



**CORTE INTERAMERICANA DE DERECHOS HUMANOS  
COUR INTERAMERICAINE DES DROITS DE L'HOMME  
CORTE INTERAMERICANA DE DIREITOS HUMANOS  
INTER-AMERICAN COURT OF HUMAN RIGHTS**



**Summary newsletter of the Judgments issued by the Inter-American Court during its  
96th Regular Period of Sessions and 46th Extraordinary Period of Sessions<sup>1</sup>**

## **I. 96th Regular Period of Sessions**

During the 96th Regular Period of Sessions, the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) issued five Judgments related to the following topics: special duty on the protection of persons with disabilities, freedom of movement and residence, freedom of thought and expression, protective measures for journalists, special duty on the protection of indigenous children, and forced disappearance, among others.

A summary of each of the judgments is provided below:

### **1. Case of Furlan and family v. Argentina. Judgment of August 31, 2012. Articles 1(1), 5(1), 8(1), 19, 21, 25, 25(2)(c) of the American Convention on Human Rights**

This case is related, *inter alia*, to the international responsibility of the State for the lack of a timely response by the Argentinean judicial authorities, caused by an excessive delay in the resolution of a civil action against the State, in which the medical treatment of a child with a disability, who subsequently became an adult, depended.

On August 31, 2012 the Inter-American Court of Human Rights declared, unanimously, that the State of Argentina is internationally responsible for the violation to the detriment of Sebastián Furlan, among others, for having exceeded a reasonable time-frame for the civil action; violation of the right to judicial protection and right to private property, and non-compliance with the obligation to guarantee, without discrimination, the right to a fair trial and right to personal integrity. Similarly, the State is internationally responsible for the infringement of the right to personal integrity and right to a fair trial of the next of kin of Sebastián Furlan, namely: Danilo Furlan (father), Susana Fernández (mother), Claudio Furlan (brother) and Sabina Furlan (sister).

## **I. Preliminary objections**

The State filed three preliminary objections: i) failure to exhaust domestic remedies; ii) lack of jurisdiction *ratione materiae* of the Inter-American Court to hear arguments regarding the

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<sup>1</sup> The preparation of this case law newsletter by the Secretariat of the Inter-American Court has been financed by Ministerio de Asuntos Exteriores y Cooperación de España and Agencia Española de Cooperación Internacional y Desarrollo.

consequences of the application of Law 23.892 of the debt consolidation regimen, and iii) violation of the State of Argentina's right to defend itself during the substantiation of the case before the Inter-American Commission.

After analyzing their admissibility the Court rejected the three preliminary objections filed by Argentina. Regarding the preliminary objection of failure to exhaust domestic remedies, the Court concluded that the State changed its argument regarding the purpose and aim of the remedy that allegedly had to be exhausted; therefore, the Court deemed that the claims made in the response to petition were not presented at the proper procedural stage before the Commission, thus failing to comply with one of the formal requirements for a preliminary objection based on failure to exhaust domestic remedies. In regards to the objection of lack of jurisdiction *ratione materiae*, the Court expressed that: i) from the textual interpretation and taking into account the purpose and object of the treaty, the application of the reservation made to Article 21 of the American Convention clearly cannot be extended to the arguments made by the Inter-American Commission for the alleged violation of Article 25 of that treaty, and ii) in the instant case the reservation made by Argentina is not applicable, insofar as the Court was not asked to review an economic policy of the government. Lastly, in relation to the preliminary objection of the alleged violation of the State's right to defend itself, the Court considered that the State was aware of the facts supporting the alleged violation of Article 5 of the Convention to the detriment of Sebastián Furlan and his family from the outset of the proceedings before the Commission; therefore, it could have expressed its position had it considered it pertinent; thus, the Commission could apply the *iura novit curia* principle or consider another classification of the same facts, without this implying a violation of the State of Argentina's right to defend itself.

## II. Merits

### a. Summary of the facts

On December 21, 1988, at the age of 14, Sebastián Furlan entered a field located near his home, property of the Argentinean Army, in order to play. There was no wire fencing or perimeter wall to prevent access to the property, to the extent that "it was used by children for playing different games, relaxing and practicing sports." Once inside the premises, the minor attempted to hang from a crossbeam of one of the installations, whereupon a beam weighing approximately 45 to 50 kilograms fell on him, hitting him hard on the head and immediately causing him to lose consciousness.

Sebastián Furlan was admitted into the intensive care unit of Hospital Nacional Posadas, and was diagnosed with encephalic cranial trauma with loss of consciousness, in a Grade II-III comatose state, with a fractured right parietal bone. He was taken to the operating room to undergo surgery for a "right extradural hematoma." After the surgery Sebastián Furlan remained in a Grade II coma until December 28, 1988, and then in a vigil coma until January 18, 1989.

As a consequence of the accident his father, Danilo Furlan, with the assistance of an attorney, filed a civil action on December 18, 1990 before the National Civil Court and Federal Commercial Court No. 9 against the State of Argentina, to claim compensation for damages stemming from the disability resulting from his son's accident. On February 27, 1996 the judge ordered the transfer of the action to the Ministerio de Defensa - Estado Mayor General del Ejército (Ministry of Defense - National General Staff of the Army, hereinafter "EMGE", "the defendant" or "the respondent"). On September 3, 1996 the respondent filed the answer to the complaint and a preliminary objection based on the statute of limitations.

Moreover, the Juvenile Defender's Office (Asesoría de Menores) submitted a brief on October 24, 1996, stating that because Sebastián Furlan had reached adult age at that time, the institution could not represent him. Subsequently, on October 21, 1997 Sebastián Furlan's attorney asked the court to authorize the introduction of evidence. On October 24, 1997 the judge announced a 40-day period for the collection of evidence in the proceedings. On November 14, 1997 Sebastián Furlan's attorney introduced the documentary evidence, evidence related to requests for information, statements and expert witness's statement, and also requested the appointment of a doctor and a psychiatrist as expert witnesses.

On March 2, 2000 the court certified that no further evidence was pending production. On March 6 it ordered the parties to submit their arguments on the evidence that had been produced. On April 6, 2000 the petitioner's attorney submitted his arguments on the merits of the evidence introduced in the proceedings and asked for compensation that would take into account his client's physical and mental disability and include the treatments recommended by the professionals who intervened as expert witnesses. On April 11, 2000 EMGE's attorney submitted her arguments on the merits of the evidence presented, and requested that the case be dismissed. On April 18, 2000, May 23, 2000 and August 22, 2000 the petitioner's attorney submitted motions requesting the judge to issue a ruling.

In the judgment of first instance, issued on September 7, 2000, the court ruled that the complaint was admissible and it established that the injury suffered by Sebastián Furlan was due to negligence by the State, as owner and party responsible for the property. The foregoing was because the property was in a state of abandonment, lacked any type of perimeter fence to prevent people from entering and contained notoriously hazardous elements. The court attributed 30% of the responsibility to Sebastián Furlan and 70% of the responsibility to the State. Consequently, it ordered the National General Staff of the Army to pay Sebastián Furlan the sum of 130,000 pesos plus interest, in proportion to and in keeping with the guidelines established in the judgment.

On September 15 and 18, 2000 both the defendant and the petitioner filed, respectively, a motion of appeal. The appeals court judgment, issued on November 23, 2000 by the First Chamber of the National Court for Federal Civil and Commercial Matters, upheld the judgment. Regarding the payment of legal costs, the Chamber indicated that "it agree[d]" with the defendant, given that "the distribution of responsibility [...] should be reflected in the assignment of the legal costs," therefore it established that Sebastián Furlan should assume the payment of the corresponding 30%.

The compensation awarded to Sebastián Furlan was subject to Law 23.982 of 1991, which structured the consolidation of past obligations from cases or title prior to April 1, 1991 that consisted in the payment of sums of money. This law provided two ways to collect compensation: i) deferred payment in cash or, ii) cashing in of consolidated bonds issued for sixteen-year terms. Considering his precarious circumstances and the need to obtain money quickly, Danilo Furlan chose to acquire consolidated bonds in local currency. On March 12, 2003 the State delivered 165.803 bonds to the beneficiary. That same day Danilo Furlan sold those bonds. Bearing in mind that Sebastián Furlan had to pay his attorney's fees for a value of 49,740 bonds, and that under the terms of the judgment of second instance he had to pay part of the legal costs, Sebastián Furlan ultimately received 116,063 bonds, equivalent to approximately 38,300 pesos, of the 130,000 pesos ordered in the judgment.

Sebastián Furlan received medical treatment immediately after the accident in 1988, after attempting suicide twice, and within the framework of criminal proceedings against him for assaulting his grandmother. In addition, some medical reports performed in the civil proceedings highlighted the need for specialized medical attention. One of the expert witnesses diagnosed that Sebastián Furlan had a disability of 70%.

On August 26, 2009 after several attempts to obtain a pension, Sebastián Furlan again submitted a request for a non-contributory pension for disability. This application was processed in accordance with Law No. 18.910 of 1970 and Regulatory Decree No. 432/97. For this purpose he presented an official medical certificate, certifying that he had 80% disability due to moderate mental handicap. On December 16, 2009 the National Commission for Social Welfare Pensions of the Ministry of Social Development concluded that the right invoked had been proven before the competent national authorities. Sebastián Furlan currently receives a pension, as well as benefits for his children Diego and Adrián. Sebastián Furlan received his Single Disability Certificate on September 23, 2008, valid for ten years.

## **b. Preliminary considerations on the rights of children and persons with disabilities**

The Court noted that in the instant case, the alleged violations of the rights enshrined in the American Convention are in relation to the fact that Sebastián Furlan was a child at the time of the accident and that, consequently, this accident resulted in his becoming an adult with disabilities. Taking these two facts into account, the Court considered that the alleged violations must be analyzed in light of: i) the international body of law on the protection of children, and ii) the international standards on the protection and guarantee of the rights of persons with disabilities. In this regard, the Court took into consideration that the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (hereinafter "CIADDIS") defined the term "disability" as a "physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment." On the other hand, the Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") establishes that persons with disabilities "include those who have long-term physical, mental, intellectual or sensory deficiencies which, in interaction with other barriers, may hinder their full and effective participation in society on an equal basis with others."

In this regard, the Court observed that the aforementioned Conventions are taken into account to address the social model for disability, which entails that disability is not exclusively defined by the presence of a physical, mental, intellectual or sensory impairment, but is related to the barriers and limitations that exist socially for persons to effectively exercise their rights. The types of limits or barriers that are commonly encountered by people with functional diversity in society are, among others, physical or architectural types of barriers, communicational, attitudinal and socioeconomic barriers.

In this regard, the Inter-American Court reiterated that any person who is in a vulnerable situation is entitled to special protection, based on the special duties that the State must comply with to satisfy the general obligation to respect and ensure human rights. The Court calls to mind that it is not sufficient for States to refrain from violating rights, and that it is imperative for States to adopt affirmative measures to be determined according to the specific protection needs of the legal person, whether on account of his personal situation or his specific circumstances, such as disability. Moreover, States have the obligation to promote the inclusion of persons with disabilities through equality of conditions, opportunities and participation in all spheres of society, to ensure that the limitations described above are removed.

Therefore, it is necessary for States to promote social inclusion practices and adopt affirmative measures to remove such barriers.

## **c. Reasonable term**

Regarding the timeframe of the proceedings under consideration, the Court observed that the period corresponding to the enforcement stage of the judicial decision, to effectively collect the compensation, in the instant case is part of the proceedings and shall be taken into account to analyze the reasonable term. Therefore, the period analyzed began on December 18, 1990, the date on which the civil action was filed, and concluded on March 12, 2003, the date on which the bonds were paid, meaning approximately 12 years and three months.

The Court applied the reasonable term assessment, analyzing four elements established by the case law to determine the reasonableness of the length of time of the proceedings: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities, and d) the adverse effect of the duration of proceedings on the judicial situation of the interested party.

Regarding the complexity of the matter, the Court concluded that the case did not involve legal or evidentiary aspects or debates that would involve a degree of complexity requiring almost 12 years to resolve. Regarding the procedural activity of the interested party, the Court did not find evidence to suggest that the petitioner's actions in the proceedings were dilatory or could have substantially contributed to the extended period of time it took to resolve proceedings of this nature. In relation to the conduct of the judicial and state authorities, the Court expressed that the State did not demonstrate that the delay of over 12 years was not attributable to the behavior of its authorities, particularly when taking into account that not only did the judicial authorities have direct participation in said proceedings, but several of the delays were attributable to state agents who participated as the defendant party or should have provided information or acted expeditiously in order to guarantee the celerity of the process.

Finally, with regard to the adverse effect on the judicial situation of the person involved in the proceedings, the Court bore in mind that if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out with more diligence so that the case is resolved quickly. Considering the above, the Court established that in cases of persons in a vulnerable situation, such as the case of a person with a disability, it is essential to take the pertinent measures, such as prioritizing the attention and resolution of the proceedings by the authorities in charge, in order to prevent delays in the processing of the proceedings, to guarantee a prompt resolution and implementation. In this regard, the Court deemed the following to be proven: i) Sebastián Furlan's serious physical and mental health condition caused by the accident and his subsequent need for medical and psychological attention; ii) the two suicide attempts committed by him, information that was reported to the judge which was evidenced by the problems in his early rehabilitation and the need for specialized medical assistance in view of his delicate situation, and iii) the incident which resulted in the order of preventive detention of Sebastián Furlan of February 21, 1994, which showed the grave situation that he was going through. Thus, the Court considered that if the judicial authorities had taken into account Sebastián Furlan's vulnerable condition, it would have been clear that this case called for a higher degree of diligence by the judicial authorities. The main objective of the judicial proceedings was to obtain compensation to cover the debts that Sebastian's family had accumulated over the years to provide him with rehabilitation and the necessary therapies to diminish the negative effects of the passage of time. Therefore, the Court considered that it was sufficiently proven that the delay in the proceedings in this case had a significant and real impact on the legal situation of the alleged victim and to date the effect is irreversible, given that by delaying the compensation he needed he was also unable to receive the treatment that could have provided him with a better quality of life.

Having analyzed the four elements of the reasonable term assessment, the Inter-American Court concluded that the judicial authorities hearing the civil suit for damages and the claim for compensation did not act with the due diligence or promptness as required by Sebastián Furlan's vulnerable situation, therefore it exceeded the reasonable term, in violation of the right to a fair trial established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, to the detriment of Sebastián Claus Furlan.

#### **d. Judicial protection and the right to property**

The Court considered that the execution of the judgment that granted the compensation was not complete or comprehensive, as it was deemed proven that Sebastián Furlan should have received 130,000 Argentinean pesos and in reality he collected approximately 38,000 Argentinean pesos, which is significantly lower than the original sum awarded. The Court indicated that the administrative authorities never took into consideration that by applying the payment method established in Law 23.982 of 1991 they greatly decreased the financial compensation awarded to Sebastián Furlan for an adequate rehabilitation and better life conditions, given his vulnerable situation. In this regard, the Court expressed that the authorities that executed the judicial decision should have weighed the vulnerable situation that Sebastián Furlan was in with the need to apply a law that regulated these payment methods. The administrative authority should have anticipated this type of disproportionate impact and proposed alternatives to the type of execution that was most detrimental to vulnerable persons. Therefore, the Court concluded that the enforcement of the judgment that awarded the

compensation to Sebastián Furlan was ineffective and resulted in a lack of judicial protection, thus failing to fulfill the purpose of protecting and compensating for the rights infringed that were recognized by means of the judicial decision.

Moreover, the Court observed that in this case there was a correlation between the problems of effective judicial protection and the effective enjoyment of the right to property. In this regard, by applying the proportionality principle to the restriction of the right to property that occurred, the Court indicated that the restriction of Sebastián Furlan's right to property was not proportionate in a strict sense given that it did not contemplate any other option that was less detrimental than the reduction of the compensation awarded to him. No evidence was found in the file of any type of pecuniary or non-pecuniary measure that could have lessened the impact of a decrease in the compensation or any other type of measure suited to the specific circumstances of a person with several disabilities who required, for adequate care, the money already judicially contemplated as a right to which he was entitled. Therefore, in the specific circumstances of this case, the non-payment of the full amount ordered by the court in favor of a person with limited resources in a vulnerable situation called for a much greater justification of the restriction of the right to property and some type of measure to prevent such an excessive and disproportionate effect, which was not demonstrated in this case.

Based on the foregoing, the Court considered that the right to judicial protection and the right to property, enshrined in Articles 25(1), 25(2.c) and 21, in relation to Article 1(1) of the American Convention, were violated to the detriment of Sebastián Claus Furlan.

#### **e. Other judicial guarantees**

The Court expressed that, by not having heard Sebastián Furlan at any stage of the judicial proceedings, the judge was also unable to value his opinions on the matter and, particularly, was unable to verify his specific situation as a person with a disability. Taking the foregoing into account, he deemed that the right to be duly heard and taken into account enshrined in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, was violated to the detriment of Sebastián Claus Furlan.

Additionally, the Court observed that the judge of the civil action did not notify the Juvenile Defender while Sebastián Furlan was a minor or subsequently when the expert assessments revealed the degree of his disability. Consequently, Sebastián did not enjoy this guarantee which is compulsory in the domestic sphere and that could have also helped, through the powers granted by law, to assist him in the civil proceedings. Bearing in mind the foregoing, in the specific circumstances of the instant case the Juvenile Defender was an essential mechanism to address Sebastián Furlan's vulnerability, given the negative effects produced by the combination of his disability and his family's very limited financial resources, which generated poverty in his environment that disproportionately affected his condition as a person with a disability. Consequently, the Court concluded that the right to judicial guarantees established in Article 8(1), in relation to Articles 19 and 1(1) of the American Convention, was violated to the detriment of Sebastián Claus Furlan.

#### **f. Right to personal integrity and access to justice of the family of Sebastián Furlan**

The Court reiterated that the relatives of victims of human rights violations may in turn be victims. The Court has deemed an infringement on the right to mental and moral integrity of some next of kin when the suffering they have endured was due to the actions or omissions of state authorities, considering, among other things, the steps taken to obtain justice and the existence of a close family relationship. The violation of this right has also been declared due to the suffering generated by the facts committed against their loved ones.

In the instant case the Court considered proven that: i) the accident suffered by Sebastián Furlan as well as the duration of the civil proceedings affected the family unit, leading to a permanent state of distress and despair in the family, which ended up breaking the family ties and generating other types of consequences, and given that the Furlan Fernández family did not receive assistance to provide better support for Sebastián Furlan, triggering a number of

negative impacts on the family's normal development and functioning; ii) it is evident that the unwarranted delay in the proceedings, as well as the other steps taken by Danilo Furlan in order to obtain other types of help for his son, caused him great suffering; given that not only did he assume almost full responsibility for his son's personal care, but he also took control of the domestic judicial proceedings; iii) the breaking of the family's reality negatively affected Ms. Susana Fernández role in the family, given that it became a family group where her participation was substantially reduced, and she had to assume the financial support for the household; iv) Mr. Claudio Furlan suffered psychologically from this situation to the extent that he constantly relives the separations of his family, he recalls specific details of his brother's accident and his parents' separation, and as a consequence of the distress suffered he built his life plan around his disabled brother and his father, and v) Ms. Sabina Furlan was also affected by the circumstances of the instant case due to the breaking of the family times and the fact that she had to live on her own with her mother apart from those who were once her dearest loved ones, her two brothers and her father, as well as lack of attention for her during her childhood due to the special care required for her older brother.

Based on the foregoing, the Court considered that the disintegration of the family unit was proven, together with the suffering endured by all the family members as a consequence of the delays in the civil proceedings, the manner in which the judgment was executed and the other problems that Sebastián Furlan faced in trying to obtain adequate rehabilitation. Accordingly, the Court considered that the State of Argentina incurred in a violation of the right to personal integrity enshrined in Article 5 and of the right to access to justice established in Articles 8(1) and 25, in conjunction with Article 1(1) of the American Convention, to the detriment of Danilo Furlan, Susana Fernández, Claudio Erwin Furlan and Sabina Eva Furlan.

#### **g. General conclusion on access to justice, the principle of non-discrimination and the right to personal integrity of Sebastián Furlan**

The Court referred to the highly vulnerable situation of Sebastián Furlan, as a minor with a disability, living in a family with limited financial resources, based on which the State should have adopted all adequate and necessary measures to address the situation. Indeed, it mentioned that the State had the duty to ensure celerity in the civil proceedings, on which greater opportunities for rehabilitation depended. The Court also concluded that the adequate intervention of the Juvenile Defender was necessary, or to seek a differentiated application of the law governing the enforcement of the judgment, since these measures would have made it possible to remedy, to some extent, the disadvantages faced by Sebastián Furlan. These elements showed that there was *de facto* discrimination associated with the violations of the right to a fair trial, judicial protection and right to property. Also, bearing in mind the facts outlined in the chapter on the legal effects caused to Sebastián Furlan in the context of the civil proceedings, as well as the impact that denying him access to justice had on his possibility of obtaining adequate rehabilitation and health care, the Court considered that the violation of the right to personal integrity was in turn proven. Therefore, the Court declared that the State failed to comply with its obligation to guarantee, without discrimination, the right to access to justice under the terms of Articles 5(1), 8(1), 21, 25(1) and 25 (2)(c) of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of Sebastián Claus Furlan.

### **III. Reparations and costs**

Regarding reparations, the Court established that the Judgment constituted *per se* a type of reparation. In addition, it ordered the State to: i) provide medical and psychological or psychiatric attention, free of charge, immediately, adequately and effectively, to the victims who request it, through its specialized public health institutions; ii) create an interdisciplinary group which, taking into account Sebastián Furlan's opinion, shall determine the most appropriate measures of protection and assistance for his inclusion in social programs, education, vocational programs and work; iii) publish this official summary of the Judgment, only once, in the Official Gazette and in a newspaper of wide national circulation, and the full text of the Judgment on an official website; iv) adopt the measures necessary to ensure that when a person is diagnosed with grave problems or consequences related to a disability, the person or his family group shall

be provided with a letter summarizing in a concise, clear and accessible manner the benefits contemplated by Argentinean law, and v) pay the amounts established in the Judgment, for compensation of pecuniary and non-pecuniary damages, and for the reimbursement of costs and expenses, as well as reimbursing to the Victims' Legal Assistance Fund the amount established in the Judgment.

The Court shall supervise full compliance with the Judgment in the exercise of its powers and in compliance with its duties in conformity with the American Convention on Human Rights, and shall deem this case concluded once the State has fully complied with that established therein.

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_246\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_246_esp.pdf)

## **2. Case of Vélez Restrepo and Family v. Colombia. Judgment of September 3, 2012. Articles 1(1), 5(1), 8(1), 13, 17(1), 19, 22(1) and 25 of the American Convention on Human Rights**

The instant case refers to the attack suffered by the journalist Luis Gonzalo Vélez Restrepo on August 29, 1996 by members of the Colombian National Army while he was filming a protest against the government policy of fumigation of coca plantations in Caquetá department, Colombia, as well as the failure to conduct an effective investigation into this attack. Following the attack, Mr. Vélez Restrepo and his family were subject to threats and harassment, and there was an attempt to abduct him. These facts, in addition to the lack of timely prevention and protection measures, caused the exile of Mr. Vélez Restrepo, his wife Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

The Republic of Colombia (hereinafter "the State" or "Colombia") partially acknowledged its international responsibility for the attack suffered by Mr. Vélez Restrepo "as a consequence of the action of the members of the National Army [...] on August 29, 1996" and, "[p]artially, for the violation of the rights to a fair trial and judicial protection."

On September 3, 2012 the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") issued the Judgment, in which it rejected the preliminary objection filed by the State, accepted the referred partial acknowledgment of responsibility, and declared, unanimously, that the State is internationally responsible for the violation of the right to personal integrity, freedom of movement and residence, the right to a fair trial and judicial protection enshrined in Articles 5(1), 22(1), 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román. In addition, the Court unanimously declared that the State violated the right to freedom of thought and expression enshrined in Article 13 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Luis Gonzalo Vélez Restrepo. The Court also decided that the State is internationally responsible for the violation of the rights of the family, contemplated in Article 17(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, as well as for the violation of the rights of the child, recognized by Article 19 of the American Convention, to the detriment of Mateo and Juliana Vélez Román.

### **I. Preliminary objection**

The State filed the preliminary objection of "lack of jurisdiction of the [...] Court to examine and admit facts or claims included within the factual background of the Merits Report presented by the Commission when submitting the case." The State claimed that the Inter-American Commission had declared as proven some facts "due to the inadequate assessment of the [...] documents provided as evidence of their existence and circumstances" and asked to the Court to "declare that it did not have the jurisdiction to hear those facts erroneously determined by the Commission."



The Court indicated that "it is not limited by the evidence assessment and qualification of the facts made by the Commission in the exercise of its powers," but that it performs its own determination of the facts of the case. Similarly, the Court indicated that the State has procedural opportunities to exercise the right to defend itself and challenge and dismiss the facts submitted for consideration of the Court. The Court deemed that it was not necessary to rule in a preliminary manner on the factual background determined by the Commission in the Report on Merits, given that said analysis corresponds to the Merits stage of the case; consequently, it rejected the preliminary objection filed by the State.

## **II. Merits**

### **A. Summary of the facts of the case**

In 1996 Mr. Luis Gonzalo Vélez Restrepo, also known as "Richard," worked as a cameraman for the national news program, "*Colombia 12:30*," with offices in Bogota, the city in which he lived with his spouse Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, who were approximately four and a half years old, and one and a half years old, respectively. On August 29, 1996 Mr. Vélez Restrepo was in the municipality of Morelia, department of Caquetá, covering the events of one of the protest marches against the Government's policy of fumigating coca crops.

On August 29, 1996 a confrontation took place between the "marchers" and the soldiers on and around the bridge over the Bodoquero River. Mr. Vélez Restrepo was filming the events and he recorded, *inter alia*, when members of the Army beat a defenseless protester. According to Mr. Vélez Restrepo, when several soldiers realized that he was filming they attacked him. The soldiers' attack destroyed the camera but not the videotape, which allowed the recording to be massively disseminated by the media the same day. This recording shows how several men in military uniforms physically attacked Mr. Vélez Restrepo and screamed at him phrases such as "take out [...] that tape."

Mr. Vélez Restrepo was taken that day to a hospital in the city of Florencia, Caquetá. That same day he was transferred to a Clinic in Bogotá, where he was hospitalized until the next day. He had a fifteen-day disability during which he remained at home. On August 31, 1996 a preliminary investigation was initiated before the criminal military jurisdiction for the offense of personal injuries.

In mid-September 1996 Mr. Vélez Restrepo began receiving threats and being harassed, including death threats, and these threats even referred to his son. Unidentified persons also showed up at his house, claiming to be from the Attorney General's Office, and asked the wife of Mr. Vélez Restrepo about his schedule and activities. Mr. Vélez Restrepo and his wife decided to move, and although the threats at the house ceased he continued to receive threatening calls at his workplace. At the beginning of October 1996 a criminal investigation was opened for the offense of threats.

Between February and August 1997 Mr. Vélez Restrepo and his family received no threats; consequently they returned to the house where they had lived previously. On August 27, 1997 Mr. Vélez Restrepo testified before the Prosecutor in charge of the investigation regarding the threats. After this, Mr. Vélez Restrepo and his family once again began receiving telephone calls with death threats and a new visit by persons who, without any ID, claimed to be employees of the Attorney General's Office.

On October 5, 1997, Mr. Vélez received a written death threat, and the following day there was an attempt to kidnap him, in which they tried to put him in the backseat of a vehicle. In the struggle, Mr. Vélez managed to escape and run to his house. This fact was reported to the State authorities, and that same day a meeting was held with the authorities of the Ministry of the Interior and the Presidential Human Rights Council, during which he was offered several security measures, *inter alia*, including relocating in another part of the country. That same day Mr. Vélez Restrepo expressed his intention to leave the country, and three days later he left Colombia for

the United States of America. Mr. Vélez Restrepo filed requests for asylum with the competent authorities of said country for himself and his wife and children. On August 14, 1998 he was notified that the asylum was granted for his wife and kids, who during that time lived in Medellín with the help of their relatives. After almost one year the Vélez Román family reunited in United States in September 1998, where they currently reside.

Regarding the facts that occurred on August 29, 1996, disciplinary proceedings were conducted within the Armed Forces in which two soldiers were punished with a "severe reprimand," but the State did not submit the final decisions to the Court given that "they were not found." The Attorney General's Office led the disciplinary investigation, which ended in the closing of the preliminary inquiries given that the Commander of Brigade XII "did not commit any misconduct" and ordered copies to be certified so that an investigation could be conducted within the National Army on the possible responsibility of soldiers in regard of the facts. Similarly, an investigation was initiated in the criminal military jurisdiction for the offense of personal injuries, but the file was lost. The State only provided to the Court the final decision of the 122nd Military Criminal Investigations Court in which it abstained from opening a formal investigation.

With regard to the threats and harassments after August 29, 1996, a disciplinary investigation was carried out by the Attorney General's Office. On May 3, 2002 the Oversight Bureau of the Attorney General's Office ordered the final closing of the investigation due to the lack of clarification on the participation of employees of the Attorney General's Office in said facts. Similarly, on August 27, 2006 the Bogota Second District Attorney's Office ordered the final closing of the procedure against the sergeant allegedly involved in the facts. In October 1996 a criminal investigation was opened in the regular jurisdiction for the offense of threats, but the 243rd Bogota Sectional Prosecutor's Office issued a decision concluding the inequity based on that the facts "had already been denounced in civil and criminal complaints before the criminal military justice" by Mr. Vélez Restrepo. Subsequently, through an official communication dated August 23, 2007 by the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, the 253<sup>rd</sup> Bogota Sectional Prosecutors' Office assumed the investigation for the crime of threats and on January 25, 2010 it decided to "[a]bstain from opening preliminary proceedings" given that "the statute of limitations had taken effect."

With regard to the attempted kidnapping that occurred in October 1997, in September 2009 the 253<sup>rd</sup> Bogotá Sectional Prosecutor's Office assumed the investigation of the case and ordered the implementation of several measures. On April 26, 2012 this Prosecutor's Office decided to abstain from opening the preliminary investigation, based on that Mr. Vélez Restrepo had not provided information "on the facts which become simply a possibility."

## **B. Conclusions and determinations of the Court regarding the attack of August 29, 1996 in relation to the obligation to respect and guarantee the rights to personal integrity and freedom of thought and expression**

The Court, taking into account that Colombia accepted part of the facts submitted to its jurisdiction and that it partially acknowledged the international responsibility for the violation of Article 5(1) of the American Convention, as well as the evidence on file, concluded that Colombia was responsible for the attack committed against Mr. Vélez Restrepo on August 29, 1996 by members of the Army, which constituted a violation of the obligation to respect the right to personal integrity of Mr. Vélez Restrepo, Mrs. Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

With regard to the right to freedom of thought and expression enshrined in Article 13 of the Convention, the State recognized that it violated said right to the detriment of Mr. Vélez Restrepo, "because the attacks that occurred on August 29, 1996, interrupted the victim's work as a journalist, thus violating his right to seek information." The Court called to mind that the freedom of thought and expression has wide-ranging content that includes the right to seek, receive and to spread ideas and information of all kinds, as well as to receive and to obtain the information and ideas disseminated by others. It also called to mind that freedom of expression has both an individual and a social dimension, both of which are equally important.

The Court highlighted that the attack against Mr. Vélez Restrepo occurred while he was performing his journalistic work as a cameraman for a national news program and that the attack was intended to prevent him from continuing to record the incidents that were taking place and to disseminate those that he had already recorded. The Court indicated that although the images recorded by Mr. Vélez Restrepo were ultimately disseminated this was because in spite of the beating by the soldiers he did not let go of the video camera and the tape was not damaged.

The Court highlighted that the information being taped by Mr. Vélez Restrepo was of public interest, insofar as it dealt with images of soldiers who in the midst of activities to control a demonstration attacked defenseless individuals, thus the dissemination of this information allowed the recipients to confirm and control due compliance with the functions of the Public Forces, as well as to consider whether their use of force was adequate.

Finally, the Court found it reasonable to conclude that the attack perpetrated by soldiers against Mr. Vélez Restrepo while he was covering a public demonstration, and its widespread dissemination in the Colombian media, had a negative impact on other journalists who had to cover events of this type, who could fear suffering similar acts of violence. In addition, the Court indicated that by having prevented Mr. Vélez Restrepo from continuing to record the events of August 29, 1996, this affected the possibility that this information would reach the potential recipients.

Consequently, the Court concluded that the attacks of August 29, 1996 constituted a violation by the State of Colombia of the obligation to respect the right to freedom of thought and expression of Mr. Vélez Restrepo, enshrined in Article 13 of the Convention in relation to Article 1(1) thereof.

### **C. Conclusions and determinations of the Court regarding the facts of threats, harassment and attempted kidnapping occurred after August 29, 1996**

#### ***Regarding the obligation to respect the right to personal integrity***

The Court presented some additional considerations to explain the assessments made when establishing the proven facts regarding that after August 29, 1996, Mr. Vélez Restrepo and his family were subject to threats and intimidations, as well suffering a kidnapping attempt on October 6, 1997. Subsequently the Court determined that Colombia is responsible for those facts and referred to the evidence that allowed it to confirm the relationship between the threats, harassment and attempted kidnap and the actions undertaken by Mr. Vélez Restrepo seeking the prosecution and punishment of the soldiers responsible for the attack of August 29, 1996.

Based on the foregoing and taking into account the testimonies of Mr. Vélez Restrepo and Mrs. Román Amariles, as well as the expert opinion of the psychiatrist provided to the Court, it concluded that the threats, harassment and attempted deprivation of liberty caused fear and constant tension and "overwhelming anxiety" that was detrimental to their mental integrity. The Court concluded that the State violated the right to personal integrity recognized by Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Mrs. Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

#### ***Alleged violation of the right to life of Mr. Vélez Restrepo***

Regarding the claims by the victims' representative on the violation of the right to life of Mr. Vélez Restrepo, the Court deemed that the evidence in this case does not confirm exceptional circumstances such as having survived an attack in which murder was attempted or a situation that represents grave risk to his life. Consequently, it concluded that there was no violation of Articles 4(1) and 1(1) of the American Convention.

***In relation to the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children through the investigation and the adoption of measures of protection***

The Court considered that in this case the failure to conduct a serious investigation into the threats and harassments entailed a violation of the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children. This in turn constituted a violation of the duty of prevention, insofar as the investigation could have prevented the continuation and escalation of the threats, which reached the point of attempted kidnapping of Mr. Vélez Restrepo, at which point he had to leave the country to protect his life and integrity and that of his family. Similarly, the Court found that the State failed to comply with its duty to adopt special measures of prevention and protection of Mr. Vélez Restrepo and his family prior to the attempted kidnapping of October 6, 1997. The Court considered that the context of risk for journalists in Colombia should have been taken into account by the State authorities to diligently assess the need for timely measures of protection. In addition, the specific situation of Mr. Vélez Restrepo should have been taken into account, as he sought and disseminated information of public interest, was attacked by soldiers and was subsequently subject to threats and harassments. The Court indicated that it was highly relevant that there was evidence on file of the brief of September 1996 by the Human Rights Unit of the Attorney General's Office informing the Administrative Department of Security (DAS) of the situation of Mr. Vélez Restrepo and his family. However, the State did not assert before the Court that, prior to October 6, 1997 it had evaluated the specific situation of Mr. Vélez Restrepo and his family and the level of risk. Regarding Colombia's position that prior to that date it had no obligation to adopt measures of protection because Mr. Vélez Restrepo had not requested them, the Court established that it corresponds to the State authorities to know the situation regarding special risk, identify or assess whether the person subject to threats and harassment requires measures of protection, or to refer the case to the competent authority to do this.

The Court concluded that the State failed to comply with its obligation to guarantee the right to personal integrity through an investigation into the threats and harassment and by the adoption of timely measures of protection, which constituted a violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

***In relation to the right of freedom of thought and expression of Mr. Vélez Restrepo***

The Court indicated that journalism may only be exercised freely when those who carry out this work are not victims of threats, attacks or other acts of harassment. In addition, the failure to comply with the obligation to investigate resulted in the attack aimed at preventing the right to freedom of expression of the journalist, Mr. Vélez Restrepo, remained unpunished, as well as the subsequent threats aimed at preventing the investigation of said attack. Also, the State did not generate the adequate guarantees and conditions to protect the integrity of Mr. Vélez Restrepo. Following the kidnapping attempt he left Colombia and his journalistic activities were restricted, as he was unable to exercise them in terms similar to those he had in Colombia when he worked for a national news program.

Similarly, the Court deemed that the impunity of the facts is particularly grave due to the intimidating effect they could have on other journalists who cover news of public interest, which affects the information that is ultimately received by the members of society.

Consequently, the Court declared that the failure to comply with the obligation to investigate the attack of August 29, 1996 and the subsequent threats and harassment, and with the obligation to adopt measures of protection in view of the latter facts, constituted a violation of the obligations to respect and guarantee the right to freedom of thought and expression of Mr. Vélez Restrepo. Therefore, the State is responsible for violating Article 13 of the American Convention, in relation to Article 1(1) of this treaty.

#### **D. Conclusions and determinations of the Court regarding freedom of movement and residence, rights of the family and rights of the child, in relation to the obligations to respect and ensure rights**

The Court considered that *de facto* restrictions existed to the freedom of movement and residence of Mr. Vélez Restrepo, Mrs. Román Amariles, and their children Mateo and Juliana Vélez Román, due to the State's failure to guarantee the right to personal integrity through an investigation and timely measures of protection or prevention, which resulted in great insecurity and their well-founded fear that their life and personal integrity were at risk of being violated if they remained in Colombia, which led to their exile. Although the State offered measures of protection after the attempted kidnapping of Mr. Vélez Restrepo of October 6, 1997, these were not timely. Mr. Vélez Restrepo continued to be at risk and had a well-founded fear that he would not be protected anywhere in the country, as evidenced by the fact that he left Colombia on October 9, 1997 for the United States, while his wife and two children went to Medellín. Almost one year afterward, when they were granted asylum in the United States, they were able to reunite there, where they remain to date. The Court concluded that the State violated the right to freedom of movement and residence, protected by Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Luis Gonzalo Vélez Restrepo, his wife Aracelly Román Amariles and his two children Mateo and Juliana Vélez Román.

The Court also determined that the threats and harassment against Mr. Vélez Restrepo and his family as of September 1996 and the failure to adopt timely measures of protection constituted the State's failure to comply with its obligation to protect from arbitrary or illegal interference in their family. Similarly, the Court considered that the enjoyment of coexistence between the members of Vélez Román family was affected, due to the separation of almost a year due to the fact that Mr. Vélez Restrepo had to leave the country first while the other family members had to wait for their asylum requests to be approved. During that time Mrs. Román Amariles and her children went to live in Medellín in the homes of family members. The Court deemed that these facts infringed the right specifically of the children, Mateo and Juliana, to live with their family and, consequently, to have their material, affective and psychological needs satisfied. In addition, the Court took into consideration that Mateo had to endure both the separation from his father as well as from his mother and sister, given that due to the economic conditions Mateo had to live in his paternal grandmother's home, while his mother and sister lived at other relatives' homes and they could only see each other during the weekends.

Based on the foregoing, the Court concluded that the State is responsible for the violation of the right to protection of the family, embodied in Article 17(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo Vélez Román, and Juliana Vélez Román, and also for violating the right to special protection of children embodied in Article 19 of the American Convention to the detriment of Mateo and Juliana Vélez Román.

#### **E. Conclusions and determinations of the Court regarding the rights to a fair trial and to judicial protection, in relation to the obligations to respect and ensure rights**

The State partially acknowledged its international responsibility for the violation of Articles 8(1) and 25 of the Convention in relation to Article 1(1) thereof, due to: (i) the absence of "a serious investigation that would have allowed the perpetrators of the attack suffered by Mr. [...] Vélez Restrepo on August 29, 1996, to be determined and punished under criminal law;" (ii) because "[n]o serious investigation was conducted that would have allowed the presumed authors of the threats of which Mr. [...] Vélez Restrepo was allegedly a victim to be determined and punished under criminal law," and (iii) because "[t]here was a violation of the reasonable term in the investigation underway for the presumed attempted kidnapping of Mr. Vélez Restrepo on October 6, 199[7]."

In addition, the Court determined that Colombia is responsible for the violation of the guarantee of a competent tribunal, given that the investigation into the attack perpetrated by soldiers against Mr. Vélez Restrepo on August 29, 1996 was carried out in the criminal military sphere. The Court reiterated its case law on the restrictive and exceptional scope of the military criminal

sphere, which lacks jurisdiction to investigate and, if applicable, prosecute and punish human rights violations. The Court reiterated that the criteria to prosecute and punish human rights violations in the civil sphere do not fall on the gravity of the violations, but rather on their very nature and on that of the protected right. Similarly, it indicated that the guarantee that a competent tribunal would investigate human rights violations such as the right to life and personal integrity is enshrined in the American Convention and does not arise from its application or interpretation by the Court in the exercise of its contentious function. Consequently, the Court concluded that the State infringed the guarantee of the competent tribunal, which is a violation of Article 8(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo.

In addition, the Court highlighted that none of the violations committed against Mr. Vélez Restrepo and his family were effectively investigated in the criminal sphere, and there is only information of disciplinary decisions in which no soldiers were directly punished for having physically attacked Mr. Vélez Restrepo on August 29, 1996, and there is no certainty as to whether they were final and firm, given that the State indicated that it did not find the decisions of the remedies presented by the military. The Court also expressed that regarding the attack endured by Mr. Vélez Restrepo on August 29, 1996, this case was not very complex, given that the fact was taped with images and sound, and even though the faces of the soldiers were not recorded in the video there were elements that could have helped identify those responsible for beating him.

