That, as indicated in the Considering paragraph 9 of this Order, the State has complied totally with:

(a) "Designation of a day dedicated to the children disappeared during the internal armed conflict for different reasons (*tenth operative paragraph of the Judgment of March 1, 2005*);

(b) Payment of the amounts established for reimbursement of costs and expenses (*fourteenth operative paragraph of the Judgment of March 1, 2005*).

2. That, as indicated in the tenth Considering paragraph of this Order, the State has complied partially with:

(a) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*);

(b) Publication, at least once, in the official gazette and in another national newspaper of the parts of the Judgment on merits, reparations, and costs ordered by the Court (*ninth operative paragraph and paragraph 195 of the Judgment of March 1, 2005 and the tenth Considering paragraph of the Order on Compliance with Judgment of September 22, 2006*).

3. That, as indicated in the tenth and eleventh Considering paragraphs of this Order, the Court will keep the procedure of monitoring compliance open in relation to the matters pending compliance in the instant case, which include:

(a) [The duty] to undertake an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure*, which prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and [...] publicize the result of the criminal proceedings (*sixth operative paragraph of the Judgment of March 1, 2005*);

(b) Establishment of a national commission to trace young people who disappeared during the armed conflict when they were children, with the participation of civil society (*seventh operative paragraph of the Judgment of March 1, 2005*);

(c) Creation of a genetic information database that allows genetic data that can contribute to determining and clarifying the identification and the relationship of the disappeared children and their next of kin to be obtained and conserved (*seventh operative paragraph of the Judgment of March 1, 2005*);

(d) Provision, free of charge, through its specialized health institutions, of the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and informing the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and providing them with the treatment. If Erlinda and Ernestina are found alive, the State shall also provide them

with the said medical and psychological treatment (*eleventh operative paragraph of the Judgment of March 1, 2005*)

(e) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the Judgment of March 1, 2005*); and

(f) Publication, at least once, of the parts of the Judgment on merits, reparations, and costs ordered by the Court in the official gazette (*ninth operative paragraph and paragraph 195 of the Judgment of March 1, 2005, and tenth Considering paragraph of the Order on Compliance with Judgment of September 22, 2006*).

AND DECIDES:

1. To require the State to take all necessary measures to comply promptly and effectively with the matters pending compliance which were ordered by the Court in its Judgment on merits of March 1, 2005, and in this Order, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit a report to the Inter-American Court of Human Rights by October 1, 2007, indicating all the measures adopted to comply with the reparations ordered by this Court that remain pending, pursuant to the tenth and eleventh Considering paragraphs and the second and third declarative paragraphs of this Order.

3. To request the representatives of the victims and their next of kin, and the Inter-American Commission on Human Rights to submit their observations on the State's report mentioned in the preceding operative paragraph, within four and six weeks, respectively, of receiving the report.

4. To continue monitoring the matters pending compliance of the Judgment on merits, reparations, and costs of March 1, 2005.

4. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary