

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ROCHAC HERNÁNDEZ ET AL. v. EI SALVADOR

JUDGMENT OF OCTOBER 14, 2014

(Merits, Reparations and Costs)

In the case of *Rochac Hernández et al. v. El Salvador*,

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

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

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

* Judge Alberto Pérez Pérez participated in all procedural stages of this case. For reasons of *force majeure*, he was unable to be present during the deliberation and signing of this judgment.

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I

INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On March 21, 2013, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court a brief (hereinafter “submission brief”) in the case of “Rochac Hernández and others” against the Republic of El Salvador (hereinafter “the State” or “El Salvador”). The case refers to:

a) the alleged forced disappearance of the boys José Adrián Rochac Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla and Ricardo Abarca Ayala¹, and of the girl Emelinda Lorena Hernández, between 1980 and 1982, in similar circumstances, namely: in the context of the internal armed conflict, following so-called “counterinsurgency” military operations, and having been seen for the last time with members of the armed forces, who had abducted them and supposedly determined their fate; and

b) the State’s alleged failure to conduct a serious and diligent investigation, within a reasonable period, into the alleged forced disappearance of the presumed victims as a mechanism to guarantee their rights, and to ensure the right to truth, justice and reparation of their next of kin; consequently, the fate or whereabouts of the presumed victims has not been established and the facts remain in impunity.

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

a) *Petitions.* On September 11, 2003, the Search Association for Disappeared Children (*Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos*) (hereinafter “the representatives of the presumed victims” or “the representatives”) submitted to the Commission petition number 731-03 for the alleged forced disappearance of the boy José Adrián Rochac Hernández; petition number 732-03 for the alleged forced disappearance of the girl Emelinda Lorena Hernández; and petition number 733-03 for the alleged forced disappearance of the boy Santos Ernesto Salinas. Subsequently, on December 8, 2003, the Search Association submitted to the Commission petition number 1072-03 for the alleged forced disappearance of the boys Manuel Antonio Bonilla and Ricardo Abarca Ayala.

b) *Reports on Admissibility.* On October 21, 2006, the Commission approved the Report on Admissibility No. 90/06, in which it concluded that petition 731-03, concerning the child José Adrián Rochac Hernández, was admissible.² On March 5, 2008, the Commission approved the Report on Admissibility No. 11/08, which concluded that petition 732-03, concerning the child Emelinda Lorena Hernández, was admissible.³ On March 5, 2008, the Commission approved Report on Admissibility No. 10/08, which concluded that petition 733-03, concerning the child

¹ Although in the different national and international proceedings Ricardo has generally been referred to with the surnames “Ayala Abarca,” for the purposes of this judgment the surnames “Abarca Ayala” will be used, since his first surname on his birth certificate is Abarca. Cf. Birth certificate of Ricardo Abarca Ayala issued by the Family Status Registry of the Municipal Office of Villa de San Esteban Catarina (evidence file, volume IV, annex 23 to the submission of the case, folio 2011).

² The Commission decided to admit the petition inasmuch as it refers to the alleged violation of the rights protected under Articles 11, 4, 5, 7, 8, 17, 18, 19 and 25 of the American Convention (file of proceedings before the Commission, volume III, folios 1235 to 1248).

³ The Commission decided to: a) declare admissible the petition related to Articles 5, 7, 8, 17, 19 and 25, pursuant to Article 1(1) of the American Convention; b) declare admissible, according to the principle of *iura novit curia*, the petition related to Articles 3 and 4 of the American Convention in relation to Articles 1(1) and 2 thereof, and c) declare admissible the petition related to Article 18 of the American Convention (file of proceedings before the Commission, volume I, folios 374 to 385).

Santos Ernesto Salinas, was admissible.⁴ On July 25, 2008, the Commission approved Report on Admissibility No. 66/08, which concluded that petition 1072-03, concerning the children Manuel Antonio Bonilla and Ricardo Abarca Ayala, was admissible.⁵

c) *Joinder of the cases.* On April 9, 2010, the Commission decided to join cases 12.646 (Santos Ernesto Salinas), 12.647 (Emelinda Lorena Hernández) and 12.667 (Manuel Antonio Bonilla and Ricardo Abarca Ayala) to case 12.577 (José Adrián Rochac Hernández), given that “they concern similar facts and reveal the same pattern of conduct.”

d) *Merits report.* On November 7, 2012, the Commission approved the Report on Merits No. 75/12, pursuant to Article 50 of the Convention (hereinafter also “Merits Report” or “Report No. 75/12”), in which it reached a number of conclusions and made several recommendations to the State:

- a. *Conclusions.* The Commission concluded that the State of El Salvador was responsible for the violation of the following rights:
 - i. rights to recognition of juridical personality, to life, to humane treatment, to personal liberty, to judicial guarantees, to the protection of the family, to special protection for children and to judicial protection, established in Articles 3, 4, 5, 7, 8, 17, 19 and 25 of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo [Abarca Ayala], and
 - ii. rights to humane treatment, to protection of the family, to judicial guarantees and judicial protection, established in Articles 5, 17, 8 and 25 of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of the next of kin.
- b. *Recommendations.* Consequently, the Commission made a number of recommendations to the State:
 - i. Conduct a thorough, impartial and effective investigation into the fate or whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo [Abarca Ayala] and, if they are found, make the necessary efforts to ensure family reunification. If it is established that any of them is not alive, take the measures necessary to deliver their remains to their next of kin [;]
 - ii. Conduct a thorough, impartial and effective investigation into the facts to determine the responsibility and to punish all the perpetrators of the human rights violations to the detriment of the victims in the instant case, including the investigations necessary to determine the responsibility and punish the persons who participated in covering up the facts and in the denial of justice[;]
 - iii. Make adequate reparation to the victims of the instant case, including both the pecuniary and the non-pecuniary aspect [;]
 - iv. Adopt the measures necessary for ensuring the effectiveness and permanence for the time necessary of the Search Commission, the search webpage, and the genetic information system being implemented within the framework of what was ordered by the Inter-American Court of Human Rights in the judgment in the case of the Serrano Cruz Sisters. In particular, ensure that these measures are established through legal mechanisms that provide legal certainty in its functioning and sufficient budget, and

⁴ The Commission decided to: a) declare admissible the petition related to Articles 5, 7, 8, 17, 19 and 25, pursuant to Article 1(1) of the American Convention; b) declare admissible, in accordance with the principle of *iura novit curia*, the petition related to Articles 3 and 4 of the American Convention in relation to Articles 1(1) and 2 thereof, and c) declare inadmissible the petition related to Article 18 of the American Convention (file of proceedings before the Commission, volume I, folios 62 to 71).

⁵ The Commission decided to: a) declare admissible the petition related to Articles 5, 7, 8, 17, 19 and 25 in relation to Article 1(1) of the American Convention; b) declare admissible, by virtue of the principle of *iura novit curia*, the petition related to Articles 3 and 4 of the American Convention in relation to Articles 1(1) and 2 thereof, and c) declare inadmissible the petition related to Article 18 of the American Convention (file of proceedings before the Commission, volume II, folios 884 to 897).

- v. Adopt measures of non-repetition to ensure that the integral protection system for children is implemented effectively, including its strengthening and adaptation to the international standards of the Civil Registry system and the adoption system.

c. *Notification to the State.* On November 21, 2012, the State was notified of the Report on the Merits and was granted a period of two months to report on its compliance with the recommendations.

e) *Submission to the Court.* On March 21, 2013, in the absence of any information from the State, the Commission submitted to the jurisdiction of the Inter-American Court all the facts declared in its merits report, "since these constitute continued violations," and given the need to obtain justice for the presumed victims. The Commission appointed Rosa María Ortiz, Commissioner, and Emilio Álvarez Icaza L., Executive Secretary, as its delegates before the Court, and Elizabeth Abi-Mershed, Assistant Executive Secretary, Silvia Serrano Guzmán and Isabel Madariaga, lawyers with the Executive Secretariat, as legal advisers.

3. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare El Salvador responsible for the violation of the rights it declared violated in its merits report⁶ (*supra* para. 2.d). In addition, the Commission asked the Court to order the State to implement specific measures of reparation, which will be specified and analyzed in Chapter VIII of this judgment.

II PROCEEDINGS BEFORE THE COURT

4. *Notification of the State and the representatives.* The submission of the case by the Commission was notified to the State and the representatives of the presumed victims on May 29, 2013.

5. *Brief of pleadings, motions and evidence.* On July 24, 2013, the representatives of the presumed victims submitted to the Court their brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief"). The representatives agreed substantially with the arguments put forward by the Commission and asked the Court to declare the State's international responsibility for the violation of the same articles alleged by the Commission and, in addition, "the violation of the right to the truth." Likewise, the presumed victims, through their representatives, requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter the "Assistance Fund of the Court" or the "Fund"). Finally, they asked the Court to order the State to implement various measures of reparation and to reimburse certain costs and expenses.

6. *Answer brief.* On November 11, 2013, the State submitted to the Court its brief answering the submission of the case and its observations to the pleadings and motions brief, in which it acknowledged its international responsibility. The State appointed as its Agents Mr. David Ernesto Morales Cruz, then Director General of Human Rights, and Mr. Sebastián Vaquerano López, El Salvador's Ambassador to Costa Rica. Subsequently, the State appointed Mrs. Tania Camila Rosa, Director General of Human Rights at the Foreign Ministry as its Agent, in replacement of Mr. Morales Cruz.

7. *Access to the Legal Assistance Fund.* In an order issued on December 12, 2013, the President of the Court approved the request submitted by the presumed victims, through their representatives,

⁶ In the proceedings before the Commission, the petitioners presented arguments concerning the alleged violation of Article 18 of the American Convention. However, in the Report on Merits, the Commission considered that, although the context indicates that a common fate that befell many disappeared children was to be stripped of their identity through name changes, in the instant case these circumstances were not established. In the proceedings before the Court, the dispute did not include that aspect. *Cf.* Merits Report No. 75/12 of the Inter-American Commission on November 7, 2012, para. 209.

to have recourse to the Victims' Legal Assistance Fund of the Court, and granted the necessary financial assistance for the presentation of a maximum of five statements, either by affidavit or at a public hearing.⁷

8. *Observations on the acknowledgment of international responsibility by the State.* On December 16, 2013 the Commission and the representatives presented their observations on the State's acknowledgement of responsibility.

9. *Evidence to facilitate adjudication of the case.* On January 10, 2014 the State forwarded the "complete documentation of the Case File 321-UMM-D-02", as requested by the President pursuant to Article 58(b) of the Rules, in notes from the Secretariat dated September 12 and November 15, 2013.

10. *Public hearing and evidence.* In his order of March 3, 2014⁸, the President summoned the parties and the Commission to a public hearing to receive their final oral arguments and observations on the merits and possible reparations and costs in this case, respectively, at the conclusion of the statements and expert opinions. The public hearing was held on April 1, 2014, during the 50th Special Period of Sessions, which took place at the seat of the Court.⁹ During the hearing, certain information and documentation was requested.¹⁰ Subsequently, the Court asked the Commission and the representatives, respectively, to forward copies of the identity documents and, for those deceased, copies of the respective death certificates of the next of kin alleged as presumed victims in this case.

11. *Arguments and final written observations.* On May 2, 2014, the State and the representatives forwarded their final written arguments, together with the evidence requested,¹¹ and the Commission presented its final written observations.

12. *Observations of the representatives and the State.* The President granted the parties and the Commission a period of time to submit their observations to the annexes to the final written arguments presented by the State and by the representatives. On May 28, 2014, the parties presented their respective observations and the Commission stated that it had "no observations to make" to the annexes to the final written arguments of the parties.

⁷ Cf. *Rochac Hernández et al. v. El Salvador*. Order of the President of the Inter-American Court of December 12, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/rochac_fv_13.pdf

⁸ Cf. *Rochac Hernández et al. v. El Salvador*. Order of the President of the Inter-American Court of March 3, 2014. Available at: http://www.corteidh.or.cr/docs/asuntos/rochac_03_03_14.pdf

⁹ The hearing was attended by the following: a) for the Inter-American Commission: Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers of the Executive Secretariat; b) for the representatives of the presumed victims: Mirla Guadalupe Carbajal Amaya, General Coordinator of the Search Association, Doris Lisette Alvarado Campos and José Roberto Rugamas Morán, attorneys and c) for the State of El Salvador: Ambassador Sebastián Vaquerano López, Agent of the State, Tania Camila Rosa, Director General of Human Rights of the Ministry of Foreign Relations and Agent of the State, and Gloria Evelyn Martínez Ramos, Director of International Protection Systems of the Ministry of Foreign Relations.

¹⁰ The Court requested information and, where appropriate, supporting documentation, concerning: the actions undertaken both by the Interinstitutional Commission and the current National Search Commission in relation to the five presumed victims in this case; the legislative bill on the operation of the National Search Commission; developments related to the decision to apply or not apply the General Amnesty Law for the Consolidation of Peace in order to limit the investigations arising from the judgment delivered by the Inter-American Court in the case of *the Massacres of El Mozote and nearby places*; and the request made to declassify or hand over information from the so-called "military archives".

¹¹ The State forwarded the following evidence: Annex 1: Antiguo Cuscatlán, El Salvador, May 2, 2014. Draft Legislative Decree of the National Search Commission of Children Disappeared during the Internal Armed Conflict (*Comisión Nacional de Búsqueda de Niñas y Niños Desaparecidos durante el Conflicto Armado Interno*). Annex 2: Executive Decree No. 18, dated February 19, 2014, published in the Official Gazette, Volume No. 402, number 51, of March 17, 2014, which extends the term of action of the National Search Commission to Search for Children who Disappeared during the Internal Armed Conflict. The representatives forwarded various documents related to the General Amnesty Law for the Consolidation of Peace, as well as identity documents and death certificates of family members.

13. *Additional evidence.* On May 28, 2014, the State forwarded a “[c]ertification of judicial actions carried out by the Justice of the Peace of Meanguera, in the Department of Morazán, in relation to the child Emelinda Lorena Hernández.” The President granted a period of time to submit observations. The Commission forwarded its observations on June 17, 2014, but no observations were received from the representatives. On September 26, 2014, following the instructions of the President of the Court and under the terms of Article 58(b) of its Rules of Procedure, the State was asked to forward, at the latest by October 7, 2014, a report of the Office of the Attorney General of the Republic or, if applicable, of the relevant public prosecutors’ offices, concerning the criminal investigations supposedly opened in 2009 into the forced disappearances of Santos Ernesto Salinas (Case File 908-UDV-2009 or 908-UDVSV-2009 at the Public Prosecutor’s Office of San Vicente), Manuel Antonio Bonilla and Ricardo Abarca Ayala (Case File 909-UDV-2009 at the Public Prosecutor’s Office of San Vicente), and Emelinda Lorena Hernández (Case File 908-UDVFM-2009 or 908-UDV-2009 at the Public Prosecutor’s Office of San Francisco Gotera), describing how the investigations were initiated, the actions carried out and their current procedural status. In his order, the President also requested that a copy of those files or of the relevant procedural actions be forwarded for inclusion in the body of evidence in the instant case. On October 8, 2014, the State requested a 15-day extension to submit that information. However, given the imminence of the period of sessions, and in light of the State’s acknowledgement of responsibility as well as scope of the factual context of the merits report (*infra* para. 144), the Court did not consider it pertinent to grant the extension requested.

14. *Disbursements in application of the Assistance Fund.* On May 14, 2014, following the instructions of the President, the Secretariat forwarded information to the State on the disbursements made in application of the Victims’ Legal Assistance Fund in this case and, pursuant to Article 5 of the Court’s Rules on the Operation of the Fund, granted the State a period of time to submit any observations deemed pertinent. The State presented its observations on May 28, 2014.

III JURISDICTION

15. The Inter-American Court is competent to hear this case under the terms of Article 62(3) of the Convention, given that El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the Court’s compulsory jurisdiction on June 6, 1995.

16. The representatives held that the instant case offers a new opportunity for the Court to “finally invalidate the clause containing the temporal limitation *ratione temporis* that the State of El Salvador included in its acceptance of the Court’s contentious jurisdiction.”

17. Although its declaration of acceptance of the Inter-American Court’s jurisdiction includes a temporal restriction,¹² in the instant case, the State of El Salvador, in keeping with its

¹² The instrument through which El Salvador recognized the Court’s contentious jurisdiction includes a time limit with respect to cases that may be submitted to the Court, in the following terms:

The Government of El Salvador accepts as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the American Convention on Human Rights, or the “Pact of San José.”

Upon accepting this jurisdiction, the Government of El Salvador places on the record that its acceptance is for an indefinite period and under conditions of reciprocity, and with the reservation that the cases in which jurisdiction is acknowledged refer solely and exclusively to subsequent facts or juridical acts, or facts or judicial acts that begun after the date on which the Declaration of Acceptance was deposited, [...].

Cf. Declaration of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights, submitted to the Secretary General of the OAS on June 6, 1995.

acknowledgment of the facts in its brief answering the submission of the case, and with its observations on the pleadings and motions brief, and reiterated in its final oral and written arguments, unilaterally declared that said limitation of jurisdiction "is neither effective nor operational in the instant case." That is to say, in all the procedural stages before the Court, the State has clearly expressed its willingness to acknowledge all the facts that occurred, as well as the violations declared in this case and their juridical consequences, expressly granting the Court jurisdiction to rule on all aspects of this case. Therefore, the Court does not find it necessary to consider the request of the representatives. The Court assesses positively the declaration made by the State for this specific case. Consequently, the Court has full jurisdiction to assess all the facts contained in the Report on the Merits No. 75/12, submitted to the Court's jurisdiction by the Commission, and will now decide on the merits and the possible reparations in this case.

IV ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

Acknowledgment of responsibility by the State and observations of the Commission and of the representatives

18. Referring to statements made in different cases before the Inter-American System, the State pointed out that, since 2009, it has developed a new national vision with respect to its obligations on human rights issues. As evidence of this, the State recalled that during the merits hearing held before the Inter-American Commission on Human Rights in the instant case, on November 6, 2009, it acknowledged that, "in the context of the armed conflict [that took place in the country], between 1980 and 1991, there was a systematic pattern of forced disappearances of children and adolescents in different areas, especially in those most affected by armed combat and military operations, although this reality was denied for many years." Accordingly, the State recognized that enforced disappearance of children formed part of a pattern of violence that took place in El Salvador during the internal armed conflict.

19. The State declared before the Court that it acknowledged and accepted the facts alleged in the Commission's presentation of the case, and considered as proven facts in section IV, letters C¹³, D¹⁴, E¹⁵ and F¹⁶ of the Report on Merits No. 75/12. As to the facts presented by the representatives in their pleadings and motions brief, the State accepted the content of section I of said brief, "specifically the part included in the section on circumstances and facts surrounding the disappearance of the victims in this case." During the public hearing, the State reaffirmed its acknowledgment of the facts related to the disappearance of the girl Emelinda Lorena Hernández and the boys Santos Ernesto Salinas, José Adrián Rochac Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, together with the circumstances surrounding their disappearances, admitting that these occurred "as part of a pattern of violence that took place in El Salvador during the armed conflict between 1980 and 1991, which included the forced disappearance of children especially in those areas most affected by armed combat and military operations." Similarly, in its final arguments the State explained that, "in accordance with the position expressed before the [...] Court in cases concerning disappeared children during the internal armed conflict, and in recognition of its obligations under the American Convention on Human Rights, at the different procedural stages of this case, including the answer [to the submission of the case], the forwarding of observations to the independent brief of the representatives and the oral

¹³ With respect to José Adrián Rochac Hernández ("Facts surrounding his disappearance" and "Domestic proceedings").

¹⁴ With respect to Santos Ernesto Salinas ("Facts surrounding his disappearance" and "Domestic proceedings").

¹⁵ With respect to Emelinda Lorena Hernández ("Facts surrounding her disappearance" and "Domestic proceedings").

¹⁶ With respect to Manuel Antonio Bonilla and Ricardo Ayala Abarca ("Facts surrounding their disappearances" and "Domestic proceedings").

arguments presented during the public hearing [...], it acknowledged and accepted the facts alleged by the Inter-American Commission on Human Rights in relation [to the] instant case."

20. With regard to the alleged human rights violations described in the briefs of the Commission and the representatives, the State did not comment explicitly in its answer. However, during the public hearing it declared that "regarding the legal claims, the State accepts the conclusions reached by the Inter-American Commission on Human Rights in its merits report, both in relation to the violations established to the detriment of the disappeared children and to the detriment of the next of kin identified in that report." Similarly, in its final arguments, the State acknowledged and accepted "the conclusions contained in the merits report, issued by [the] Commission, regarding the violations established to the detriment of the disappeared children and their next of kin identified in that report."

21. With respect to the reparations, in its answer brief the State expressed its willingness to "implement measures of reparation for the victims in this case, as recommended by the [...] Commission [...] in its merits report." In order to accomplish this, the State expressed its intention to: (i) hold a dialogue with the victims and their representatives for the purpose of agreeing on the adoption and implementation of a set of comprehensive measures of reparation; (ii) make progress on measures such as the provision of medical and psychological assistance for the victims, the creation of a garden-museum dedicated to disappeared children, a public act of acknowledgement of international responsibility, the designation of a school with the names of the children in the instant case, and any other measure requested and agreed upon between the State, the victims and their representatives; (iii) adopt the measures necessary to ensure the continuity of the National Search Commission for Disappeared Children during the Internal Armed Conflict, and (iv) make all the necessary efforts to investigate the whereabouts of the children and implement procedures to help them recover their identity in the event of being found again. During the public hearing, the State reiterated its willingness to comply with the reparations. In its final arguments, the State explicitly expressed its "firm commitment to move forward with the actions necessary to ensure the victims full enjoyment of their rights, and particularly to achieve the greatest aspiration of all the next of kin, namely, the location of their disappeared children." The State also reiterated its comments concerning the reparations and its commitment to make progress in their implementation. In relation to the costs and expenses requested by the representatives, the State indicated that "the amount [...] exceeds the standard of the precedents established by [the] Court."

22. Likewise, it is noteworthy that in the course of the public hearing the State made the following statement:

[...] the State of El Salvador [...] wishes to declare before this [...] Court its full recognition of the dignity of the victims in this case and their families. The State expresses to all the next of kin of the children Santos Ernesto Salinas, José Adrián Rochac Hernández, Emelinda [Lorena] Hernández, Manuel Antonio Bonilla and Ricardo [Abarca Ayala] a sincere apology, because in the past the State denied the existence of these events that formed part of a pattern of violence that took place in El Salvador during the armed conflict between 1980 and 1991, especially in those areas that were most affected by armed combat and military operations, which even today is the cause of profound suffering for many families. In particular, the State recognizes how difficult it is for the victims to express the pain of their memories before this [...] Court, and therefore highlights the strength that all the next of kin have maintained for many years during the search for their disappeared children. Their struggle has been accompanied by the Search Association for Disappeared Children which, in the course of these years, has elucidated hundreds of cases and has assisted many families as part of an effort that has its origins in the admirable humanitarian work carried out by the priest Jon Cortina. As stated in the answer brief [...], the State has acknowledged the facts that are the subject of this hearing; furthermore, it has acknowledged its obligation to guarantee the rights corresponding to the victims in this case. Therefore, the State wishes to take this opportunity to express to the victims of this case its solidarity, but also to express its firm commitment to make progress in any actions that may be necessary for their full enjoyment of the rights to which they are entitled as victims [, particularly to achieve the greatest aspiration of all the next of kin, namely, the localization of their disappeared children].

23. The Commission appreciated the State's acknowledgment of responsibility, together with its previous acknowledgement made during the hearing before the Commission. Although it initially formulated certain observations on that acknowledgement, in light of the comments made by the State during the public hearing, the Commission considered that the factual and legal dispute has ceased. Likewise, the Commission reiterated its satisfaction at the State's acknowledgement of responsibility and considered that its apology was very significant. Nevertheless, it asked the Court to make a determination in its judgment regarding the context of the facts of the case and the legal consequences in light of the American Convention, clearly establishing all of the State's obligations for the future. With regard to reparations, the Commission considered that "the main challenge posed by this case [involves] overcoming the dissociation between the willingness expressed through the acknowledgement of responsibility and the real situation that the families of the victims in this case continue to experience." The Commission pointed out that although the State initially acknowledged its responsibility in 2009, so far its good will has not "translated into a comprehensive response that includes the components of truth, justice and reparation." The Commission therefore requested that, as part of the reparations, the Court require the State to provide a specific assessment of the structural problems and define measures to address these.

24. The representatives, in turn, also considered positive the State's acknowledgement in admitting both the alleged violation of rights and the factual arguments outlined. However, they argued that the State's expressions of good faith "need to be complemented with even more decisive measures and actions to improve the situation of social and natural vulnerability in which the victims find themselves." They added that they hoped to obtain, through the Court's judgment, structural measures of reparation that would lead to true redress and access to the truth of what happened. Furthermore, the representatives considered that such recognition should imply a response, at all levels of public administration, with the integrality, compassion, diligence and proportionality required by the victims' moral and pecuniary situation "as survivors of crimes against humanity." In their final arguments, the representatives "celebrated the State's acceptance of the facts because, from a psychological and legal point of view, it signifies the satisfaction of the victims' demands for justice, to be heard and to have their credibility recognized, in addition to an apology by State representatives within an international litigation process, after enduring decades of disparagement and without receiving any level of attention to their status as victims." The representatives considered that the measures of reparation should be comprehensive and that for the victims "it would be frustrating not to obtain concrete measures to change their living conditions."

Considerations of the Court

25. In accordance with Articles 62¹⁷ and 64¹⁸ of the Rules of Procedure and in exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is the Court's responsibility to ensure that acts of acquiescence are acceptable for the purposes sought by the Inter-American system. This task is not limited to verifying, recording or taking note of the acknowledgement made by the State, or to confirming the formal conditions of such acts; rather, it must examine them in keeping with the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular

¹⁷ Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings, and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

¹⁸ Article 64. Continuation of a Case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

circumstances of the specific case, and the attitude and position of the parties,¹⁹ so that it can elucidate the truth about what took place, to the extent possible and in the exercise of its competence.²⁰ Thus, such acknowledgment cannot result in the direct or indirect limitation of the Court's exercise of its powers to hear a case that has been submitted to it,²¹ and to decide if there was a violation of any right or freedom protected by the Convention.²²

26. Regarding the facts of this case, the Court confirms that the State is clearly willing to accept as true the facts presented by the Inter-American Commission in section IV of the merits report, specifically those described under the following headings "C. With respect to José Adrián Rochac Hernández", "D. With respect to Santos Ernesto Salinas", "E. Emelinda Lorena Hernández" and "F. Manuel Antonio Bonilla and Ricardo Ayala Abarca", as well as the facts included in the pleadings and motions brief of the representatives, specifically those described in section I, referring to the circumstances and facts surrounding the disappearance of the children, which contains the following sections: "1) José Adrián Rochac Hernández"; "2) Santos Ernesto Salinas"; "3) Emelinda Lorena Hernández"; "4) Manuel Antonio Bonilla Osorio" and "5) Ricardo Ayala Abarca." Therefore, the Court considers that the State's acknowledgment of responsibility encompasses the facts that occurred from 1980 until 2004, regarding the circumstances in which the forced disappearances occurred and the proceedings in the domestic courts. Furthermore, in view of the State's comments during the public hearing, the Court considers that the State also accepted references to the context in which the disappearances occurred and acknowledged that these formed part of a systematic pattern of forced disappearances.

27. Given that the State has acknowledged "the conclusions contained in the report on the merits, issued by [the] Commission, regarding the violations established to the detriment of the disappeared children and of their next of kin identified in said report" (*supra* para. 20), the Court considers that the dispute between the parties has ceased in relation to the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and the legal consequences thereof, for the alleged violations of the rights enshrined in the following Articles: 3 (Right to Recognition of Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Judicial Guarantees), 17 (Protection of the Family), 19 (Rights of the Child) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the aforementioned children. Likewise, the dispute has ceased with respect to the alleged violations of Articles 5 (Right to Humane Treatment), 8 (Judicial Guarantees), 17 (Rights of the Family) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala.

¹⁹ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Gutiérrez and Family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 21.

²⁰ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Gutiérrez and Family v. Argentina, supra*, para. 21.

²¹ Article 62(3) of the Convention states: The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special statement pursuant to the preceding paragraphs, or by a special agreement.

²² Article 63(1) of the Convention states: If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

28. The Court decides to accept the State's acknowledgement of the aforesaid violations. Bearing in mind that the legal claims made in this case with respect to the forced disappearances have already been comprehensively established by the Inter-American Court in other cases of forced disappearance of persons and, specifically, of children in the context of El Salvador's armed conflict, the Court does not consider it necessary, in this case, to examine the scope of the violations of the rights to freedom, to humane treatment, to life and to juridical personality (*infra* paras. 92 to 97).

29. As to the scope of the violations of the children's rights to protection of the family, to private and family life, and to identity, as well as the right of their next of kin to the protection of the family, family life and humane treatment, the Court deems it pertinent to analyze this matter in the corresponding chapters, having regard to the particular features of this case (*infra* paras. 104 to 117). Such considerations will contribute to the development of its case law on this subject matter and to the corresponding protection of the human rights of the victims in this case.

30. Considering that the State acknowledged the legal consequences of the facts as stated in the report of the Commission, without referring to the position of the representatives concerning the right to the truth, the Court will rule on the merits regarding the relationship between this and the possible legal and factual obstacles that would have prevented compliance with the obligation to investigate the facts of the forced disappearance of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala (*infra* Chapter VII-2).

31. Regarding the measures of reparation, the Court finds that there is still a dispute about the scope of certain claims by the Commission and the representatives in relation to the reparations, as well as the results invoked by the State. Consequently, the Court will rule on these matters in Chapter VIII.

32. As to the next of kin, the State did not issue a specific statement about the victims and/or beneficiaries, but merely expressed its willingness to compensate the victims in this case, as ordered in the merits report. According to the provisions of Article 35(1) of the Court's Rules of Procedure, the Inter-American Commission stated in its submission brief and in merits report No. 75/12, that the presumed victims of this case were: "Alfonso Hernández, Sebastián Rochac Hernández, Estanislao Rochac Hernández, María Juliana Rochac Hernández, María del Tránsito Rochac Hernández, Ana Margarita Rochac Hernández, Nicolás Alfonso Rochac Hernández, María Adela Iraheta, Amparo Salinas, Estela Salinas, Josefina Salinas, Julio Iraheta, Felipe Flores Iraheta, María Adela Hernández, Juan de la Cruz Sánchez, Joel Alcides Hernández, Valentina Hernández, Santiago Pérez, Juan Evangelista, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, José de la Paz Bonilla, María de los Ángeles Osorio, Petronila Abarca Alvarado, José Aristides Bonilla, María Inés Bonilla, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Ester Ayala Abarca, Paula Alvarado, Daniel Abarca, José Humberto Abarca and Osmín Abarca." In their pleadings and motions brief, the representatives also included as presumed victims Melvin Armando Hernández Alvarado, paternal brother of José Adrián Rochac Hernández; Juana Francisca Bonilla, paternal sister of Santos Ernesto Salinas; Wilmer Alexander Hernández, brother of Emelinda Lorena Hernández; José Reyes Bonilla Osorio, Ana Virginia Abarca Osorio and Dora Alicia Bonilla Osorio, brother and sisters, respectively, of Manuel Antonio Bonilla. In their final written arguments, the representatives added as presumed victims María Silveria Rochac Beltrán and Sergio Rochac, mother and brother respectively of José Adrián Rochac Hernández; Manuel Eugenio Salinas, father of Santos Ernesto Salinas; Simón de Jesús Bonilla Ayala, nephew of Manuel Antonio Bonilla; Juan José Ayala Alvarado and Juan Francisco Abarca Alvarado, father and paternal brother, respectively, of Ricardo Abarca Ayala. To summarize: 25 persons were named as next of kin of the presumed victims in the instant case by the Commission and the representatives, and accepted by the State; 10 people were named as next of kin of the presumed victims by the Commission and accepted by the State, but not by the representatives, and 12 persons were named as the presumed victims' next of kin only by the representatives.

33. Article 35(1) of the Rules of Procedure establishes that the case shall be presented to the Court through the submission of the merits report, which must “identify the alleged victims.” Thus, it is for the Commission to identify precisely, and at the appropriate procedural moment, the alleged victims in a case before the Court;²³ consequently, it is not possible to add new alleged victims after the merits report has been submitted, save in the exceptional circumstances established in Article 35(2) of the Court’s Rules of Procedure,²⁴ which mentions situations in which “it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations.” Therefore, in application of Article 35, the content of which is unequivocal, it is the Court’s consistent case law that the presumed victims must be indicated in the merits report, as established in Article 50 of the Convention.²⁵

34. In the instant case, none of the suppositions referred to in Article 35(2) of the Rules are present to justify the identification of alleged victims after the presentation of the merits report or submission of the case. Thus, in keeping with its case law criteria, the Court deems it appropriate to clarify that the additional family members indicated by the representatives shall not be considered as alleged victims in the present case, without detriment to any reparations that may be ordered at the domestic level. Therefore, the Court rules that the following persons shall be considered as victims in this case:

In relation to José Adrián Rochac Hernández: Alfonso Hernández Herrera (father), Sebastián Rochac Hernández (brother), Estanislao Rochac Hernández (brother), María Juliana Rochac Hernández (sister), María del Tránsito Hernández Rochac (sister), Ana Margarita Hernández Rochac (sister) and Nicolás Alfonso Torres Hernández (brother).

In relation to Santos Ernesto Salinas: María Adela Iraheta (mother), Julio Antonio Flores Iraheta (brother), Felipe Flores Iraheta (brother), María Estela Salinas de Figueroa (sister), Amparo Salinas de Hernández (sister) and Josefa Salinas Iraheta (sister).

In relation to Emelinda Lorena Hernández: María Adela Hernández (mother), José Juan de la Cruz Sánchez (father), Joel Alcides Hernández Sánchez (brother), Valentina Hernández (maternal grandmother), Santiago Pérez (maternal grandfather), Juan Evangelista Hernández Pérez (maternal uncle), José Cristino Hernández (maternal uncle), Eligorio Hernández (maternal uncle) and Rosa Ofelia Hernández (maternal aunt).

In relation to Manuel Antonio Bonilla: María de los Ángeles Osorio (mother), José de la Paz Bonilla (father), José Arístides Bonilla Osorio (brother), María Inés Bonilla de Galán (sister), María Josefa Rosales (maternal grandmother), María Esperanza Alvarado (aunt) and Luis Alberto Alvarado (uncle).²⁶

²³ Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, footnote 214, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 29.

²⁴ Article 35(2) of the Court’s Rules of Procedure provides that “When it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims.” Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, paras. 47 to 51, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, paras. 49 to 57.

²⁵ Cf. *Case of the Barrios Family v. Venezuela, supra*, footnote 214, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 29.

²⁶ As established in paragraph 123 of the Report on Merits No. 75/12, María Esperanza Alvarado and Luis Alberto Alvarado are “paternal aunt and uncle” of Manuel Antonio Bonilla. However, in their initial petition the representatives stated that María Esperanza Alvarado and Luis Alberto Alvarado are “paternal siblings” and that María Esperanza Alvarado was married to Isidro

In relation to Ricardo Abarca Ayala: Petronila Abarca Alvarado (mother), Daniel Ayala Abarca (brother), José Humberto Abarca Ayala (brother), Ester Abarca Ayala (sister), Osmín Abarca Ayala (brother) and Paula Alvarado (grandmother).

35. In sum, the State's acknowledgment of responsibility constitutes a total acceptance of the facts which, pursuant to Articles 62 and 64 of the Court's Rules of Procedure, produces full juridical effects as well as a partial acknowledgment of international responsibility. Considering the serious nature of the facts and of the alleged violations, the Court will now proceed to establish the facts that generated the State's responsibility, together with the context in which they occurred, in order to contribute to the reparation of the victims, avoid the repetition of similar facts and to satisfy the purposes of the Inter-American jurisdiction on human rights.²⁷

36. Finally, the Court emphasizes the importance of the apology made by the State to the victims of forced disappearance and to their next of kin, which has a high symbolic value in terms of preventing the repetition of similar facts, and ensuring that the State remains committed to implementing the necessary measures of reparation in permanent dialogue with the representatives and under the criteria established by the Court. All these actions make a positive contribution to this proceeding, to the effectiveness of the principles that inspire the American Convention²⁸ and, in part, to the satisfaction of the need to provide redress to the victims of human rights violations.²⁹

V EVIDENCE

37. Based on the provisions of Articles 46 to 52 and 57 to 59 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,³⁰ the Court will examine the probative elements submitted by the parties on different occasions during the proceedings, the statements, testimony and expert opinions rendered by affidavit and received during the public hearing, as well as helpful evidence requested by the Court. It Court will subsequently assess these, establish the proven facts and rule on the merits and the possible reparations, taking into account the entire body of evidence and the observations of the parties. To this end, the Court will adhere to the principles of sound judicial discretion within the applicable legal framework.³¹

A. Documentary, testimonial and expert evidence

38. The Court received different documents presented as evidence by the Inter-American Commission and the representatives, together with their main briefs (*supra* paras. 1 and 5). The Court

Osorio Rosales, brother of María de los Ángeles Osorio, mother of Manuel Antonio Bonilla. Given that in its answer the State acknowledged its responsibility based on the merits report that establishes that said persons are the uncle and aunt of Manuel Antonio Bonilla, the Court will consider them as such.

²⁷ Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Gutiérrez and Family v. Argentina, supra*, para. 22.

²⁸ Cf. *Case of the Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 273, para. 23.

²⁹ Cf. *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 18, and *Case of Gutiérrez and Family v. Argentina, supra*, para. 27.

³⁰ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 51.

³¹ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 51.

also received the affidavits of María del Tránsito Hernández Rochac, Julio Antonio Flores Iraheta, María Adela Hernández, Ester Abarca Ayala and the expert opinion of Frank La Rue. As to the evidence provided during the public hearing, the Court heard the statements of María Juliana Rochac Hernández, José Arístides Bonilla Osorio and the expert opinion of Martha de la Concepción Cabrera Cruz. In addition, the following were included in the body of evidence in the instant case: the expert opinions of Douglass Cassel, Viktor Jovev and Ana Georgina Ramos de Villalta, rendered by affidavit; the expert opinions provided during the public hearing by María Sol Yáñez de la Cruz and Ricardo Alberto Iglesias Herrera; and the written extension to the expert opinion provided by María Sol Yáñez de la Cruz, all corresponding to the *Case of Contreras et al. v. El Salvador*.³² Likewise, the Court received from the parties various documents requested as helpful evidence (*supra* paras. 9, 10, 11 and 13).

B. Admission of the evidence

B.1 Admission of the documentary evidence

39. In this case, as in others, the Court accepts those documents presented by the parties and the Commission at the proper procedural opportunity that were not contested or opposed,³³ together with those requested by the Court under the provisions of Article 58(b) of the Rules of the Court that were provided by the parties after the public hearing.

40. Regarding the newspaper articles forwarded by the Commission and the representatives, this Court considers that these may be assessed when they contain public and well-known facts or statements by government officials, or when they corroborate aspects related to the case.³⁴ Consequently, the Court decides to admit those documents, provided that they are complete or, at least, include a source and date of publication.³⁵

41. As to the documents on costs and expenses forwarded by the representatives with their final written arguments, the Court will only consider those that refer to new expenses and costs incurred in the proceedings before this Court, in other words, those incurred after submission of the pleadings and motions brief.

42. Finally, the State forwarded a "certification of judicial actions undertaken by the Justice of the Peace of Meanguera in the Department of Morazán, in relation [to] the girl Emelinda Lorena Hernández," together with its observations to the annexes to the final arguments of the representatives, and asked the Court that this evidence be included under the terms of Article 57(2) of the Rules as it contains updated information. The Commission and the representatives did not object to its inclusion. Based on the aforementioned provision, the Court decides to admit the Official Letter No. 265/2014 of May 14, 2014, and the Court Record of the Justice of the Peace of Meanguera, dated May 15, 2014, both of which are included in the certification and, considering it useful for the resolution of the instant case, will admit the ruling issued on September 13, 2013, by the Justice of the Peace of Meanguera.

³² Cf. *Rochac Hernández et al. v. El Salvador*. Order of the President of the Inter-American Court of March 3, 2014, considering paragraph 14.

³³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 54.

³⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 55.

³⁵ Therefore, Annex 15 to the motions and evidence brief will not be considered, since no date or source was provided and it was not possible to rectify that shortcoming, nor the newspaper articles included in Annex 30 to the motions and evidence brief, which are illegible and this defect could not be rectified.

B.2 Admission of the testimonial and expert evidence

43. The Court finds it pertinent to admit the statements and expert opinions provided by the alleged victims and the expert witnesses, both during the public hearing and in sworn statements (affidavits), insofar as these are useful to the purpose specified by the President in the order that admitted them (*supra* para. 10) and the object of this case. Following the public hearing, the expert witness Martha de la Concepción Cabrera Cruz forwarded a document containing her expert opinion on “Transgenerational after-effects of forced disappearance,” which is included in the body of evidence.

44. In his order of March 3, 2014 (*supra* para. 10), the President of the Court did not admit the representatives’ request to substitute the expert statement of Pilar Ibáñez Mosqueda with that of the expert witness Baltasar Garzón Real, and therefore ordered that the evidence initially offered be received. However, the expert opinion of Pilar Ibáñez Mosqueda was not received within the time limit granted. On April 1, 2014, Mr. Baltasar Garzón Real forwarded a document ratified by a notary public, containing “the answer to the questions forwarded by the [...] State of El Salvador to Pilar Ibáñez Mosqueda in relation to the ‘study on the established chain of command followed within the armed forces of El Salvador during the years in which the [alleged] forced disappearances occurred in the instant case.’” At the request of the President, the representatives provided clarification regarding the aforementioned document and agreed to withdraw the expert opinion. For its part, the State noted that said expert opinion was not rendered by the proposed expert witness, and therefore asked that “it not be admitted.” The Court decides to accept the representatives’ decision to withdraw the expert opinion and, therefore, the said report will not be taken into account as part of the body of evidence of this case.

VI FACTS

45. Given the importance of establishing the facts in this case that resulted in the State’s responsibility, as well as the context in which they took place, so as to preserve the historical memory, avoid the repetition of similar acts and as a form of reparation for the victims,³⁶ in this section the Court will ascertain the facts of the case and the international responsibility arising from them, based on the factual framework presented in the Inter-American Commission’s merits report and the State’s acknowledgement of responsibility, and taking into consideration the representatives’ pleadings and motions brief, the precedents of the Court and the body of evidence. To this effect, the Court recalls that the State declared its full acceptance of the facts (*supra* paras. 26 and 35).

A. Context

46. In the judgment issued in the *Case of Contreras et al. v. El Salvador*, the Court established the context in which the facts of the instant case took place, based principally on the Report of the Truth Commission for El Salvador.³⁷ A description of this context was included by the Inter-American Commission in its merits report on this case. For its part, the State acknowledged the aforementioned context (*supra* para. 19).

³⁶ Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 53, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 47.

³⁷ Cf. *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, paras. 40 to 55, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

47. Thus, the Court recalls that from 1980 to 1991, El Salvador was mired in an internal armed conflict. Between 1989 and 1992, several agreements were signed between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN); finally, after twelve years of armed conflict, on January 16, 1992, the Peace Accords putting an end to the hostilities were signed in Chapultepec, Mexico, under the aegis of the Secretary General of the United Nations.³⁸ The Truth Commission, which was created under the Peace Accords on April 27, 1991 and began its activities on July 13, 1992, described in its report published on March 15, 1993, the patterns of violence perpetrated by both State agents and FMLN members during the armed conflict. For methodological reasons, the time span examined (1980-1991) is divided into four periods: from 1980 to 1983; 1983 to 1987; 1987 to 1989; and 1989 to 1991. The period from 1980 to 1983, which provided the context for the events of this case, was termed "the Institutionalization of Violence", when "the systematic establishment of violence, terror and distrust in the civilian population [...] were the essential characteristics of this period."³⁹

48. It was in this context that the Immediate Response Infantry Battalions of the Salvadoran Armed Forces were created, such as the Atlacatl Battalion in March 1981. These were specially trained anti-guerrilla units that had completed their training with the advisory services and support of United States military personnel.⁴⁰ According to the Truth Commission, this period saw "the greatest number of deaths and human rights violations."⁴¹ Thus, the Truth Commission received direct testimonies of numerous mass executions that took place over the years 1980, 1981 and 1982, during counterinsurgency operations in which members of the Armed Forces "executed peasants, men, women and children, who offered no resistance, simply because they were considered to be collaborating with the guerrillas."⁴² The Truth Commission dismissed "all possibility that these were isolated incidents or excesses committed by soldiers or their immediate commanding officers. [...] Everything indicates that these deaths took place as part of a pattern of conduct, a deliberate strategy to eliminate or terrorize the peasant population in areas where the guerrillas were active in order to deprive them of a source of supplies and information, as well as of the possibility of disguising themselves or hiding among the population."⁴³ According to the Truth Commission, "it cannot be argued that this pattern of conduct could be attributed only to local leaders and that their superior officers were unaware of it, as the massacres of the peasant population were repeatedly denounced with no evidence that any effort was made to investigate them."⁴⁴

49. The Court emphasized that, in the context of the armed conflict and the phenomenon of forced disappearance of persons, there was also a more specific pattern, acknowledged by the State (*supra* para. 19), relating to the forced disappearance of children, who were abducted and illegally held by members of the Armed Forces during counterinsurgency operations. Likewise, it has been established that, in many cases, this practice implied the appropriation of children and their registration under a

³⁸ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 46, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 65.

³⁹ *Case of Contreras et al. v. El Salvador*, *supra*, para. 48, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

⁴⁰ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 67, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

⁴¹ *Case of Contreras et al. v. El Salvador*, *supra*, para. 48, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

⁴² *Case of Contreras et al. v. El Salvador*, *supra*, para. 50, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

⁴³ *Case of Contreras et al. v. El Salvador*, *supra*, para. 50, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

⁴⁴ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 50, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

different name or with false personal data. According to the Search Association, a civil society institution that has documented and investigated this phenomenon in greater depth and has participated in efforts to search for and reunite young people their families,⁴⁵ as of April 2014, it had received 926 reports of children disappeared during the armed conflict, of which approximately 389 cases had been resolved. Of these, 239 had been reunited with their biological families, 54 had been found dead and 96 were awaiting reunification.

50. Based on the work carried out by the Search Association, the Court has identified the following elements that characterize the systematic pattern of forced disappearance of children during the armed conflict in El Salvador:⁴⁶

- a) The phenomenon of the forced disappearance of children was part of a deliberate strategy in the context of the institutionalized State violence that characterized this period of the conflict.
- b) The departments most affected by the conflict were also those where the greatest number of children disappeared; they included Chalatenango, San Salvador, San Vicente, Morazán, Usulután, Cabañas, Cuscatlán and La Libertad, because the disappearances formed part of the counterinsurgency strategy developed by the State under the concept of destroying population groups associated with the guerrillas.
- c) One of the objectives of that strategy was to abduct children in order to separate them from the "enemy population" and "to educate them under the State's ideology at that time." There were also other reasons for abduction, such as taking the children to give them up for adoption.
- d) The children were abducted during military operations after family members had been executed or forced to flee to save their lives, and they were frequently appropriated by military leaders, who included them within their immediate families as their children.
- e) The possible destinations of the children after they had been separated from their families and disappeared can be broken down as follows: 1) adoptions through a formal process within the judicial system, with the majority assigned to foreign families, mainly in the United States, France and Italy; 2) "de facto" adoptions or "appropriations", consisting of cases in which Salvadoran families took custody of the children but never formalized the adoption; 3) cases of "appropriation" by soldiers, who included the children in their families as if they were their own, although in most cases the children were used for domestic or agricultural tasks; 4) children raised in orphanages without guardians, in which those in charge of them did not try to find their parents; and 5) children who grew up on military bases. In addition, there is evidence to suggest that some disappeared children were victims of illegal trafficking. Finally, there were cases of children who had perished.
- f) There was also a practice of altering the minor's identity, with many children registered as sons and daughters; in other words, without the need to alter the records. In other cases the names or surnames were changed together with the child's age.

51. The Court will now proceed to establish the constituent facts and surrounding circumstances in each of the forced disappearances of the victims in this case, who were children at the time of the events,⁴⁷ based on the factual framework and the State's acknowledgment of responsibility.

B. Facts related to the forced disappearance of José Adrián Rochac Hernández

52. José Adrián Rochac Hernández was born on May 17, 1975, in the canton of San José Segundo, municipality of San Martín, department of San Salvador.⁴⁸ He is the son of Alfonso Hernández

⁴⁵ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 48.6, and *Case of Contreras et al. v. El Salvador, supra*, para. 52.

⁴⁶ Cf. *Case of Contreras et al. v. El Salvador, supra*, paras. 51 to 55.

⁴⁷ According to the Court, "child" refers to any person who has not yet turned 18 years of age. Cf. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A, No. 17, para. 42.

⁴⁸ Cf. Birth certificate of José Adrián Rochac Hernández issued by the Family Status Registry of the Municipal Office of San Martín (evidence file, volume IV, annex 1 to the submission of the case, folio 1831).

Herrera⁴⁹ and María Silveria Rochac Beltrán⁵⁰ and brother of Sebastián,⁵¹ Tanislao,⁵² Sergio Antonio,⁵³ María Juliana,⁵⁴ María del Tránsito⁵⁵ and Ana Margarita⁵⁶, and of Nicolás Alfonso Torres Hernández.⁵⁷ At the time of the events the Rochac Hernández family lived in canton of San José Segundo,⁵⁸ considered an area that supposedly supported the guerrillas.⁵⁹

53. On December 12, 1980, at approximately 8am to 9am, a military operation was carried out in the canton of San José Segundo, in which units of the Salvadoran Air Force participated along with the Civil Defense units of San Martín and Perulapia.⁶⁰

54. During the operation a group of ten soldiers of the Salvadoran Air Force arrived at the house of the Rochac Hernández family.⁶¹ At the time, Mrs. María Silveria Rochac Beltrán was at home convalescing with her newborn son, and was accompanied by her children Sergio Antonio, María

⁴⁹ Cf. National identity document of Alfonso Hernández Herrera issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4934).

⁵⁰ Cf. Birth certificate of José Adrián Rochac Hernández issued by the Family Status Registry of the Municipal Office of San Martín (evidence file, volume IV, annex 1 to the submission of the case, folio 1831).

⁵¹ Cf. National identity document of Sebastián Rochac Hernández issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4942).

⁵² Name used on the birth certificate. Cf. Birth certificate of Tanislao Rochac Hernández issued by the Family Status Registry of the Municipal Office of San Martín (evidence file, volume XI, annex to the final written arguments, folio 4940).

⁵³ Cf. Record of the hearing held at the Family Court of Soyapango on January 20, 2014 (evidence file, volume XI, annex to the final written arguments, folios 4935 to 4938).

⁵⁴ Cf. National identity document of María Juliana Rochac Hernández issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4942).

⁵⁵ Cf. National identity document of María del Tránsito Hernández Rochac issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4941).

⁵⁶ Cf. National identity document of Ana Margarita Hernández Rochac issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4945).

⁵⁷ Cf. National identity document of Nicolás Alfonso Torres Hernández issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4941). Although the national identity document indicates that he was born on the same day that José Adrián Rochac Hernández was abducted, that is, December 12, 1980, Nicolás Alfonso Torres Hernández formed part of the family at the time of the disappearance of José Adrián Rochac Hernández, since according to several witnesses he was "just a few days old." Cf. Affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4748); Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); and affidavit rendered by Dolores López, widow of Hurtado, on January 11, 2007 (evidence file, volume IV, annex 5 to the submission of the case, folios 1864 and 1865).

⁵⁸ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1834); affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4748); and statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

⁵⁹ Cf. Article published in "Diario Latino" on December 22, 1980 entitled "Subversive camp dismantled in a canton" (evidence file, volume IV, annex 4 to the submission of the case, folios 1860 to 1861); and affidavit rendered by José Román Quijano on January 11, 2007 (evidence file, volume IV, annex 3 to the submission of the case, folio 1850).

⁶⁰ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); and affidavit rendered by José Román Quijano on January 11, 2007 (evidence file, volume IV, annex 3 to the submission of the case, folio 1849).

⁶¹ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); and affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749).

Juliana, José Adrián, María del Tránsito and Ana Margarita.⁶² The soldiers ordered María Silveria Rochac Beltrán to hand over the weapons, to which she replied that they did not have any.⁶³ The soldiers then removed María Silveria Rochac Beltrán from the house⁶⁴ and her son Sergio Antonio, who was approximately twelve years old at the time, ran outside to be with his mother.⁶⁵ Both María Silveria Rochac Beltrán and her son Sergio Antonio were executed by soldiers in the area around the house, together with a neighbor.⁶⁶

55. Moments after the execution, the soldiers returned to the house and took away José Adrián Rochac Hernández, who was five years and seven months old at the time, saying "let's go little boy, we're going to get on the horse."⁶⁷ The soldiers kept the other children inside the house under the threat that they would be killed if they went outside.⁶⁸ The soldiers then left and headed toward the road leading out of the canton and the following day José Adrián Rochac Hernández was moved to the town square of Perulapia, where some Army trucks were waiting for them.⁶⁹

56. Once the conflict had ended, the next of kin of José Adrián Rochac Hernández made several efforts to find him and, on May 29, 1996, reported his case to the Search Association.⁷⁰ On May 31,

⁶² Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); and affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749).

⁶³ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749); and statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

⁶⁴ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); and affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749).

⁶⁵ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folios 1834 to 1835); affidavit rendered by Dolores López, widow of Hurtado, on January 11, 2007 (evidence file, volume IV, annex 5 to the submission of the case, folio 1864); affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749); and statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

⁶⁶ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folios 1835 to 1836); affidavit rendered by Dolores López, widow of Hurtado, on January 11, 2007 (evidence file, volume IV, annex 5 to the submission of the case, folio 1864); affidavit rendered by José Román Quijano on January 11, 2007 (evidence file, volume IV, annex 3 to the submission of the case, folio 1850); affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749); Court Record of hearing held in the Family Court of Soyapango on January 20, 2014 (evidence file, volume XI, annex to the final written arguments, folios 4935 to 4938); Interview with the petitioner Alfonso Hernández Herrera at the Unit for Crimes against Women and Children of the Office of the Attorney General, on November 20, 2009 (file of proceedings before the Commission, volume III, folios 1610 to 1612), and statement rendered by María Juliana Rochac Hernández during the public hearing before the Inter-American Court held on April 1, 2014.

⁶⁷ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1836); Affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749); affidavit rendered by Dolores López widow of Hurtado, on January 11, 2007 (evidence file, volume IV, annex 5 to the submission of the case, folio 1864); and statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

⁶⁸ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1835); Affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4749); and statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

⁶⁹ Cf. Affidavit rendered by María Juliana Rochac Hernández on January 11, 2007 (evidence file, volume IV, annex 2 to the submission of the case, folio 1836); and affidavit rendered by José Román Quijano on January 11, 2007 (evidence file, volume IV, annex 3 to the submission of the case, folio 1850).

⁷⁰ Cf. Telefax issued by the *Asociación Pro-Búsqueda* on February 2, 2005 (file of proceedings before the Commission, volume II, folio 968).

1996, the Search Association forwarded to the Office of the Human Rights Ombudsman (*Procuraduría para los Derechos Humanos*) a list of several complaints submitted by the families of disappeared children, including one related to the disappearance of José Adrián Rochac Hernández.⁷¹

57. On April 12, 2002, Alfonso Hernández Herrera, father of José Adrián Rochac Hernández, filed a formal complaint for the disappearance of his son with the Unit for Crimes against Women and Children, at the Soyapango Sub-Regional Office of the Attorney General's Office of the Republic.⁷² The prosecutor opened an investigation, which is currently ongoing at the Soyapango Office (*infra* paras. 145 to 147).

58. On October 16, 2002, Alfonso Hernández Herrera filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court for the disappearance of his son José Adrián Rochac Hernández.⁷³ Together with his brief, he provided the birth certificate of José Adrián Rochac Hernández and offered as evidence the statements of two witnesses.⁷⁴ The executing judge in charge of the proceeding indicated that "[...] the books and records kept by the respondent institutions do not include any related annotations or information regarding the possible restriction or deprivation of the child's liberty [...]" and that "it was determined that the minor is not deprived of his liberty in any of the grounds of the military units of the Ministry of Defense and Head of the Joint Chiefs of Staff of the Armed Forces."⁷⁵ On March 3, 2003, the Constitutional Chamber of the Supreme Court dismissed the writ of *habeas corpus*, arguing that "for this Chamber to issue a decision on the merits of the matter raised, it requires a minimum of elements in order to establish a degree of probability regarding the existence of the restriction of the right of physical liberty."⁷⁶

59. On February 22, 2013, the Search Association requested a meeting with the Attorney General of the Republic to express its concern over the fact that cases related to the disappearance of children had stalled in the different prosecutors' offices, including the case of José Adrián Rochac Hernández.⁷⁷

60. The State indicated that the National Commission to Search for Disappeared Children during the Internal Armed Conflict⁷⁸ "has made various efforts, including field investigations and a review of records and documents in public and private institutions, and to date it has some specific leads on a

⁷¹ Cf. Telefax issued by the *Asociación Pro-Búsqueda* addressed to the Office of the Human Rights Ombudsman on May 31, 1996 (evidence file, volume IV, annex 7 to the submission of the case, folio 1875), and list of cases submitted by the Search Association to the Office of the Human Rights Ombudsman on May 31, 1996 (file of proceedings before the Commission, volume II, folios 982 to 985).

⁷² Cf. Complaint presented to the Unit of Crimes against Women and Children of the Office of the Attorney General of the Republic by Alfonso Hernández Herrera on April 12, 2002 (evidence file, volume V, annex 8 to the pleadings, motions and evidence brief, folios 2268 to 2270).

⁷³ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by Alfonso Hernández Herrera on October 16, 2002 (evidence file, volume IV, annex 11 to the submission of the case, folios 1890 to 1893).

⁷⁴ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by Alfonso Hernández Herrera on October 16, 2002 (evidence file, volume IV, annex 11 to the submission of the case, folios 1890 to 1893).

⁷⁵ Decision issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceeding No. 216-2002 on March 3, 2003 (evidence file, volume V, annex 11 to the pleadings, motions and evidence brief, folios 2308 to 2310).

⁷⁶ Decision issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceeding No. 216-2002 on March 3, 2003 (evidence file, volume V, annex 11 to the pleadings, motions and evidence brief, folios 2308 to 2310).

⁷⁷ Cf. Letter from the *Asociación Pro-Búsqueda* to the Attorney General of the Republic of February 22, 2013 (evidence file, volume V, annex 12 to the pleadings, motions and evidence brief, folios 2312 to 2313).

⁷⁸ The Commission was created through Executive Decree No. 5, published in the Official Gazette on January 18, 2010; its primary purpose is to "investigate and determine the whereabouts and situation of the children who disappeared during the internal armed conflict in El Salvador and promote their reunification with their family of origin in a context of respect for the dignity of the victims."

person who could be the boy José Adrián Rochac Hernández.” However, according to the State, the investigation process has not concluded, and therefore his identification has not been completed.

C. Facts related to the forced disappearance of Santos Ernesto Salinas

61. Santos Ernesto Salinas was born on November 28, 1972, in the canton of San Antonio Achichilquito, municipality of San Vicente, in the department of San Vicente.⁷⁹ He is the son of María Adela Iraheta and Manuel Eugenio Salinas⁸⁰ and brother of María Estela,⁸¹ Amparo⁸² and Josefa,⁸³ and, on his mother’s side, of Julio Antonio⁸⁴ and Felipe Flores Iraheta.⁸⁵

62. At the time of the events, the Salinas family lived in the canton of San Nicolás Lempa, jurisdiction of Tecoluca, in the department of San Vicente.⁸⁶ On October 15, 1981, the guerrillas destroyed the bridge known as Puente de Oro across the Río Lempa, in the canton of San Nicolás Lempa.⁸⁷ In response, a few days later, the Salvadoran army carried out a military operation in that place.⁸⁸ The Atlacatl Battalion and the National Guard ordered the eviction of the families that lived in the area near the bridge.⁸⁹

63. On October 25, 1981, Santos Ernesto Salinas, who was almost nine years old, was outside his home with his father and a young man named Wilber Torres. As the soldiers approached, the boy and Torres fled toward the home of the latter’s aunt, a woman by the name of Tomasa Torres, who had a

⁷⁹ Cf. Birth certificate of Santos Ernesto Salinas issued by the Family Status Registry of the Municipal Office of San Vicente (evidence file, volume IV, annex 12 to the submission of the case, folio 1895).

⁸⁰ Cf. Birth certificate of Santos Ernesto Salinas issued by the Family Status Registry of the Municipal Office of San Vicente (evidence file, volume IV, annex 12 to the submission of the case, folio 1895).

⁸¹ Cf. National identity document of María Estela Salinas de Figueroa issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4954).

⁸² Cf. National identity document of Amparo Salinas de Hernández issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4953).

⁸³ Cf. Death certificate of Josefa Salinas Iraheta issued by the Family Status Registry of the Municipal Office of Usulután (evidence file, volume XI, annexes to the final written arguments, folio 4955).

⁸⁴ Cf. National identity document of Julio Antonio Flores Iraheta issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4952).

⁸⁵ Cf. National identity document of Felipe Flores Iraheta issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4951).

⁸⁶ Cf. Sworn statement before a notary public of Juana Francisca Bonilla, July 15, 2013 (evidence file, volume V, annex 52 to the pleadings and motions brief, folio 2533); and affidavit of Julio Antonio Flores of 22 July 2013 (evidence file, volume V, annex 54 to the pleadings and motions brief, folio 2538).

⁸⁷ Cf. Affidavit rendered by Julio Antonio Flores Iraheta on March 20, 2014 (evidence file, volume X, affidavits, folio 4741); Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folio 1897), and newspaper report published in “*Diario Latino*” on October 29, 1981, entitled “Enveloping attack by the army in the Oriental Zone” (evidence file, volume IV, annex 14 to the submission of the case, folio 1902).

⁸⁸ Cf. Affidavit rendered by Julio Antonio Flores Iraheta on March 20, 2014 (evidence file, volume X, affidavits, folio 4741); Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folio 1897), and newspaper report published in the “*Diario Latino*” on October 29, 1981 entitled “Enveloping attack by the army in the Oriental Zone” (evidence file, volume IV, annex 14 to the submission of the case, folio 1902).

⁸⁹ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folios 1897 to 1900).

store in that place.⁹⁰ The soldiers ordered the father of Santos Ernesto to leave, because otherwise he would be killed, and so he fled from his house.⁹¹

64. Members of the National Guard and the Atlacatl Battalion then forced their way into the place where Santos Ernesto Salinas was taking refuge and detained all those present. Then they led them to the river bank and assassinated all those who were not children.⁹² Santos Ernesto Salinas was taken away to an unknown destination.⁹³ That day, local residents saw members of the National Guard taking away two children, one of whom matched the physical description of Santos Ernesto Salinas.⁹⁴ The following day, Julio Antonio Flores Iraheta went out to look for his brother, but did not find him.⁹⁵

65. After the conflict ended, family members made several attempts to find Santos Ernesto Salinas and, on October 22, 1998, submitted his case to the Search Association.⁹⁶

66. In August 2002, María Adela Iraheta visited the Office of the Attorney General of the Republic, at the San Vicente office, to file a complaint regarding the forced disappearance of her son. However, the officials did not admit her complaint, indicating that she should present it in the city of San Salvador.⁹⁷

67. In October 2002, Mrs. Iraheta filed a writ of *habeas corpus* on behalf of her son Santos Ernesto Salinas before the Constitutional Chamber of the Supreme Court.⁹⁸ Together with the brief, she provided her son's birth certificate and the statement of a witness as evidence.⁹⁹ The executing judge hearing the proceedings stated that "[...] there [was] no investigation or investigative steps being taken against the beneficiary, [...] for which reason the *habeas corpus* proceeding [...] cannot [be] the subject of study by the law."¹⁰⁰ On March 3, 2003, the Constitutional Chamber of the Supreme Court dismissed the writ of *habeas corpus*,¹⁰¹ arguing that the petitioner had not "provide[d] any evidence to demonstrate that we are indeed faced with a case of forced disappearance of persons" and that, "in this situation, and given that this Chamber only has the word of the petitioner, on the one hand,

⁹⁰ Cf. Affidavit rendered by Julio Antonio Flores Iraheta on March 20, 2014 (evidence file, volume X, affidavits, folios 4741 to 4742).

⁹¹ Facts acknowledged by the State.

⁹² Facts acknowledged by the State.

⁹³ Cf. Affidavit rendered by Julio Antonio Flores Iraheta on March 20, 2014 (evidence file, volume X, affidavits, folios 4741 to 4742), and writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folio 1897).

⁹⁴ Facts acknowledged by the State. Cf., also writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court submitted by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folio 1897).

⁹⁵ Cf. Affidavit rendered by Julio Antonio Flores Iraheta on March 20, 2014 (evidence file, volume X, affidavits, folios 4741 to 4742).

⁹⁶ Cf. Telefax issued by the Search Association on February 2, 2005 (file of proceedings before the Commission, volume II, folio 969).

⁹⁷ Facts acknowledged by the State.

⁹⁸ Cf. Writ of *habeas corpus* filed before the Constitutional Chamber of the Supreme Court by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folios 1897 to 1900).

⁹⁹ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folios 1897 to 1900).

¹⁰⁰ Ruling issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceeding No. 217-2002 on March 3, 2003 (evidence file, volume IV, annex 15 to the submission of the case, folios 1904).

¹⁰¹ Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceeding No. 217-2002 on March 3, 2003 (evidence file, volume IV, annex 15 to the submission of the case, folios 1904 to 1906).

to issue its ruling, and on the other, the report provided [...], which denies that the alleged facts took place [...], it [was] appropriate to dismiss the [...] *habeas corpus* proceeding.”¹⁰²

68. Since October 25, 1981, the whereabouts of Santos Ernesto Salinas remain unknown.

D. Facts related to the forced disappearance of Emelinda Lorena Hernández

69. Emelinda Lorena Hernández was born on March 18, 1981, in the municipality of San Miguel.¹⁰³ She is the daughter of María Adela Hernández¹⁰⁴ and José Juan de la Cruz Sánchez¹⁰⁵ and sister of Joel Alcides Hernández Sánchez.¹⁰⁶ Juan Evangelista, José Cristino, Eligorio and Rosa Ofelia Hernández are her maternal uncles and aunt, respectively.¹⁰⁷ The family also included the grandmother of Emelinda Lorena Hernández, Valentina Hernández, and her life partner Santiago Pérez.¹⁰⁸ In 1981, when the events occurred, Emelinda Lorena Hernández lived with her family in the canton of La Joya, in the jurisdiction of Meanguera, department of Morazán.¹⁰⁹

70. From December 8 to 16, 1981, an extensive military operation took place in the northern zone of the department of Morazán,¹¹⁰ code-named “Operation Rescue” or “*Yunque y Martillo*.” It was carried out by the Immediate Response Infantry Battalion, known as “Atlacatl”, together with other units of the Salvadoran Armed Forces. It was in the context of this operation that the Massacres of El Mozote and nearby places occurred.¹¹¹ Upon learning of the imminent military incursion, the family of Emelinda Lorena Hernández fled toward the hills and crossed the La Joya River seeking protection.¹¹² After several days on the run and feeling exhausted, the parents of Emelinda Lorena Hernández decided to take her back to the canton of La Joya and leave her in the care of a woman by the name of Marta Ramírez, who had four children of her own.¹¹³

¹⁰² Ruling issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceeding No. 217-2002 on March 3, 2003 (evidence file, volume IV, annex 15 to the submission of the case, folio 1905).

¹⁰³ Cf. Birth certificate of Emelinda Lorena Hernández issued by the Family Status Registry of the Municipal Office of San Miguel (evidence file, volume V, annex 19 to the pleadings, motions and evidence brief, folio 2339).

¹⁰⁴ Cf. Birth certificate of Emelinda Lorena Hernández issued by the Family Status Registry of the Mayor’s Office of San Miguel (evidence file, volume V, annex 19 to the pleadings, motions and evidence brief, folio 2339), and national identity document of María Adela Hernández issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4958).

¹⁰⁵ Name used in the death certificate. Cf. Death certificate of José Juan of the Cruz Sánchez issued by the Family Status Registry of the Mayor’s Office of Villa Meanguera (evidence file, volume XI, annexes to the final written arguments, folio 4959), and affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4739).

¹⁰⁶ Cf. National identity document of Joel Alcides Hernández Sánchez issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4961).

¹⁰⁷ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4739), and Record of interview with Juan Evangelista Hernández Pérez at the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629).

¹⁰⁸ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4739).

¹⁰⁹ Facts acknowledged by the State.

¹¹⁰ Cf. Report issued by the Legal Protection Office of the Archbishopric of San Salvador on November 9, 1991 (evidence file, volume IV, annex 17 to the submission of the case, folio 1972), and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 83.

¹¹¹ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, paras. 73 to 76, 83 and 84.

¹¹² Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folios 4739 to 4740), and record of the interview of Juan Evangelista Hernández Pérez by the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629). See also, *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 99.

¹¹³ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folios 4739 a 4740); record of the interview of Juan Evangelista Hernández Pérez by the National Civil Police on March 2, 2010 (file of

71. The parents of Emelinda Lorena Hernández then returned to the hills and heard gunshots during the night.¹¹⁴ The soldiers had been to Marta Ramírez's house and had executed those present.¹¹⁵ After hearing the gunshots, the father of Emelinda Lorena Hernández decided to return to the place by night, to see what had happened.¹¹⁶ However, he did not find his daughter's body, only her shoes and a blanket.¹¹⁷ Several people who lived in the area said they had seen soldiers carrying small children.¹¹⁸ Emelinda Lorena Hernández was almost 10 months old at the time of her disappearance.

72. After the end of the conflict, her family made several efforts to find Emelinda Lorena Hernández and, on March 15, 1996, presented her case to the Search Association.¹¹⁹ On May 31, 1996, the Search Association forwarded to the Ombudsman's Office a list of several complaints submitted to it by the families of disappeared children, including the one related to the disappearance of Emelinda Lorena Hernández.¹²⁰

73. On November 15, 2002, María Adela Hernández filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court for the disappearance of her daughter Emelinda Lorena Hernández.¹²¹ Together with the brief, she provided the birth certificate of Emelinda Lorena Hernández and offered the statement of a witness as evidence.¹²² The executing judge in charge of the proceeding stated that "according to information provided by the Human Rights department of the Ministry of Defense, there [were] no files on Emelinda Lorena Hernández and, therefore, there [was] no violation

proceedings before the Commission, volume III, folio 1629), and interview of the witness María Adela Hernández before the Office of the Attorney General of the Republic, on 18 March 2010 (file of proceedings before the Commission, volume III, folios 1631 to 1632).

¹¹⁴ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folios 4739 a 4740), and Interview of witness María Adela Hernández before the Office of the Attorney General of the Republic on March 18, 2010 (file of proceedings before the Commission, volume III, folios 1631 to 1632).

¹¹⁵ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4740), and Record of interview of Juan Evangelista Hernández Pérez before the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629).

¹¹⁶ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4740), and record of the interview of Juan Evangelista Hernández Pérez by the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629).

¹¹⁷ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4740), and record of the interview of Juan Evangelista Hernández Pérez by the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629).

¹¹⁸ Cf. Affidavit rendered by María Adela Hernández on March 20, 2014 (evidence file, volume X, affidavits, folio 4740), and record of interview of Juan Evangelista Hernández Pérez by the National Civil Police on March 2, 2010 (file of proceedings before the Commission, volume III, folio 1629).

¹¹⁹ Cf. Telefax issued by the Search Association on February 2, 2005 (file of proceedings before the Commission, volume II, folio 971).

¹²⁰ Cf. Telefax issued by the Search Association addressed to the Office of the Human Rights Ombudsman on May 31, 1996 (evidence file, volume IV, annex 7 to the submission of the case, folio 1875), and List of Cases presented by the Search Association to the Office of the Human Rights Ombudsman on May 31, 1996 (file of proceedings before the Commission, volume II, folios 982 to 985).

¹²¹ Cf. Writ of *habeas corpus* filed before the Constitutional Chamber of the Supreme Court presented by María Adela Hernández on November 15, 2002 (evidence file, volume V, annex 23 to the pleadings, motions and evidence brief, folios 2367 to 2370).

¹²² Cf. Writ of *habeas corpus* filed before the Constitutional Chamber of the Supreme Court by María Adela Hernández on November 15, 2002 (evidence file, volume V, annex 23 to the brief of pleadings, motions and evidence, folio 2370).

of Article 11(1) of the Constitution.”¹²³ On March 3, 2003, the Constitutional Chamber of the Supreme Court dismissed the *habeas corpus* proceeding.¹²⁴ The Chamber ruled that “no minimum indicium was produced to generate the conviction that a disappearance actually occurred” and that, “in this situation, and given that this Chamber only has the word of the petitioner, on the one hand, to issue its ruling [...], and on the other, the report provided by the executing judge, which denies that the alleged facts took place [...], it [was] appropriate to dismiss the [...] *habeas corpus* action.”¹²⁵

74. On March 13, 2013, the Justice of the Peace of Meanguera, department of Morazán, summoned Mrs. María Adela Hernández to inform her that the State had requested information about the proceeding related to the forced disappearance of Emelinda Lorena Hernández,¹²⁶ and that he had issued a certification stating that “there is no type of document related to [the disappearance of Emelinda Lorena Hernández], entered either as a report [*sic*], a complaint or a notice filed by any person.”¹²⁷

75. On September 13, 2013, the Justice of the Peace of Meanguera asked the Subregional Prosecutor of San Francisco Gotera for a progress report on the investigation into the forced disappearance of Emelinda Lorena Hernández, since “a reasonable period of time has elapsed and there has been no news about the progress of the investigation [...] it is pertinent to request precisely that, an update on the investigation that [the Prosecutor’s office] should already have carried out by this time.”¹²⁸

76. On May 14, 2014, the Head of the Morazán Prosecutor’s Office asked the Justice of the Peace of Meanguera to provide information as to whether, on December 12, 1981, any examinations of the bodies of unidentified children, and/or of the child Emelinda Lorena Hernández, were carried out in that jurisdiction.¹²⁹ The report of the court’s secretary indicated that no documents exist prior to 1993 and explained that “according to accounts by local residents of [Villa de Meanguera], during the armed conflict [in El Salvador], the buildings of this court were completely destroyed by the Salvadoran guerrillas [...]”¹³⁰ The secretary also confirmed that “there is no information or record related to [Emelinda Lorena Hernández], as shown in the respective books” available from 1993.¹³¹

77. Since December 12, 1981, the whereabouts of Emelinda Lorena Hernández remain unknown.

¹²³ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 238-2002 on March 3, 2003 (evidence file, volume IV, annex 20 to the submission of the case, folio 2000).

¹²⁴ Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 238-2002 on March 3, 2003 (evidence file, volume IV, annex 20 to the submission of the case, folios 2000 to 2002).

¹²⁵ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 238-2002 on March 3, 2003 (evidence file, volume IV, annex 20 to the submission of the case, folio 2001).

¹²⁶ Cf. Notification record of March 13, 2013 (evidence file, volume XI, certification of judicial actions of the Justice of the Peace of Meanguera in the Department of Morazán, folios 5063 and 5064).

¹²⁷ Report of the Secretary of the Justice of the Peace of Meanguera of March 8, 2013 (evidence file, volume V, annex 21 to the brief of pleadings, motions and evidence, folio 2347).

¹²⁸ Decision issued by the Justice of the Peace of Meanguera on September 13, 2013 (evidence file, volume XI, certification of judicial actions by the Justice of the Peace of Meanguera, Department of Morazán, folios 5070 to 5072).

¹²⁹ Cf. Official Letter 265/2014 of May 14, 2014 (evidence file, volume XI, certification of judicial actions by the Justice of the Peace of Meanguera, Department of Morazán, folio 5075).

¹³⁰ Report of the Secretary of the Justice of the Peace of Meanguera of May 15, 2014 (evidence file, volume XI, certification of judicial actions by the Justice of the Peace of Meanguera, Department of Morazán, folio 5077).

¹³¹ Cf. Report of the Secretary of the Justice of the Peace of Meanguera of May 15, 2014 (evidence file, volume XI, certification of judicial actions by the Justice of the Peace of Meanguera, Department of Morazán, folio 5077).

E. Facts related to the forced disappearances of Manuel Antonio Bonilla and Ricardo Abarca Ayala

78. Manuel Antonio Bonilla was born on December 7, 1971, in the canton of Cerros de San Pedro, municipality of San Esteban Catarina, department of San Vicente.¹³² Manuel Antonio Bonilla is the son of María de los Ángeles Osorio and José de la Paz Bonilla¹³³ and brother of José Arístides Bonilla¹³⁴ and María Inés Bonilla de Galán.¹³⁵ His maternal grandmother is María Josefa Rosales.¹³⁶ María Esperanza Alvarado and Luis Alberto Alvarado were also part of the family.¹³⁷

79. Ricardo Abarca Ayala was born on February 5, 1969, in the canton of Cerros de San Pedro, municipality of San Esteban Catarina, department of San Vicente.¹³⁸ He is the son of Juan José Ayala and Petronila Abarca Alvarado,¹³⁹ and brother of Daniel,¹⁴⁰ José Humberto,¹⁴¹ Ester,¹⁴² and Osmín.¹⁴³ His family also included his grandmother, Paula Alvarado.¹⁴⁴

80. From August 17 to 24, 1982, a large-scale military operation was launched in the department of San Vicente, involving, among other units, members of the Fifth Infantry Brigade and the "Atlatcatl" and "Juan Ramón Belloso" Immediate Response Infantry Battalions (BIRI).¹⁴⁵ The operation was

¹³² Cf. Birth certificate of Manuel Antonio Bonilla issued by the Family Status Registry of the Municipal Office of Villa de San Esteban Catarina (evidence file, volume IV, annex 22 to the submission of the case, folio 2009).

¹³³ Cf. Birth certificate of Manuel Antonio Bonilla issued by the Family Status Registry of the Municipal Office of Villa de San Esteban Catarina (evidence file, volume IV, annex 22 to the submission of the case, folio 2009); national identity document of María de los Ángeles Osorio, widow of Bonilla, issued by the National Registry of Natural Persons (evidence file, volume XI, annex to the final written arguments, folio 4928), and death certificate of José de la Paz Bonilla issued by the Family Status Registry of the Municipal Office of San Esteban Catarina (evidence file, volume XI, annexes to the final written arguments, folio 4929).

¹³⁴ Cf. National identity document of José Arístides Bonilla Osorio issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4930).

¹³⁵ Cf. National identity document of María Inés Bonilla de Galán issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4932).

¹³⁶ Cf. National identity document of María de los Ángeles Osorio, widow of Bonilla, issued by the National Registry of Natural Persons (evidence file, volume XI, annex to the final written arguments, folio 4928).

¹³⁷ Facts acknowledged by the State.

¹³⁸ Cf. Birth certificate of Ricardo Abarca Ayala issued by the Family Status Registry of the Municipal Office of Villa de San Esteban Catarina (evidence file, volume IV, annex 23 to the submission of the case, folio 2011).

¹³⁹ Cf. Birth certificate of Ricardo Abarca Ayala issued by the Family Status Registry of the Municipal Office of Villa de San Esteban Catarina (evidence file, volume IV, annex 23 to the submission of the case, folio 2011), and national identity document of Petronila Abarca Alvarado issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4921).

¹⁴⁰ Cf. National identity document of Daniel Ayala Abarca issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4923).

¹⁴¹ Cf. Birth certificate of José Humberto Abarca Ayala issued by the Family Status Registry of the Municipal Office of San Esteban Catarina (evidence file, volume XI, annexes to the final written arguments, folio 4926).

¹⁴² Cf. National identity document of Ester Abarca Ayala issued by the National Registry of Natural Persons (evidence file, volume XI, annexes to the final written arguments, folio 4924).

¹⁴³ Cf. Birth certificate of Osmín Abarca Ayala issued by the Family Status Registry of the Municipal Office of San Esteban Catarina (evidence file, volume XI, annexes to the final written arguments, folio 4927).

¹⁴⁴ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4744), and national identity document of Petronila Abarca Alvarado issued by the National Registry of Natural Persons (evidence file, volume XI, annex to the final written arguments, folio 4921).

¹⁴⁵ Cf. Newspaper report published in "*La Prensa Gráfica*" on August 19, 1982, entitled "Clean-up Operation by Armed Forces in San Vicente" (evidence file, volume V, annex 30 to the brief of pleadings, motions and evidence, folio 2403); Press photograph published in the "*Diario Latino*" on August 19, 1982, entitled "Counterinsurgency actions coordinated" (evidence

codenamed "Lieutenant Colonel Mario Azenón Palma,"¹⁴⁶ also known as a "ring invasion" by the civilian population. When the operation began, local residents were forced to flee their homes and seek refuge in the mountains.¹⁴⁷ The family of Manuel Antonio Bonilla was among those that fled and in the mountains they met up with other families in the same situation.¹⁴⁸

81. During that operation, an exchange of gunfire took place near the hamlet of Las Guayabillas, in the canton of Amatitán Abajo, and the family of Manuel Antonio Bonilla became separated from other families with whom they were fleeing. At that point, they met up with a boy named Ricardo Abarca Ayala, who was carrying his six year-old sister Ester.¹⁴⁹ On August 22, 1982, after walking for three days, the group stopped in a sugar cane field in the area known as Quebrada Seca to eat and to rest.¹⁵⁰ Some people continued on their way, but when they saw the soldiers approaching, they managed to hide.¹⁵¹ Others who had remained in the sugar cane field decided to hide in Quebrada Seca. However, they were discovered by a group of soldiers, who fired shots at them.¹⁵² At that moment, the soldiers captured Manuel Antonio Bonilla.¹⁵³ Ricardo Abarca Ayala and his sister Ester, who had taken refuge near the river, were subsequently discovered by the soldiers and captured, together with María Josefa Rosales, María Esperanza Alvarado and Mauricio Osorio Alvarado.¹⁵⁴ After walking for a few kilometers, the soldiers released María Josefa Rosales, because of her old age, also

file, volume V, annex 30 to the pleadings, motions and evidence brief, folio 2423); Newspaper report published in "*La Prensa Gráfica*" on August 23, 1982, entitled "FMLN suffers many casualties" (evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folios 2393 to 2394); newspaper report published in "*El Diario de Hoy*" on August 25, 1982, entitled "Successful end to Operation 'Colonel Palma'" (evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folios 2434 to 2435); newspaper report published in "*El Mundo*" on August 24, 1982, entitled "End of Operation 'Lieutenant Coronel Mario Alberto Azenón Palma'" (evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folio 2404), and report published in the newspaper "*La Prensa Gráfica*" on August 25, 1982 entitled "Successful end to armed forces operation." (Evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folios 2396 to 2397).