Consequently, the Court determined that the domestic investigations did not constitute effective remedies to guarantee access to justice and determination of the truth, the investigation and punishment of those responsible and comprehensive reparation of the consequences of the violations. This violates Articles 8(1) and 25 of the Convention in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román.

### **III. Reparations**

The Court established that the Judgment constitutes *per se* a type of reparation and, in addition, it ordered the State to: (i) guarantee the conditions for the members of Vélez Román family to return to live in Colombia, if they decide to do so; (ii) in the event that the victims express their willingness to return and reside in Colombia, provide them with health attention through the specialized health institutions, and if they do not return to provide them with fixed amounts to contribute toward the payment of their health attention costs; (iii) publish, within six months from the date of notification of the Judgment: a) this official summary of the Judgment prepared by the Court, only once, in the Official Gazette; b) the official summary of this Judgment prepared by the Court, only once, in a newspaper with wide circulation, and c) the full text of the Judgment, available for a period of one year, at an official website; (iv) incorporate into its human rights training programs for the Armed Forces a specific module on protection of the right to freedom of thought and expression and the role of journalists and social commentators; (v) report to the Court whether, in conformity with the Colombian body of law, it is possible to adopt other measures or actions that would allow determining the responsibilities in the instant case for the attack of August 29, 1996 and the threats and harassment of 1996 and 1997, and if so to carry out said measures or actions; (vi) carry out an effective investigation, within a reasonable term, for the attempted kidnapping of Mr. Luis Gonzalo Vélez Restrepo on October 6, 1997, and (vii) pay the amounts established in the Judgment for pecuniary and non-pecuniary compensation and reimbursement of costs and expenses. The Court established that Colombia must present within one year from the notification of the Judgment a report on the measures adopted to comply with said Judgment. The Court shall monitor full compliance with Judgment in exercise of its powers and in compliance with its duties pursuant to the American Convention on Human Rights, and shall deem this case concluded once the State has fully complied with that set forth in the Judgment.

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_248\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_248_esp.pdf)

**3. Case of Uzcátegui et al. v. Venezuela. Judgment of September 3, 2012. Articles 1(1), 4(1), 5, 5(1), 7(1), 7(2), 7(4), 8(1), 11, 13, 19, 21, 25(1) of the American Convention on Human Rights**

On September 3, 2012 the Inter-American Court of Human Rights declared, unanimously, that the State of Venezuela is internationally responsible for the violation, among other things, of the right to life of Mr. Néstor José Uzcátegui; of the rights to personal integrity and personal liberty of Luis Enrique Uzcátegui and Carlos Eduardo Uzcátegui, to the freedom of expression of Luis Enrique Uzcátegui; as well as the rights to personal integrity, to a fair trial and to judicial protection of the members of Uzcátegui family, which resided in Coro, state of Falcón, Venezuela. The Court also verified the violation of the right to privacy and private property of several members of Uzcátegui family.

Mr. Néstor José Uzcátegui, who was 21 years old at the time, lived with family members on a home located in Urbanización La Velita II, Coro, state of Falcón. On the morning of January 1, 2001, officers of the Police Investigations Department and an elite group of the Armed Police Forces of the state of Falcón raided without a warrant and in a violent manner the house of Uzcátegui family, while they were celebrating the New Year. During the police operation the officers used firearms against Néstor José Uzcátegui, shooting him at least twice, without having demonstrated the legitimacy or, if applicable, the need and proportionality of the use of lethal force. Néstor José Uzcátegui died as a result of the shots.

These facts occurred within a context of extrajudicial killings and other abuses by the police forces, specifically state and municipal police. At that time “the disproportionate, indiscriminate and discretionary [...] use of force” was frequent, as well as “negligence and lack of expertise in the use of firearms, threats and harassment, simulated executions, arbitrary detentions, illegal raids, delays in transferring injured persons to health centers after injuring them, firing shots into the air, adulteration of cartridges, use of illegal firearms,” among other situations.

In addition, within the framework of the operation carried out on January 1, 2001 at the Uzcátegui home, Luis Enrique and Carlos Eduardo Uzcátegui –brothers of Néstor José Uzcátegui– were detained without being shown an arrest warrant. They were not informed of the reason for the arrest nor were they registered in the detained persons register.

Furthermore, the Court deemed proven several threats and harassment against Luis Enrique Uzcátegui and his family that occurred after he initiated judicial and media activities in the search for justice for the death of his brother and other human rights violations committed by the security forces of the State of Falcón. Similarly, there is evidence that Luis Enrique Uzcátegui was subjected to criminal proceedings for slander that could have generated an intimidating or inhibiting effect on the exercise of his right to freedom of speech. Based on the threats and harassment received, Luis Uzcátegui had to change addresses often and move out of the state of Falcón. In turn, it was demonstrated that the State was aware of the risk of Luis Enrique Uzcátegui and some of his family members, both through complaints and measures of protection granted domestically, as well as based on precautionary and provisional measures ordered by the organs of the Inter-American Human Rights System. The Court also verified that when police officers of the State of Falcón violently entered into the home of Uzcátegui family, the State violated the right to privacy and private property of its citizens.

Consequently, the Court considered that the State did not demonstrate that it had taken sufficient and effective steps to prevent the acts of threat and harassment against Luis Enrique Uzcátegui, therefore it failed to comply with the obligation to adopt the necessary and reasonable measures to effectively guarantee the rights to personal integrity and freedom of thought and expression of Mr. Luis Enrique Uzcátegui.

In addition, in the process before the Inter-American Court the domestic investigations carried out regarding the facts of the instant case were analyzed; it was verified that they were not carried out with due diligence or complied with the reasonable term requirement.

Specifically, the Court observed that during the course of the investigation several evidentiary steps or evidence-gathering procedures were not performed, were not adequately performed or were carried out with a delay; international standards were not fully complied within the framework of the forensic evaluation; in several procedures the authorities omitted or delayed the testing or submission of evidence requested by the Attorney General's Office, and it cannot be inferred from any of the procedures undertaken by the authorities who carried out the investigation or the judicial proceedings regarding the death of Néstor José Uzcátegui that they took into account the context of extrajudicial killings that existed in the State of Falcón at that time. Therefore, the Court concluded that the State had violated the rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Luis Enrique Uzcátegui, Carlos Eduardo and the family of Néstor José Uzcátegui.

Based on the foregoing, the Inter-American Court of Human Rights concluded that:

1. The State is responsible for the violation of the right to life, enshrined in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of said instrument, to the detriment of Néstor José Uzcátegui Jiménez.
2. The State is responsible for the violation of the right to personal liberty, enshrined in Articles 7(1), 7(2) and 7(4) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez and Carlos Eduardo Uzcátegui Jiménez, and in relation to Article 19 of the Convention to the detriment of the latter.
3. The State is responsible for the violation of the right to personal integrity enshrined in Article 5(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of said instrument, to the detriment of Carlos Eduardo Uzcátegui, Luis Gilberto Uzcátegui, Yrma Josefina Jiménez, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez, José Gregorio Mavárez Jiménez, José Leonardo Mavárez Jiménez and Josianni de Jesús Mora Uzcátegui.
4. The State is responsible for the violation of the rights to personal integrity and freedom of thought and expression, recognized in Articles 5 and 13 of the American Convention on Human Rights, respectively, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez.
5. The State is responsible for the violation of the right to privacy enshrined in Article 11 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui, Luis Enrique Uzcátegui, Carlos Eduardo Uzcátegui, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez and Josianni de Jesús Mora Uzcátegui.
6. The State is responsible for the violation of the right to private property, enshrined in Article 21 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui and his family.
7. The State is responsible for the violation of the rights to a fair trial and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez and his family.
8. It is not appropriate to examine the facts of this case in light of Articles 1, 2 and 6 of the Inter-American Convention to Prevent and Punish Torture, or of Articles 2, 9, 44 and 63(2) of the Convention.
9. The alleged violation of Articles 7(3), 7(4) and 7(6) of the American Convention on Human Rights was not demonstrated.

Lastly, the Inter-American Court of Human Rights expressed that the Judgment constitutes a type of reparation in and of itself. In addition, it ordered other reparation measures, including



that the State shall: a) conduct an effective investigation into the facts of this case, in order to clarify them, determine the corresponding criminal responsibilities and effectively apply the sanctions and consequences contemplated by the law; b) examine, in conformity with the pertinent disciplinary regulations, the procedural and investigation irregularities related to the instant case, and if applicable, to punish the behavior of the corresponding public officers; c) provide psychological attention through its public health institutions to the victims who request it; d) publish the Judgment of the Inter-American Court, and e) pay certain amounts for compensation of pecuniary and non-pecuniary damages as well as reimbursement of costs and expenses and the amounts paid by the Victims' Legal Assistance Fund of the Inter-American Court.

The full text of the Judgment can be accessed through the following link:

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_249\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_249_esp.pdf)

**4. Case of the Río Negro Massacres v. Guatemala. Judgment of September 4, 2012. Articles 1(1), 3, 4(1), 5(1), 5(2), 6, 7(1), 8(1), 11(1), 11(2), 12(1), 17, 19, 22(1), 25(1) of the American Convention on Human Rights**

The instant case refers to the five massacres perpetrated against the members of Río Negro community by the Army of Guatemala and members of the Civilian Self-Defense Patrols in 1980 and 1982, as well as the persecution and elimination of its members, and the subsequent human rights violations against the survivors, including the failure to investigate.

On November 30, 2010 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case of the Río Negro Massacres regarding the Republic of Guatemala (hereinafter "the State" or "Guatemala"). This case originated in the petition file by *Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces* (hereinafter "ADIVIMA") on July 19, 2005. The Inter-American Commission approved Admissibility Report No. 13/08 on March 5, 2008, and issued Merits Report No. 86/10 on July 14, 2010, with a series of recommendations to the State. The latter report was served to Guatemala on July 30, 2010, and it was granted two months to report on compliance with the recommendations. On October 4, 2010, the State requested a one-month extension to submit information on compliance with the recommendations made by the Commission. This extension was granted on October 30, 2010, and the Commission ordered the State to submit information by November 20, 2010 at the latest. However, the State did not submit the necessary information. Consequently, the Commission submitted the case to the Court "due to the State's failure to comply with the recommendations and the resulting need to obtain justice in the case."

The submission of the case by the Inter-American Commission was notified to the State and to ADIVIMA as representatives of the alleged victims (hereinafter "the representatives") on March 29, 2011. On June 6, 2011 the representatives submitted the brief containing pleadings, motions and evidence. On November 22, 2011 the State presented its response to petition and observations on the brief containing pleadings, motions and evidence (hereinafter "the response to petition"). In said brief Guatemala challenged the jurisdiction of the Court to hear the violations occurred before the State recognized the Court's obligatory jurisdiction. However, the State recognized its international responsibility in relation to some of the violations claimed by the Commission and the representatives, and accepted some of the reparations requested by them.

On September 4, 2012 the Inter-American Court issued the Judgment, in which it accepted the State's partial acknowledgment of international responsibility and admitted the preliminary objection filed by Guatemala regarding the lack of temporal jurisdiction of the Inter-American Court to hear the human rights violations that occurred prior to its recognition of the obligatory jurisdiction of the Court.

**I. Preliminary objection**

The State argued that the Inter-American Court lacked temporal jurisdiction to rule on “all” of the human rights violations claimed in this case because said violations occurred from 1980 to 1982; in other words, before Guatemala had accepted the compulsory jurisdiction of the Court and because the violations do not persist to date and are not of a continuous nature.

Guatemala recognized the obligatory jurisdiction of the Court on March 9, 1987, and in its declaration it indicated that the Court would have jurisdiction for “cases that occurred after the date” of said recognition. Based on the foregoing and on the principle of non-retroactivity, the Inter-American Court decided that it had jurisdiction to hear facts or events that took place after the date of said recognition and which generated human rights violation of an immediate, continuous or permanent nature. On the other hand, the Court also decided that it had jurisdiction to hear human rights violations of a continuous or permanent nature even if the first act took place prior to the date of recognition of the Court’s obligatory jurisdiction, if said violations continued to be perpetrated after the date of said recognition, in order for the principle of non-retroactivity not to be infringed. Considering the above, the Court decided that it had jurisdiction to hear the facts and alleged human rights violations regarding forced disappearances; lack of impartial and effective investigation of the facts; adverse effects on the personal integrity of the next of kin and survivors in relation to the investigation of the facts; the failure to identify those who were executed and disappeared; the “destruction of the community’s social fabric,” and forced displacement.

## ***II. Partial acknowledgment of responsibility***

The State partially acknowledged its international responsibility for some of the human rights violations claimed in the instant case by the Inter-American Commission and the representatives, namely:

a) The violation of Articles 3 (Right to recognition as a legal person), 4 (Right to Life), 5 (Right to Personal Integrity) and 7 (Right to Personal Liberty) of the American Convention on Human Rights (hereinafter “the American Convention”), in relation to Article 1(1) thereof (Obligation to Respect Rights), as well as the failure to comply with the obligation established in Article I of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj and Manuel Chen Sánchez. Regarding the latter, the State also recognized the violation of Article 19 (Rights of the Child) of the Convention, to his detriment

b) The violation of Articles 5 (Right to Humane Treatment) and 11 (Right to have his honor respected and his dignity recognized) of the Convention, to the detriment of María Eustaquia Uscap Ivoy.

c) The violation of Article 5 (Right to Humane Treatment) of the Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), to the detriment of the members of the Río Negro community who survived the massacres, as well as to the detriment of the next of kin of the members of the community.

d) The violation of Articles 6 (Freedom from Slavery) and 17 (Rights of the Family) of the Convention, in relation to Article 1(1) thereof, to the detriment of the following 17 children: Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Burrero (Juan Osorio Alvarado).

e) The violation of Article 19 (Rights of the Child) of the American Convention to the detriment of “those children who were under 18 years of age when the Court’s obligatory jurisdiction was ratified”;

f) The violation of Articles 12 (Freedom of Conscience and Religion) and 16 (Freedom of Association) of the Convention, in relation to Article 1(1) thereof, to the detriment of the members of the Río Negro community.

g) The violation of Article 22 (Freedom of Movement and Residence) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the members of Río Negro community who were relocated to Pacux settlement.

h) The violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) of the Convention and to Articles 1, 6 and 8 of the Convention against Torture, and to Article 7(b) of the Convention of Belem do Pará, to the detriment of the survivors and next of kin of those who were tortured and extrajudicially executed during the different massacres.

i) The violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof and to Article I of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj and Manuel Chen Sánchez.

The State expressly opposed that the Court hear the other human rights violations claimed by the Inter-American Commission and the representatives.

The State also accepted some of the “victims of the instant case,” presented a list of victims who allegedly had already received compensation through the National Reparations Program, and accepted some of the reparations requested by the representatives.

The Court accepted the State’s acknowledgment of responsibility for the human rights violations indicated above. Nevertheless, since the dispute remained with regard to the alleged violation of other human rights regarding the determination of the alleged victims and some of the representatives’ claims for reparation, and considering the gravity of the alleged facts and violations, the Court performed an extensive and detailed determination of the facts that took place relating to the human rights violations acknowledged by the State, and it issued a Judgment in this case.

### **III. *Prior considerations regarding the determination of the alleged victims***

Since there was a dispute regarding the whole group of victims in the instant case, based on Article 35(2) of the Rules of Procedure of the Court, as this is related to five massacres, considering the size of the case, the nature of the facts and the time elapsed, the Court deemed reasonable that it was complex to identify each of the alleged victims. Considering that the State had no opposition to including other persons as alleged victims if and when this agreed with the preliminary objection filed, and “there was no other error or confusion in their identification” considering the characteristics of the instant case, the Court deemed as alleged victims those identified by the representatives who had suffered human rights violations that fell within the temporal jurisdiction of the Court and the partial acknowledgement of responsibility by the State, based on that the Court had the necessary evidence to verify the identity of those persons.

### **IV. *Merits***

#### ***a. Summary of the facts***

##### ***a.1. General context***

Between 1962 and 1996 an internal armed conflict took place in Guatemala that resulted in enormous human, material, institutional and moral costs. The Historical Clarification Commission (hereinafter “CEH”) estimated that “more than 200,000 persons died or disappeared during the internal armed conflict,” and that the State’s armed forces together with paramilitary groups were responsible for 93% of the human rights violations committed, including 92% of the forced disappearances. The massacres of the instant case occurred within this context.

##### ***a.2. Massacre of March 4, 1980 in the chapel of Río Negro Community and extrajudicial killings of July 8, 1980***

On March 4, 1980, two members of the Guatemalan Army and an agent of the Ambulatory Military Patrol Police (hereinafter "PMA") came to the village of Río Negro in search of several individuals they accused of having stolen provisions from the INDE workers who were building the Río Chixoy dam. The members of the Río Negro community assembled in front of the village chapel, after which an argument broke out and apparently the PMA agent was hit. The evidence in the case file is not clear as to whether it was said agent or his companions who then fired against the people gathered there, resulting in the deaths of six of them, while another person was wounded and taken to the hospital in Cobán, Alta Verapaz, where he subsequently died. The seven persons killed were leaders and representatives of the community.

Following this massacre, Valeriano Osorio Chen and Evaristo Osorio, two leaders of the Río Negro community committee that were negotiating the resettlement with INDE, were summoned to a meeting to be held on July 8, 1980, at the offices of the said State entity in "Chinatzul, [...] between Santa Cruz and San Cristóbal Verapaz." They were instructed to bring with them the books containing the agreements signed and the commitments made by INDE. The two community leaders left that day to go to the INDE meeting. However, they did not return, and their naked bodies were found several days later in Purulha, Baja Verapaz, with gunshot wounds.

### ***a.3. Massacre of February 13, 1982 in Xococ village***

At the beginning of February 1982, a group of armed men set fire to the market in the village of Xococ and killed five people. The Guatemalan Army attributed these facts to the guerrilla and the community of Río Negro; consequently, Xococ community declared itself an enemy of the latter and broke off trading ties. The Army armed, trained and organized the Xococ villagers into civil self-defense patrols that came into confrontation with the community of Río Negro.

On February 6 or 7, 1982, on behalf of the Guatemalan Army, the Xococ patrollers summoned several members of the community of Río Negro to come to their village. When those who had been summoned arrived in Xococ, they were subjected to abuse and accusations by the Xococ patrollers, who accused them of being guerrillas and of having set fire to the market. The patrollers retained the identity cards of these people from Río Negro and ordered them to return the following Saturday to recover the cards.

On February 13, 1982, several members of the Río Negro community returned to Xococ to collect their identity cards. There, the "members of the Xococ Civil Self-Defense Patrol [and] soldiers" were waiting for them, armed with "clubs, poles, ropes and machetes [...]." They surrounded the inhabitants of Río Negro, took money from them, and then allowed them to do their shopping in the market. At around noon the Xococ patrollers put the Río Negro villagers into lines and separated the men from the women and children. The men were taken away "into a hollow" and after hearing "an echoing sound" it was understood that they were killed.

Subsequently, the Xococ patrollers assembled the remaining Río Negro villagers in front of a church, tied up some of them up and/or attacked them "with clubs [and] machetes." They then shut them up in a building without water or food, and some of them remained there in these conditions for two days.

The group of members of the Río Negro community that went to Xococ consisted of approximately 70 persons, most of them adult men, but also children and women, some of them pregnant. However, only two people returned to Río Negro.

On the afternoon of Sunday, February 14, 1982, Teodora Chen escaped from her captors and walked all night toward Río Negro, arriving the following morning to report what had happened in Xococ. She suggested that the members of the community should hide; accordingly, several of them left their homes and went to live in the surrounding hills. That day, soldiers and the Xococ patrollers came to Río Negro asking in each house for the men, who they accused of having joined the guerrillas. The "patrollers and soldiers told the women [that] if the men [did] not appear, within a month they would be killed."

#### ***a.4. Massacre of March 13, 1982 in Cerro Pacoxom***

A month later, around 6 a.m. on March 13, 1982, members of the Guatemalan Army and patrollers from Xococ village came to Río Negro village carrying weapons, spades, pickaxes, ropes, wire and machetes. They went from house to house asking for the men, but most of them were not there because they spent the nights in the hills for safety. Amid accusations that the absence of the men was an indication that they were guerrillas, they demanded that the women, including those who were pregnant, the elderly and the children leave their houses, supposedly to take part in a meeting. They then plundered the village.

The patrollers and soldiers then forced the villagers, mainly women, some of them tied by the neck or the hands, to walk uphill for approximately three kilometers without water or food to a place known as "Cerro Pacoxom." On the way, the soldiers and patrollers insulted, pushed, struck and flogged them, even the pregnant women, with branches and clubs, killing some who were unable to continue. They also forced the women to dance, according to the patrollers and soldiers, as they would with the guerrillas. Some of the girls and women were separated from the group and raped; the case file indicates that at least one of them was pregnant. María Eustaquia Uscap Ivoy, a minor at the time of the incident, was one of the people taken to Cerro Pacoxom. On arriving there, a soldier took her brother, who she had been carrying on her back, from her. She was then taken to a hillock where she was raped by two soldiers and two patrollers. On returning, she found that her grandmother, who had been taken to Cerro Pacoxom with her, had been murdered. After this, she was taken to Xococ, where she was again raped by a patroller in the market there.

Upon reaching Cerro Pacoxom, the patrollers and soldiers dug a mass grave and then killed the Río Negro people present. They strangled or hung several using poles or rope, and they killed the others with machetes or shot them. They killed the babies and the children with machetes, grabbing them by the feet or the hair and throwing them against rocks or trees until they died; they also assembled them in small groups to shoot them all together. The bodies from the massacre were thrown into a nearby ravine or into a mass grave that the patrollers and soldiers had dug, which they subsequently covered with rocks and branches.

In addition, during the massacre, the patrollers and soldiers selected 17 children from the Río Negro community to take back to the village of Xococ: Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado. Some of the children offered themselves or were offered by their mothers to be taken by the patrollers to avoid being killed. After the massacres, the children were forced to walk, hungry and thirsty, to Xococ, where some were taken by the soldiers or the patrollers, while others were led to the village church to be turned over to members of the Xococ community. The Río Negro children were obliged to live with these individuals, some for two to four years, approximately, and were forced to work. The case file indicates that some of the children were threatened and mistreated, and they were prevented from contacting next of kin who had survived the massacres. Some children were given a new identity until they were recovered by their next of kin thanks to measures taken before the municipal authorities. Apart from these 17 children, few people survived the massacre. The case file indicates that at least 70 women and 107 children were murdered.

#### ***a.5. Massacre of May 14, 1982 in "Los Encuentros"***

Some of the survivors of the massacre that took place on Cerro Pacoxom took refuge in a sacred place known as "Los Encuentros." There, on May 14, 1982, at approximately 1 p.m., a group of soldiers and patrollers attacked the community, firing at them and throwing grenades. They raped several women, set fire to houses, and tied up and hung a number of people from trees, forcing them to stand on an iron sheet heated by a fire until they died. The patrollers and soldiers thus killed at least 79 people. Also, on at least three occasions, an army helicopter came to the community and at least 15 people were forced to board it and were never heard from

again. Several of the survivors fled to the mountains, where they took refuge from the persecution by the army and the patrollers.

***a.6. Massacre of September 14, 1982 in "Agua Fría"***

A group of survivors of the Pacoxom and Los Encuentros massacres fled to a village known as "Agua Fría," in the department of Quiché, Guatemala. On September 14, 1982, a group of soldiers and patrollers came to that area and assembled the people in a building. They fired at them from outside and later set fire to the building, killing at least 92 people. At least one person, Timotea Lajuj López, survived the massacre due to the intervention of her brother, who was serving in the Army.

***a.7. Life in the mountains and the resettlement of the members of Río Negro Community in Pacux settlement***

The individuals who were able to escape the different massacres perpetrated against the Río Negro community took refuge in the mountains, some of them for years, stripped of all of their belongings, sleeping exposed to the elements and moving continuously in order to flee the soldiers and patrollers who pursued them even after the massacres. Some of them were shot to death during those pursuits. Additionally, the members of the Río Negro community experienced severe difficulties finding food, and several children and adults died of hunger because the army and patrollers would destroy any fields they were able to cultivate. Some women gave birth in the mountains and were only able to register their children later, with false dates and places of birth in order to protect them.

When the amnesty law entered into force in 1983, some survivors of the massacres came down from the mountains and were resettled by the government in the Pacux settlement, located behind the Rabinal military garrison. However, the violence against members of the Río Negro community continued there.

At least 289 survivors of the Río Negro massacres identified by the representatives still reside in the semi-urban settlement of Pacux. However, despite the State's efforts, the living conditions in Pacux are precarious and the land is inadequate for subsistence agriculture. In addition, the resettlement entailed the loss of the "relationship that [the community had] with nature," "the celebration of traditional festivals related to agriculture and water," of the "contact with [its] most important sacred places and cemeteries, which were cultural reference points for their ancestors and for the history of their people," of their leaders and spiritual guides, as well as the materials for their handicrafts and music, and the Maya Achí language.

***a.8. Investigation of the facts***

From October 7, 1999 to May 28, 2008 the First Instance Court for Crime, Drug Trafficking and Environmental Offenses of Baja Verapaz issued two judgments, respectively, in which several responsible persons were convicted for the facts of the massacres of Pacoxom and Agua Fría. Similarly, on October 7, 1993 an exhumation was performed in Río Negro village (Pacoxom). They were able to identify the remains of three persons, namely, Marta Julia Chen Osorio, Demetrio Osorio Lajuj and Margarita Chen Uscap. On February 19, 20 and 21, 1996, in a clandestine cemetery, the exhumation was carried out of the remains of members of the Río Negro community who died during the Agua Fría massacre. It was not possible to identify the victims, but it was certified that in spite of the state of the skeletal remains it was possible to determine that the death of the victims was violent and that recently the cemetery had been partially sacked, and "the amount and quality of the evidence lost was unknown." From September 4 to 17, 2001 the exhumation of remains found in Xococ village was performed. They were able to identify the victims Tereso Osorio Chen and Crispín Tum Iboy.

***b. Human Rights violations declared by the Inter-American Court***

In application of Article 35(2) of the Rules of Procedure and since the State did not dispute it, taking into account the context and circumstances of the instant case, according to which the

forced disappearance of persons was a practice carried out in Guatemala during the internal armed conflict, and the fact that to date, after having been forced to board a helicopter, there is no news of their whereabouts, the Court considered that Ramona Lajuj, Manuel Chen Sánchez, Aurelia Alvarado Ivoy, Cornelio Osorio Lajuj, Demetria Osorio Tahuico, Fermin Tum Chén, Francisco Chen Osorio, Francisco Sánchez Sic, Héctor López Osorio, Jerónimo Osorio Chen, Luciano Osorio Chen, Pablo Osorio Tahuico, Pedro Chén Rojas, Pedro López Osorio, Pedro Osorio Chén, Sebastiana Osorio Tahuico and Soterio Pérez Tum remain victims of forced disappearance to date. Consequently, the Court considered that the State violated the rights recognized in Articles 3, 4(1), 5(1), 5(2) and 7(1) of the American Convention, in relation to Article 1(1) thereof, all in relation to the obligations established in Article I(a) of the Convention on Forced Disappearance, to their detriment. In addition, the Court found that the State violated Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Manuel Chen Osorio, a minor at the time of the facts.

On the other hand, the Inter-American Court declared the international responsibility of the State for the consequences of the rape suffered by María Eustaquia Uscap Ivoy by soldiers and patrollers. The Court established that the State violated to her detriment the rights recognized in Articles 5(1), 11(1) and 11(2) of the American Convention, in relation to Article 1(1) thereof.

The Court also established that 17 persons, 16 of which were children, were abducted from Río Negro community during the Pacoxom massacre, and that they were forced to work at the homes of patrollers of civilian self-defense groups, which had a serious impact on their mental integrity, and the consequences of this remain to date. Therefore, the Court declared that Guatemala is responsible for the violation of the rights recognized in Article 5(1) of the American Convention, in relation to Articles 6, 17 and 1(1) thereof, to the detriment of María Eustaquia Uscap Ivoy. It also declared that the State is responsible for the violation of Article 5(1) of the Convention, in relation to Articles 6, 17, 19 and 1(1) thereof to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado.

In addition, the Court considered that currently the members of Río Negro community cannot perform their funeral rituals because the State has not located or identified most of the remains of the persons allegedly killed during the massacres, and 17 people remain forcibly disappeared. However, it also indicated that they cannot perform any other type of ritual either because their sacred places which they used to go have been flooded due to the construction of the Chixoy hydroelectric plant.

Furthermore, the Court indicated that the massacres that occurred during the internal armed conflict in Guatemala, added to the displacement of the members of the community of Río Negro and their resettlement in the Pacux settlement, in precarious conditions, led to the destruction of their social structure, the disintegration of the families, and the loss of their cultural and traditional practices, and the Maya Achí language. All of this has had an impact on the collective life of the members of the community of Río Negro who, to date, still live in Pacux. Therefore, the Court considered that Guatemala violated Article 5(1) of the American Convention in relation to Articles 12(1) and 1(1) thereof, to the detriment of the members of Río Negro Community who live in Pacux.

This Court also took into account that subsequent to the massacres perpetrated against the community of Río Negro in 1980 and 1982, the survivors took refuge in the nearby mountains, in dangerous conditions, in order to flee the systematic persecution of State agents aimed at their total elimination. Moreover, given this situation, after 1983, some of these survivors were resettled in the Pacux settlement, where they were subjected to threats, torture, forced labor and other human rights violations. In view of the violent acts they survived and the extreme deprivation they suffered in those mountains, as well as context of violence that persisted in Guatemala during those years, the Court deemed that the members of Río Negro community were deprived from the possibility to return to their ancestral land during this period due to the

well-founded fear of being subjected to violations of their rights to life and personal integrity, among others.

Furthermore, the Court established that the construction of the Chixoy dam and its reservoir physically and permanently prevented the return of Río Negro community to part of their ancestral lands. Therefore, the freedom of movement and residence of the members of the Río Negro community resettled in Pacux has been limited to date by a *de facto* restriction. Lastly, the Court confirmed that the living conditions in Pacux settlement have not allowed the inhabitants to take up again their traditional economic activities and that they have had to participate in economic activities that do not provide them with stable incomes. This has contributed to the disintegration of the social structure and cultural and spiritual life of the community and basic health, education, electricity and water needs have not been fully met. Although Guatemala has made efforts to resettle the survivors of the Río Negro community massacres, it has not created the conditions or provided the means that are essential for repairing or mitigating the effects of their displacement, which was caused by the State itself. Consequently, the Court finds that the State of Guatemala is responsible for the violation of Article 22(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the survivors of the Río Negro massacres who live in Pacux settlement.

In addition, the Court found that the State did not assume as its inherent obligation the investigation of the facts of the massacres perpetrated against Río Negro Community, and it has not adequately led to the investigation, pursuit, capture, prosecution and eventual punishment of all those responsible, including perpetrators and masterminds, in a manner that fully and thoroughly examines the multiple violations committed against the members of Río Negro community within the particular context in which the facts of the instant case occurred. In addition, the investigation has not been designed to locate all the disappeared victims, or to find and to identify the remains that have been found in the various exhumations performed. In sum, the facts of this case remain in impunity. Based on the foregoing, the Court decided that Guatemala is responsible for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and also for non-compliance with the obligations established in Articles 1, 6, and 8 of the Convention Against Torture; Article 1(b) of the Inter-American Convention on the Forced Disappearance of Persons, and Article 7(b) of the Convention of Belém do Pará, to the detriment of the victims of this case, in their respective circumstances.

Finally, the Court deemed that the surviving victims of the Río Negro massacres experience deep suffering and pain due to the impunity in which the facts remain, which fell within a state policy of “scorched earth” intended to fully destroy the community. Therefore, the Court considered that the State violated Article 5(1) of the American Convention in relation to Article 1(1) of said instrument, to the detriment of the survivors of Río Negro massacres.

## **V. Reparations**

The Court established that its Judgment constitutes per se a form of reparation. In addition, it ordered the State to: (i) investigate, promptly, seriously and effectively the facts that gave rise to the violations declared in this Judgment, in order to prosecute and, eventually, punish those responsible; (ii) conduct an effective search for the whereabouts of the victims who were forcibly disappeared; draw up a meticulous plan to search for the members of the Río Negro community who were forcibly disappeared, and to find, exhume and identify the persons presumably executed, and to determine the cause of death and possible prior injuries, and to create a genetic information bank; (iii) make the publications indicated in the Judgment; (iv) hold a public act of acknowledgement of international responsibility for the facts of this case; (v) build the infrastructure and provide basic services in favor of the members of the community of Río Negro who reside in the Pacux settlement, under the terms indicated; (vi) design and implement a project to rescue the Maya Achí culture; (vii) provide medical and psychological treatment to the victims in the instant case; (viii) pay the amounts established as compensation for pecuniary and non-pecuniary damages, and as reimbursement of costs and expenses; and (ix) it must establish an appropriate mechanism to ensure that other members of the community of Río Negro may subsequently be considered victims of any of the human rights violations declared in



this Judgment, and receive individual and collective reparations such as those ordered in this Judgment.

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_250\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_250_esp.pdf)

#### **5. Case of Palma Mendoza et al v. Ecuador. Judgment of September 3, 2012**

In this judgment, the Inter-American Court stated that the State of Ecuador did not violate the rights to judicial guarantees and judicial protection in relation to the right to life, nor the right to personal integrity. It abstained from ruling on the State's supposed failure to comply with the obligation contained in Article 2 of the American Convention, and ordered to close the case file.

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_247\\_esp1.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_247_esp1.pdf)

## **II. 46th Extraordinary Period of Sessions**

During the 46th Extraordinary Session, the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") issued two Judgments related, amongst others, to the following topics: immigrants and indirect discrimination, freedom of movement and the prohibition to carry out collective expulsions, standards on the use of force, amnesties.

Below is a summary of each of these Judgments:

#### **1. Case of Nadege Dorzema et al v. Dominican Republic. Judgment of October 24, 2012. Articles 1.1, 2, 4, 4.1, 5, 5.1, 7, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 8, 8.1, 22.9, 25, 25.1**

On October 24, 2012 the Inter-American Court of Human Rights issued a Judgment on the case of *Nadege Dorzema et al v. Dominican Republic* and declared that the State is internationally responsible for the violation of the right to life, to personal integrity, to personal liberty, to judicial guarantees, to freedom of movement and to judicial protection, as well as for its failure to comply with the obligation to adapt its domestic law and to not discriminate. The Court also declared that the State was not responsible for the alleged violation of the rights to juridical personality and equal protection before the law.

This case relates to the excessive use of force by Dominican soldiers against a group of Haitians, in which seven persons lost their life and several more were injured. Additionally, some Haitian immigrants involved in the events were expelled without receiving the proper guarantees. The facts of the case were submitted to the military justice system, which acquitted the soldiers involved, despite requests of the next of kin of the victims to have the case submitted to the ordinary jurisdiction.

The Court verified that on June 18, 2000, a yellow truck transporting approximately 30 Haitian nationals in Dominican territory, failed to stop at a checkpoint in Botoncillo. Dominican agents pursued the truck for several kilometers and fired shots at the vehicle, killing four people and injuring several more. Another person lost his life when the truck subsequently turned over, and several others ran for their lives; at that point the agents opened fire killing two more people. Due to this display of force, six Haitian nationals and a Dominican national died and at least 10 others were injured. Some of the survivors were taken to a hospital, without being registered or treated adequately, and the remaining survivors were detained and taken to the Border Intelligence Operations Base (DOIF) in Montecristi. Some hours later they were taken to the Dejabón military barracks, where soldiers threatened to take them to a prison, and told them

that they could work in the fields or pay money to the agents to be returned to Haiti. The detainees paid the military agents, and were transported to Quanamthe, Haiti, during the afternoon of June 18, 2000. The corpses of the Haitians who died were buried in a mass grave, and have not been repatriated or returned to their next of kin.

The investigation was carried out by military officers and judges. The Court Martial of First Instance ruled on the military criminal proceedings in which two soldiers were found guilty of murder and sentenced to five years imprisonment. In the same decision, a third soldier was found guilty of murder; however, due to "extensive mitigating circumstances," he was sentenced to 30 days suspension from duty. Lastly, a fourth soldier involved was found "not guilty of the facts," and was absolved "of all criminal responsibility." Subsequently, the Joint Court Martial Appeals Court of the Armed Forces ruled on the appeal of the three soldiers and acquitted them from the first instance conviction. Lastly, the next of kin of the deceased filed a civil suit before the Court of First Instance of the Montecristi Judicial District and another action before the Supreme Court of Justice of the Dominican Republic to have the case investigated and tried by the ordinary jurisdiction. However, both were rejected.

Regarding the rights to life and personal integrity, the Court considered that the State did not comply with its obligation to guarantee these rights by adequate legislation on the exceptional use of force, and did not prove that it had provided training and instruction on the matter to law enforcement officers, and specifically to the agents involved in the events of the case, in violation of the obligation to guarantee the rights contained in articles 4(1) and 5(1), in connection with article 1(1) and to adopt provisions of domestic law, established in Article 2 of the Convention.

The Court considered that in cases where the use of force becomes essential, it must be used in keeping with the principles of legality, absolute necessity and proportionality. In this case neither the legality nor the absolute necessity of the lethal use of force during the pursuit has been proved, because the State was not preventing an attack or imminent danger. Consequently, the serious situation that occurred was the result, at least by negligence, of the disproportionate use of force that can be attributed to the State owing to the acts of law enforcement officials. In addition, the Court observed that, in the context of discrimination against migrants, the use of excessive force in the case revealed the failure to implement reasonable and appropriate measures to deal with this situation to the detriment of this group of Haitians. Therefore, the Court concluded that the State violated the right to life established in Article 4(1) of the American Convention on Human Rights, in relation to article 1(1) of the same instrument in its dimension of respect, based on the arbitrary deprivation of life of the five victims that died during the pursuit. The Court also found the State responsible for the extrajudicial execution of two victims who ran after the vehicle turned over, in violation of the same articles.

Similarly, the Court found that at least five more survivors were wounded by bullets during the events, at least another five were injured by the truck accident, and two other persons survived the events. According to medical certificates the said victims also suffered harm to their mental and physical integrity due to what happened. Therefore, the Court finds the State responsible for the violation of the obligation to respect the right to personal integrity established in Article 5(1) of the Convention, in relation to Article 1(1) thereof. In addition, even though it was aware of the situation, the State did not individualize the injured persons in the investigation, so that these facts have remained unpunished, in violation of the obligation to guarantee the right to personal integrity.

The Court observed that, according to the Principles on the Use of Force, if anyone is injured owing to the use of force, assistance and medical aid should be ensured and rendered, and relatives or close friends should be notified at the earliest possible moment. In addition, the incident should be reported promptly, and reports should be subject to review by administrative and prosecutorial authorities. Similarly, the facts should be investigated in order to determine the level and means of participation of all those who intervened, either directly or indirectly, thereby establishing the corresponding responsibilities. In this case, it has been proved that nine people were transferred to the José María Cabral Báez Regional University Hospital, and at least

five were hospitalized; however, the failure to register the entry into and exit from the health center, the lack of medical care for five seriously injured victims, and the failure to diagnose their condition and prescribe treatment, denote omissions in the attention that should have been provided to the injured in order to respect and ensure their right to personal integrity, in violation of Article 5(1) in relation to Article 1(1) of the Convention. Lastly, this Court considered that the treatment given to the bodies of the deceased following the incident, by burial in mass graves without being clearly identified or returned to their families, reveals a demeaning treatment in violation of Article 5(1) in relation to Article 1(1) of the Convention, to the detriment of the deceased and their next of kin.

Regarding the right to personal liberty, the Court determined that at no time during the deprivation of liberty were these persons informed of the reasons and grounds for their detention, either verbally or in writing. In addition, there is no document to prove that the detainees were informed in writing of the existence of any kind of charge against them. Moreover, regarding the arbitrary nature of the detention, the Court noted that the authorities did not keep them detained with the intention of bringing them before a judge or other officer authorized by law to exercise judicial power or to formulate charges against them in keeping with the domestic norms. Thus, the Court considered that the arrests were not made in order to carry out a procedure capable of determining the circumstances and legal status of the detainees, or even to conduct a formal immigration procedure for their deportation or expulsion, which means that they were unlawfully and arbitrarily detained. Also, the Court considered that although the detentions were less than the 48 hour constitutionally-based time frame established by the Dominican legal system for bringing a detainee before a competent judicial authority. Additionally, the migrants were not released in Dominican Republic; the military agents unilaterally applied the punishment of expulsion, without the victims having been brought before a competent authority, who, as appropriate, would determine their release. Lastly the Court found that owing to their rapid expulsion, the migrant victims had no opportunity to exercise an appropriate remedy that would control the lawfulness of the detention. Consequently, the Court concluded that the State violated Article 7, and its sections 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) of the Convention to the detriment of the detained victims.

Regarding the judicial guarantees, the Court considered that the expulsion of the Haitian immigrants was not in line with international standards on the matter or the procedures established in domestic law. The Haitian immigrants were not guaranteed any of the minimum guarantees due to them as aliens. Therefore, the Court considered that the Dominican Republic violated the right to due process and to judicial guarantees established in Article 8(1) of the American Convention, to the detriment of the expelled victims.

Regarding the freedom of movement and the prohibition to carry out collective expulsions, the Court found that a proceeding that may result in expulsion or deportation of an alien must be individualized, so as to evaluate the personal circumstances of each subject and comply with the prohibition of collective expulsions. Furthermore, this proceeding must adhere to the following minimum guarantees in relation to the alien: a) be expressly and formally informed of the charges against him or her and of the reasons for the expulsion or deportation; b) in case of an unfavorable decision, the alien must be entitled to have his or her case reviewed by the competent authority and appear before this authority for that purpose, and c) the eventual expulsion may only take effect following a reasoned decision in keeping with the law that is duly notified. From the foregoing, the Court concluded that the State treated the immigrants as a group, without individualizing them or providing them with differential treatment as human beings and taking into consideration their eventual needs for protection. This represented a collective expulsion in violation of Article 22(9) of the American Convention.

Regarding the rights to judicial guarantees and to judicial protection, in this case, the intervention of the military jurisdiction in the investigation of the facts contravened the parameters of exceptionality and restriction that characterize it and signified the application of a personal jurisdiction that functioned without taking into account the nature of the acts involved. The foregoing violated the demands of justice and the rights of the victims, and implied that the decision of the Court Martial Appeals Court, through which the accused were acquitted, cannot be considered a legal obstacle to the institution of criminal proceedings, or a final judgment.

From the evidence in the case file, the Court notes that the laws in force at the time of the events and their application by domestic courts did not exclude the facts of the case from the military jurisdiction. Moreover, both the First Instance Court of the Montecristi Judicial District and the Supreme Court of Justice rejected two appeals filed by the next of kin of the deceased victims for the case to be investigated and tried by the ordinary jurisdiction. Similarly, the Court emphasized that the military criminal proceeding did not permit the participation of the victims' next of kin. In addition, the Court noted that the injuries suffered by the Haitian survivors were not investigated or prosecuted by the State and that, more than 12 years after the events occurred, no one has been convicted and the facts remain in total impunity. All the above implied the State's violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, to the detriment of the surviving victims and the next of kin of the deceased victims.

Regarding the obligation to adopt domestic legal provisions, the Court held that the Supreme Court of Justice of the Dominican Republic, in its judgment of January 3, 2005, did not analyze the domestic norms and Article 3 of Law No. 3,483 in light of the American Convention and the consistent case law of the Inter-American Court regarding the lack of competence of the military criminal jurisdiction to try human rights violations and the restrictive and exceptional scope that it must have in the States that still retain its jurisdiction. Based on the foregoing, the Court concluded that the legislation in force at the time of the facts, the actions of the military officials during the investigation and the prosecution of the case in the military jurisdiction, and those of the ordinary domestic courts, represented a clear failure to comply with the obligation to adopt domestic law provisions contained in Article 2 of the American Convention. However, the changes to the law in the Dominican Republic from 2002 to 2010 established the competence of the ordinary jurisdiction to try offenses committed by military personnel, and also established the exceptional nature of the military jurisdiction exclusively for disciplinary offenses and offenses that are strictly related to the armed forces. Therefore, the Court concluded that with the current Dominican legislation, the State has remedied its obligation to adopt domestic legal provisions.

Regarding the obligation to respect and guarantee rights without discrimination, the Court observed various situations of vulnerability of the Haitian victims, owing to their condition as irregular immigrants. In this regard, the situation of special vulnerability of the Haitian immigrants was due, *inter alia*, to: a) the absence of preventive measures to adequately address situations relating to migratory control on the land border with Haiti; b) the violence deployed by the illegal and disproportionate use of force against unarmed immigrants; c) the failure to investigate said violence, the absence of testimony by and the participation of the victims in the criminal proceedings, and the impunity of the events; d) the detentions and collective expulsion without the due guarantees; e) the lack of adequate medical attention and treatment to the injured victims, and e) the demeaning treatment of the corpses and the failure to return them to the next of kin.

All of the foregoing demonstrates that, in the instant case, there was *de facto* discrimination against the victims in the case owing to their condition as immigrants, which resulted in preventing them from enjoying the rights that the Court declared violated in this Judgment. Therefore, the Court concluded that the State did not respect or ensure the rights of the Haitian migrants without discrimination in violation of Article 1(1) of the American Convention in relation to Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof.

Regarding the measures of integral reparation ordered in the Judgment, the Court established that its Judgment constitutes *per se* a form of reparation, and additionally ordered the State various measures, including: A) *In its obligation to investigate* the State shall re-open the investigation of all facts in order to identify, prosecute and, as appropriate, punish those responsible for the facts of the case, among other measures for the effective investigation and discovery of the facts, as well as determine the location of the bodies of the deceased persons, repatriate them and deliver them to their next of kin; B) *Measures of rehabilitation*: The State has the obligation to provide, free of charge and immediately, the medical and psychological treatment required by the victims, following their informed consent and for the time necessary, including the provision of medication free of charge; C) *Measures of satisfaction*: The State shall:

i) publish the judgment or certain portions of it in the official gazette and the official website, as well as publish it in a newspaper with widespread distribution in the Dominican Republic. Additionally, it shall translate the official summary of the judgment to French and Creole and publish it once in a newspaper of widespread distribution in Haiti, and ii) make an acknowledgement of the State's international responsibility; D) *Guarantees of non-repetition*: The State shall conduct trainings for public officials on the following topics: i) the use of force by law enforcement agents; ii) the principle of equality and non-discrimination, applied especially to immigrants and with a gender and child protection focus, and iii) due process in the detention and deportation of irregular immigrants. Additionally, it should conduct a campaign in public media on the rights of regular and irregular immigrants in Dominican territory, and adapt its domestic legislation to the American Convention, incorporating international standards on the use of force by law enforcement officers, and E) *Compensation*: The State shall pay the amounts established as compensation for pecuniary and non-pecuniary damage, for reimbursement of costs and expenses and reimburse expenses to the Victims' Legal Assistance Fund.

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_251\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_251_esp.pdf)

**2. Case of the Massacres of El Mozote and nearby places v. El Salvador. Judgment of October 25, 2012. Articles 1(1), 2, 4, 5(1), 5(2), 7, 8(1), 11(2), 19, 21(1), 21(2), 22(1), 25, 25(1)**

On October 25, 2012 the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") issued a Judgment, whereby it declared that the Republic of El Salvador was internationally responsible for the human rights violations perpetrated by the Salvadorian Armed Forces in the massacres committed from December 11 to 13, 1981, in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo, as well as the canton of Cerro Pando in a cave in Cerro Ortiz, in the municipality of Morazán. The Inter-American Court also determined that the enactment by the Salvadorian Legislative Assembly of the General Amnesty Law for the Consolidation of Peace and its subsequent application in this case by the Second First Instance Court of San Francisco Gotera is contrary to the letter and spirit of the Peace Accords, which understood in light of the American Convention, reveals a grave violation of the State's international obligation to investigate and punish the grave human rights violations of the massacres of El Mozote and nearby places.

While processing the case before the Inter-American Court, the Salvadorian State conducted an acknowledgement, which constituted a full acceptance of the facts contained in the report on merits of the Inter-American Commission and specific facts included in the pleadings and motions brief submitted by the victims' representatives, which was well received by the Court. Additionally, the Court underscored the speech given by the President of the Republic of El Salvador on January 16, 2012, on the 20<sup>th</sup> Anniversary of the signing of the Peace Accords, as well as the apology to the surviving victims and the next of kin of those massacred, which has great symbolic value in pursuing the non-repetition of similar events. It also emphasized the commitment expressed by the State in relation to the promotion of the necessary reparation measures as part of a permanent dialogue with the representatives, and under the conditions established by the Court.

The Case of the Massacres of El Mozote was one of the incidents addressed by the Truth Commission in its 1993 report, as a case that illustrated the peasant massacres committed by the Salvadorian Armed Forces during the counterinsurgency operations. However, to this date and for several years, the occurrence of the massacres of El Mozote and nearby places was systematically denied and concealed by the State.

In the instant case it was established and El Salvador recognized that, from December 11 to 13, 1981, the Salvadorian Armed Forces – the Rapid Deployment Infantry Battalion of Atlacatl, along with units of the Third Infantry Brigade of San Miguel, and the Center for Instruction of

Commands of San Francisco Gotera, with the support of the Salvadorian Armed Forces, conducted a consecutive series of massive, collective and indiscriminate executions of defenseless individuals, geared toward the civilian or non-combatant population in the village of El Mozote, the canton of La Joya, the villages of Rancheria, Los Toriles and Jocote Amarillo, as well as in the canton of Cerro Pando and in a cave in Cerro Ortiz, as part of an alleged counterinsurgency operation that was part of a "scorched earth" policy planned and executed by the State. In fact, the events demonstrated that the Armed Forces executed all of those persons it came across: elderly adults, men, women, boys and girls, they killed animals, destroyed and burned plantations, homes, and devastated "especially [...] everything community-related."

The most recent lists of victims drafted by the Office of Legal Guardianship of the Archbishopric of San Salvador, based on the testimonies of survivors and next of kin, include the names of 1061 alleged victims executed, of which approximately 54% were children, approximately 18% were adult women and approximately 10% were older men and women ages 60 and above. In the exhumations conducted in 28 sites, indicated mostly by the survivors and other witnesses, the remains of at least 281 individuals were recovered, of which approximately 74% correspond to children under 12. Particularly at Site 1, known as "El Convento" in the village of El Mozote, of 143 individuals identified, 136 were either children or adolescents, with an average age of 6 years.

The Inter-American Court determined that it was the State's responsibility to protect the civilian population during the armed conflict, especially children, who are in a situation of greater risk and vulnerability of having their rights violated. However, in the instant case the State agents acted deliberately, planning and executing through State structures and facilities the perpetration of seven successive massacres of older adults, men, women, and defenseless children, as part of a systematic plan of repression to which certain sectors of the population were subjected as they were considered to be supporting, collaborating or belonging to the guerrilla, or were in any way in opposition or contrary to the government.

The Court concluded that the Salvadorian State is responsible for the executions perpetrated by the Salvadorian Armed Forces in the massacres committed from December 11 to 13, 1981 in the village of El Mozote, the canton of La Joya, the villages of Rancheria, Los Toriles and Jocote Amarillo, as well as in the canton of Cerro Pando and in a cave in Cerro Ortiz, in violation of article 4 (Right to Life) of the American Convention on Human Rights, in relation to article 1(1) of said instrument.

Also, given that the events that preceded the execution of the persons represented for them physical, mental and moral suffering, the Court determined that the State is responsible for the violation to their right of personal integrity recognized in article 5(1) (Right to Personal Integrity) of the American Convention, which in turn constituted cruel, inhuman and degrading treatment, contrary to article 5(2) of the American Convention, in relation to article 1(1) of the same instrument, in detriment of the executed victims. Likewise, since the soldiers stripped the victims of their belongings, burned their homes, destroyed and burned their plantations, and killed their animals, in such a way that the operation of the Armed Forces consisted of a succession of events that simultaneously affected a series of rights, including the right to private property, the Court concluded that the State violated article 21(1) and 21(2) (Right to Property) of the American Convention, in relation to article 1(1) of the same instrument, to the detriment of the executed victims. Lastly, given that it was confirmed that children were found among the victims executed, the Court concluded that the violations also occurred in relation to article 19 (Rights of the Child) of the Convention.

In the case of the massacre in the village of El Mozote, additional impacts were evident, since it can be inferred from the facts that the people were illegally and arbitrarily detained under the control of the Armed Forces, impeding any possibility of the safeguards of personal liberty established in article 7 (Right to Personal Liberty) of the American Convention could be brought to bear in their favor. The Court emphasized that the collective executions did not occur immediately after the detention of the inhabitants and other individuals that were gathered in the village, but approximately between 12 and 24 hours during which they were intentionally subjected to intense suffering, by being threatened and intimidated; they were kept locked up

and guarded for hours, and under those circumstances they were interrogated about the presence of guerrilla members in the area, not knowing what their final fate would be.

Based on the State's acceptance of the facts, the Court deemed it reasonable to grant value in this case to the series of indications derived from the case, which allow it to infer the truth of the rapes of the women perpetrated by the soldiers in the village of El Mozote. For this reason, the Court deemed that the rapes to which the women in El Mozote were subjected while they were under military control, constituted a violation of article 5(2) (Prohibition of Torture and of other cruel, inhuman and degrading treatments) of the American Convention, as well as article 11(2) (Right to Private Life) of the same instrument, and article 11(2) (Right to Private life) of the same instrument, in relation of article 1(1), although there wasn't sufficient proof to allow identifying the persons against whom this violation had taken place, whose obligation to investigate falls on the domestic courts.

Consistently, the statements received by the Court allowed it to verify that the personal integrity of the surviving victims of the village of El Mozote, the canton of La Joya, the villages of Rancheria, Los Toriles and Jocote Amarillo, as well as in the canton of Cerro Pando, were affected by one or several of the following situations: a) fearful of being killed; they were forced to flee their homes into the hills, mountains, rivers and wooded areas of the mountains to take refuge, alone or with their families in caves, homes of friends and other safe places in the area, where they remained for days without sufficient food or water; b) from the places where they had hidden, they heard, and in some cases witnessed the soldiers entering the homes of their relatives, neighbors and acquaintances, forcing these persons from their homes, killing them and setting fire to them, and heard their cries for help while they were brutally massacred. They also heard gunfire, gunshots, a hail of bullets, bombardments and the explosion of grenades; c) once they noticed that the soldiers left, they returned to those places, and found the corpses of the executed victims, including their family members and loved ones, burned and/or in an advance state of decomposition, and, in some cases, incomplete, since they had been devoured by animals; d) in some cases they were unable to bury the bodies they found because the soldiers were still in the area; e) days later they proceeded to bury the remains of their family members, including wife, sons and daughters, mother, brothers and sisters, nieces and nephews, as well as acquaintances and neighbors, although they also found corpses that they were unable to identify, and f) some of the survivors searched for the remains of their relatives for days, without finding them.

Given that in some cases the survivors took various measures, such as the search for justice, taking part in the proceedings before domestic and/or international jurisdiction, and given that it is evident that the lack of effective investigations to shed light on the facts and the impunity in which the facts of this case remain have caused the surviving victims to feel fear, vulnerability and insecurity, the Court found that said acts implied cruel, inhuman and degrading treatments, contrary to article 5(1) and 5(2) of the American Convention in relation to article 1(1) of the same instrument, to the detriment of the surviving victims.

The Court also concluded that the State violated the right to private property recognized in article 21(1) and 21(2) (Right to Private Property) of the American Convention, in relation to article 1(1) of the same instrument, to the detriment of the surviving victims. In this regard, it considered that the violation of this right in the instant case is of special gravity and magnitude, not only because of the loss of tangible assets, but also because of the loss of the most basic living conditions, and of every social reference point of the people who lived in those towns.

From the facts in this case it can be inferred that those who survived the massacres were forced to leave their usual place of residence, because of both the State's acts and its omissions. In other words, owing to the acts of State agents when perpetrating the massacres that terrorized the population and left the people, most of them peasants and housewives (*supra* para. 81), without their homes and without the essential means for their subsistence, as well as because of the lack of State protection suffered by the civilian population in the areas associated with the guerrilla that placed them in a situation of vulnerability in the presence of military operations.

In the instant case, and as can be inferred from the testimony received, it has been proven that situations of mass displacement occurred caused precisely by the armed conflict and the lack of protection suffered by the civilian population because it was equated with the guerrillas. In the instant case, as a direct consequence of the massacres that occurred between December 11 and 13, 1981, and the accompanying circumstances, which have also been verified, of this being part of a State scorched earth policy; all of which meant that the survivors were obliged to flee their country, seeing their life, safety or freedom threatened by the generalized and indiscriminate violence. The Court concluded that the State is responsible for the conduct of its agents that caused the enforced displacement internally and to the Republic of Honduras. In addition, the State did not provide the conditions or means that would allow the survivors to return in a dignified and safe manner. As this Court has established previously, the lack of an effective investigation of acts of violence can encourage or perpetuate enforced displacement. Consequently, the Court found that, in this case, the freedom of movement and residence of the survivors of the massacres were limited by severe *de facto* restrictions, originating from the State's acts and omissions, in violation of Article 22(1) (Freedom of Movement and Residence) of the American Convention.

The evidence presented reveals that there is a group of next of kin of the executed victims who, at the time, were not present in the places where the massacres that this case refers to occurred and, when they returned, they tried to find their relatives, but only found their remains. The Court considers it especially serious that some of them had to gather up the bodies of their loved ones that were charred and/or in an advanced state of decomposition and, in some cases, incomplete, in order to bury them, without being able to give them a burial in accordance with their traditions, values or beliefs. It is also evident from the case file that, in some cases, the next of kin of the executed victims have been involved in different actions such as the search for justice, taking part in the proceedings before the international jurisdiction. It has been proven that soldiers proceeded to set fire to the houses, destroy and burn the inhabitants' crops, and kill the animals. Therefore, the State is responsible for the violation of articles 5(1), 5(2), 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims executed in the massacres.

The Court considers that, in this case, the international responsibility of the State is aggravated owing to the context in which the facts of the massacres of El Mozote and nearby places were perpetrated, which relates to a period of extreme violence during the Salvadoran internal armed conflict that responded to a State policy characterized by military counterinsurgency operations, such as "scorched-earth" operations, intended to achieve the massive and indiscriminate destruction of the villages that were suspected of being linked to the guerrillas. This is exemplified through the expression "taking the water away from the fish". Thus, once the extrajudicial execution had been concluded, the soldiers proceeded to set fire to the people's homes, belongings and crops and to kill their animals, which signified the permanent loss of the victims' possessions and the destruction of their homes and means of subsistence, causing the enforced displacement from those places of the survivors. As has been established, entire family units were destroyed, and due to the very nature of the massacres, this altered the dynamics of the surviving next of kin and profoundly affected the community's social tissue. In addition, since that time and to date, there have been no effective judicial mechanisms to investigate the grave human rights violations perpetrated, or to prosecute and, as appropriate, punish those responsible.

Indeed, almost 31 years have passed since the massacres of El Mozote and nearby places occurred, and no serious or exhaustive criminal proceeding have been held to identify the masterminds and perpetrators, and all the truth about the events are still not known. Thus, a situation of total impunity prevails, shielded by the Law of General Amnesty for the Consolidation of Peace. It has been verified that, from the time the investigations began, they have been characterized by a lack of diligence, thoroughness and seriousness. In particular, the failure to comply with the obligation to open an investigation *ex officio* and to expedite the necessary measures, the absence of clear and logical lines of investigation that would have taken into account the context and complexity of the events, the periods of procedural inactivity, the refusal to provide information on the military operations, the lack of diligence and thoroughness in the implementation of the investigations by the authorities responsible for



them, the delay in carrying out the judicial inspections and the exhumations, as well as the decision to dismiss the proceedings issued in application of the Law of General Amnesty for the Consolidation of Peace, allowed the Court to conclude that the domestic criminal proceedings have not constituted an effective remedy to guarantee the rights of access to justice and to know the truth by the investigation and eventual punishment of those responsible, and comprehensive reparation for the consequences of the violations.

For the Court, the logic of the political process between the parties in conflict, which resulted in the end of the hostilities in El Salvador, imposed on the State the obligation to investigate and punish by the "exemplary action" of the ordinary law courts, at least grave human rights violations established by the Truth Commission, so that they did not remain unpunished and to avoid their repetition.

Subsequently, the Legislative Assembly of the Republic of El Salvador enacted the 1992 National Reconciliation Law, which established the benefit of unrestricted amnesty, while excluding from its application "anyone who, according to the report of the Truth Commission, had taken part in grave acts of violence that had occurred since January 1, 1980, whose impact on society demands, with the utmost urgency, that the public know the truth, regardless of the sector to which he or she belongs."

Similarly, the Truth Commission, created by the Mexico Accords of April 27, 1991, and which initiated its activities on July 13, 1992, investigated "grave acts of violence that had occurred since 1980, whose impact on society demands, with the utmost urgency, that the public know the truth," which included the Massacres of El Mozote, as an exemplary case of the peasant massacres perpetrated by the Armed Forces.

However, on March 20, 1993, five days after the presentation of the Report of the Truth Commission, the Legislative Assembly of the Republic of El Salvador enacted the "Law of General Amnesty for the Consolidation of Peace," which extended the benefit of amnesty to the persons referred to in Article 6 of the National Reconciliation Law; namely, "those persons who, according to the Truth Commission, participated in grave human rights violations that have occurred since January 1, 1980." In other words, a general and absolute amnesty was granted which extended the possibility of impeding the criminal investigation and the determination of responsibilities to those individuals who had taken part as perpetrators, masterminds and accomplices in the perpetration of serious human rights violations and grave breaches of international humanitarian law during the internal armed conflict, including those exemplary cases established by the Truth Commission. In short, it set aside the non-applicability of the amnesty in these situations that had been agreed by the parties to the Peace Accords and established in the National Reconciliation Law. In addition, beneficiaries of the amnesty included not only individuals, whose cases were pending, but also those who had not yet been prosecuted or regarding whom a guilty verdict had already been delivered, and in all cases, civil responsibility was extinguished.

Contrary to the cases examined previously by this Court, the instant case deals with a general amnesty law that relates to acts committed in the context of an internal armed conflict. Therefore, the Court found it pertinent, when analyzing the compatibility of the Law of General Amnesty for the Consolidation of Peace with the international obligations arising from the American Convention and its application to the case of the Massacres of El Mozote and Nearby Places, to do so also in light of the provisions of Protocol II Additional to the 1949 Geneva Conventions, as well as of the specific terms in which it was agreed to end hostilities, which put an end to the conflict in El Salvador and, in particular, of Chapter I ("Armed Forces"), section 5 ("End to impunity"), of the Peace Accord of January 16, 1992.

The Court held that, according to the international humanitarian law applicable to these situations, the enactment of amnesty laws on the conclusion of hostilities in non-international armed conflicts are sometimes justified to pave the way to a return to peace. In fact, article 6(5) of Protocol II Additional to the 1949 Geneva Conventions establishes that:

At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

However, this norm is not absolute, because, under international humanitarian law, States also have an obligation to investigate and prosecute war crimes. Consequently, “persons suspected or accused of having committed war crimes, or who have been convicted of this” cannot be covered by an amnesty. Consequently, it may be understood that article 6(5) of Additional Protocol II refers to extensive amnesties in relation to those who have taken part in the non-international armed conflict or who are deprived of liberty for reasons related to the armed conflict, provided that this does not involve facts, such as those of the instant case, that can be categorized as war crimes, and even crimes against humanity.

In the instant case, it has been almost 20 years since the investigation into the massacres of El Mozote and nearby places was dismissed and the case file closed as a result of the application of the Law of General Amnesty for the Consolidation of Peace, without any response to the repeated requests to re-open the proceedings by the representatives of the victims.

Consequently, it is evident that the *ratio legis* of the Law of General Amnesty for the Consolidation of Peace was to render ineffectual Chapter I (“Armed Forces”), section 5 (“End to impunity”), of the Peace Accord of January 16, 1992, and, in this way, amnesty and leave in impunity all the grave crimes perpetrated against international law during the internal armed conflict, even though the Truth Commission had determined that they should be investigated and punished. Thus, the enactment of the Law of General Amnesty for the Consolidation of Peace explicitly contradicted what the parties to the armed conflict had established in the Peace Accord that determined the end of the hostilities.

In conclusion, the Inter-American Court determined that the approval by the Legislative Assembly of the Law of General Amnesty for the Consolidation of Peace and its subsequent application in this case by the Second First Instance Court of San Francisco Gotera, on the one hand, is contrary to the letter and spirit of the Peace Accords, which understood in light of the American Convention reveals a serious violation of the State’s international obligation to investigate and punish the grave human rights violations relating to the massacres of El Mozote and nearby places, by preventing the survivors and the victims’ next of kin in this case from being heard by a judge, in keeping with the provisions of Article 8(1) of the American Convention and receiving judicial protection, in keeping with the right established in Article 25 of this instrument.

On the other hand, the Law of General Amnesty for the Consolidation of Peace has resulted in the installation and perpetuation of a situation of impunity owing the absence of investigation, pursuit, capture, prosecution and punishment of those responsible for the facts, thus failing to comply with Articles 1(1) and 2 of the Convention; the latter in relation to the obligation to adapt its domestic law to the provisions of the Convention. Given their evident incompatibility with the American Convention, the provisions of the Law of General Amnesty for the Consolidation of Peace that prevent the investigation and punishment of the grave human rights violations that were perpetrated in this case lack legal effects and, consequently, cannot continue to represent an obstacle to the investigation of the facts of this case and the identification, prosecution and punishment of those responsible, and they cannot have the same or a similar impact in other cases of grave violations of the human rights recognized in the American Convention that may have occurred during the armed conflict in El Salvador.

In short, it has been verified that, in the instant case, the State’s power was organized as a means and resource for perpetrating the violation of the rights that it should have respected and ensured, and this has been aided by a situation of impunity of these grave violations, encouraged and tolerated by the highest State authorities, who have obstructed the course of the investigation. Consequently, the Court considers it essential that, as soon as possible, the State rectify the conditions of impunity verified in this case by removing all the obstacles, which have promoted and maintained it, *de facto* and *de jure*.

In light of the above, the Court declared that the State is responsible for the violation of Articles 8(1) (Judicial Guarantees) and 25(1) (Judicial Protection) of the American Convention, in relation to articles 1(1) and 2 (Duty to Adopt Domestic Legal Effects) of the same instrument, and for the violation of the obligations established in Article 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women “Convención de Belém do Pará”, to the detriment of the surviving victims and the next of kin of the victims who were executed in this case, in their respective circumstances.

The Court established that its Judgment constitutes *per se* a form of reparation, and, in view of the violations established, it also ordered the State the following measures of reparation: (i) to continue with the full implementation of the “Single List of the Victims and Next of Kin of the Victims of Grave Human Rights Violations during the Massacre of El Mozote” and adopt the necessary measures to ensure its sustainability and the budgetary allocation to guarantee its effective operation; (ii) initiate, promote, re-open, direct, continue and conclude, as appropriate, with the greatest diligence, the pertinent investigations of all of the events that resulted in the violations declared in the instant Judgment, in order to identify, prosecute and, as appropriate, punish those responsible; (iii) ensure that the Law of General Amnesty for the Consolidation of the Peace never again represents an obstacle to the investigation of the facts that are the subject matter of this case or to the identification, prosecution and eventual punishment of those responsible for them and for other similar grave human rights violations that took place during the armed conflict in El Salvador; (iv) investigate, through the competent public institutions, the conduct of the officials who obstructed the investigations and allowed the facts to remain in impunity and, following a suitable proceeding, apply, if appropriate, the corresponding administrative, disciplinary or criminal sanctions to those found responsible; (v) review the information available on possible interment or burial sites, which must be protected to preserve them, in order to initiate, systematically and rigorously and with the adequate human and financial resources, the exhumation, identification and, when appropriate, return of the remains of those executed to their next of kin; (vi) implement a development program for the communities of the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo and the canton of Cerro Pando; (vii) guarantee suitable conditions so that the displaced victims may return to their original communities on a permanent basis, if they wish, and also implement a housing program in the areas affected by the massacres in this case; (viii) implement a permanent and comprehensive program of physical, mental and psychosocial care and attention; (ix) publish the Judgment; (x) make an audiovisual documentary about the grave acts committed in the massacres in El Mozote and nearby places; (xi) implement a permanent and compulsory program or course on human rights, with a children- and gender-based perspective, for all ranks of the Salvadoran Armed Forces; and (xii) pay the amounts established as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses.

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

The full text of the Judgment can be accessed through the following link:  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_252\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_252_esp.pdf)

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For further information, please visit the Inter-American Court’s webpage at <http://corteidh.or.cr/index.cfm> or contact Secretary Pablo Saavedra Alessandri via email at [corteidh@corteidh.or.cr](mailto:corteidh@corteidh.or.cr).