¹⁴⁶ Cf. Newspaper report published in "*La Prensa Gráfica*" on August 23, 1982, entitled "FMLN suffers many casualties" (evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folios 2393 to 2394), and newspaper report published in "*La Prensa Gráfica*" on August 25, 1982, entitled "Successful end to Operation of F.A." (Evidence file, volume V, annex 30 to the pleadings, motions and evidence brief, folios 2396 to 2397).

¹⁴⁷ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁴⁸ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁴⁹ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵⁰ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵¹ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵² Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵³ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folio 4745), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵⁴ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folios 4745 a 4746), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

handing over to her the children Ester Abarca Ayala and Mauricio Osorio Alvarado.¹⁵⁵ Several witnesses claim to have seen the two children and a woman at the army barracks in Sensuntepeque.¹⁵⁶ At the time of their capture, Manuel Antonio Bonilla and Ricardo Abarca Ayala were 10 and 13 years old, respectively.

82. After the conflict, their next of kin made numerous efforts to find Manuel Antonio Bonilla and Ricardo Abarca Ayala. In the Report of the Truth Commission for El Salvador, published in 1993, the two boys appear on the lists of victims of homicide, according to "indirect sources", at the hands of the armed forces of El Salvador.¹⁵⁷

83. On January 20, 1996, this case was presented to the Search Association.¹⁵⁸ On May 31, 1996, the Search Association forwarded to the Office of the Human Rights Ombudsman a list of several complaints submitted to the Association by the families of disappeared children, including those related to the disappearance of Manuel Antonio Bonilla and Ricardo Abarca Ayala.¹⁵⁹

84. On February 18, 2002, Mrs. Petronila Abarca Alvarado filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court for the disappearance of her son, Ricardo Abarca Ayala.¹⁶⁰ Together with the brief, she provided his birth certificate and offered the statement of a witness as evidence.¹⁶¹ For her part, on December 25, 2002, María de los Ángeles Osorio filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court for the disappearance of her son Manuel Antonio Bonilla.¹⁶² Together with the brief, she provided her son's birth certificate.

85. In the context of the *habeas corpus* proceeding related to Ricardo Abarca Ayala, the Head of the Joint Chiefs of Staff of the Armed Forces, at the request of the executing judge appointed for that proceeding, indicated that "upon reviewing the archives of that institution, and of various military

¹⁵⁵ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folios 4745 to 4746), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵⁶ Cf. Affidavit rendered by Ester Abarca Ayala on March 21, 2014 (evidence file, volume X, affidavits, folios 4745 to 4746), and Statement rendered before the Inter-American Court by José Aristides Bonilla Osorio during the public hearing held on April 1, 2014.

¹⁵⁷ Cf. Report of the Truth Commission for El Salvador, "From Madness to Hope:" Annexes, Volume II, and #6. List of victims submitted to the Truth Commission" based on "Indirect Source", pages 16 and 20 (file of proceedings before the Commission, volume II, folios 916 to 918). In this regard, the Search Association explained that the next of kin did not directly approach the Truth Commission but did engage with other organizations to report that both children were victims of the actions of the Armed Forces of El Salvador. It added that "their inclusion in the lists of people assassinated was probably due to the fact that in 1993, Salvadoran families had little hope that children abducted by the Armed Forces would still be alive." Brief of *Asociación Pro-Búsqueda* of November 10, 2006 (file of proceedings before the Commission, volume II, folio 1049).

¹⁵⁸ Cf. Telefax issued by the *Asociación Pro-Búsqueda* on February 2, 2005 (file of proceedings before the Commission, volume II, folio 970).

¹⁵⁹ Cf. Telefax issued by the *Asociación Pro-Búsqueda* addressed to the Office of the Human Rights Ombudsman on May 31, 1996 (evidence file, volume IV, annex 7 to the submission of the case, folio 1875), and list of cases presented by the *Asociación Pro-Búsqueda* to the Office of the Human Rights Ombudsman on May 31, 1996 (file of proceedings before the Commission, volume II, folios 982 to 985).

¹⁶⁰ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by Petronila Abarca Alvarado on February 18, 2002 (evidence file, volume V, annex 31 to the pleadings, motions and evidence brief, folios 2439 to 2442).

¹⁶¹ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by Petronila Abarca Alvarado on February 18, 2002 (evidence file, volume V, annex 31 to the pleadings, motions and evidence brief, folios 2439 to 2442).

¹⁶² Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court presented by María de los Ángeles Osorio on December 25, 2002 (evidence file, volume V, annex 27 to the brief of pleadings, motions and evidence, folios 2381 to 2384).

units, no records or information appear related to the possible restriction or deprivation of liberty [of Ricardo Abarca Ayala], in the place and on the date mentioned in the request, or on other dates and places.”¹⁶³ The Minister of Defense issued a statement in the same terms.¹⁶⁴ Consequently, on March 6, 2003, the Constitutional Chamber of the Supreme Court dismissed the *habeas corpus* action, arguing that “no minimum indicium was produced by the petitioner to give rise to the conviction that a forced disappearance in fact occurred.”¹⁶⁵

86. Regarding the *habeas corpus* action related to Manuel Antonio Bonilla, in response to an inquiry by the executing judge appointed for that proceeding, the Head of the Joint Chiefs of Staff of the Armed Forces stated that, “upon reviewing that institution’s archives, and those of various military units, no records or information appear regarding the possible restriction or deprivation of the ambulatory liberty [...] of the minor Manuel Antonio Bonilla Osorio, in the place and date mentioned in the request, or on other dates and places.”¹⁶⁶ The executing judge reported that the Minister of Defense issued a statement in the same terms and that when he consulted the Fifth Infantry Brigade he was told that they “had no information about this case.”¹⁶⁷ Accordingly, on May 26, 2003, the Constitutional Chamber of the Supreme Court dismissed the writ of *habeas corpus*, arguing that “no minimum indicium was produced by the petitioner to give rise to the conviction that a forced disappearance in fact occurred.”¹⁶⁸

87. Since August 22, 1982, the whereabouts of Manuel Antonio Bonilla or of Ricardo Abarca Ayala remain unknown.

VII MERITS

88. The Court will now open the corresponding chapters to examine sequentially the violations related to the forced disappearances, and the violations related to their investigation, as stated *supra* in Chapter IV.

VII-1 VIOLATIONS RELATED TO THE FORCED DISAPPEARANCES: RIGHTS TO PERSONAL LIBERTY, HUMANE TREATMENT, LIFE, RECOGNITION OF JURIDICAL PERSONALITY, PRIVATE AND FAMILY LIFE, IDENTITY, PROTECTION OF THE FAMILY AND OF THE CHILD, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS

89. In this chapter, the Court will rule, where appropriate, on the scope of the violations related to the forced disappearances, having regard to the particular features of this practice against children in the Salvadoran context.

¹⁶³ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 18-2003 on March 6, 2003 (evidence file, volume V, annex 32 to the brief of pleadings, motions and evidence, folios 2447 to 2449).

¹⁶⁴ Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 18-2003 on March 6, 2003 (evidence file, volume V, annex 32 to the pleadings, motions and evidence brief, folios 2447 to 2449).

¹⁶⁵ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 18-2003 on March 6, 2003 (evidence file, volume V, annex 32 to the pleadings, motions and evidence brief, folios 2447 to 2449).

¹⁶⁶ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 25-2003 on May 26, 2003 (evidence file, volume V, annex 28 to the pleadings, motions and evidence brief, folios 2387 to 2389).

¹⁶⁷ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 25-2003 on May 26, 2003 (evidence file, volume V, annex 28 to the pleadings, motions and evidence brief, folios 2387 to 2389).

¹⁶⁸ Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 25-2003 on May 26, 2003 (evidence file, volume V, annex 28 to the pleadings, motions and evidence brief, folios 2387 to 2389).

A. The forced disappearance of children as a multiple and continuing violation of human rights and of the obligation to respect and guarantee rights (Articles 7, 5, 4(1) and 3 in relation to Article 1(1) of the American Convention)

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

90. Both the Commission and the representatives held that the facts of the instant case should be classified as forced disappearance and, therefore, that the State of El Salvador be declared responsible for the violation of the rights to personal liberty, humane treatment, life and recognition of juridical personality, enshrined in Articles 7, 5, 4 and 3 of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala.

91. The State acknowledged its responsibility for the violations of Articles 7, 5, 4 and 3 of the American Convention, referring to the facts established in the Commission's merits report (*supra* para. 20).

A.2. Considerations of the Court

92. In international law, this Court's case law has been a precursor to the consolidation of a comprehensive perspective on the gravity and the continuous or permanent and autonomous nature of the legal definition of forced disappearance of persons, in which the act of disappearance and its execution begin with the deprivation of liberty of the person and the subsequent lack of information about that person's fate and continues until the whereabouts of the disappeared person are known and his or her identity is established.¹⁶⁹ To summarize, the practice of forced disappearance implies a blatant rejection of the essential principles that underlie the inter-American human rights system¹⁷⁰ and its prohibition, together with the correlative duty to investigate and, if applicable, punish those responsible, has achieved the status of *ius cogens*.¹⁷¹

93. By virtue of the facts established and the State's acknowledgment of responsibility, it has been demonstrated that state agents, specifically members of the Salvadoran Armed Forces, abducted José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, on December 12, 1980, October 25, 1981, December 12, 1981, and August 22, 1982, respectively, in the course of different counterinsurgency operations during the armed conflict in El Salvador. Given that the whereabouts or subsequent fate of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala are still unknown to this day, the Court considers that these persons still remain subject to forced disappearance.

94. In its consistent case law the Court has reiterated that forced disappearance is a multiple and continuing violation of several rights protected by the American Convention, and that it places the

¹⁶⁹ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 59, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 195.

¹⁷⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 158, and *Case of Osorio Rivera and Family v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 112.

¹⁷¹ Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 84, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 112.

victim in a state of complete defenselessness, giving rise to other related crimes; these are particularly serious when they form part of a systematic pattern or practice applied or tolerated by the State.¹⁷²

95. The characterization of forced disappearance as an act that includes multiple offenses, in terms of the rights affected, and as a continuing or permanent crime, has been constantly reaffirmed in the Court's case law since the first case it decided in 1988,¹⁷³ which even preceded the definition contained in the Inter-American Convention on Forced Disappearance of Persons.¹⁷⁴ This characterization is consistent with other definitions contained in different international instruments¹⁷⁵ that indicate the following as concurrent elements constituting forced disappearance: a) deprivation of liberty; b) direct involvement of State agents or their acquiescence, and c) refusal to acknowledge the detention and to reveal the fate or whereabouts of the individual in question.¹⁷⁶

96. Based on the considerations outlined in Chapter IV regarding the State's acknowledgement of responsibility, and on the facts established (*supra* paras. 52 to 87), in the precedent of *Contreras et al. v. El Salvador* and under the terms of the State's acknowledgment of international responsibility, the Court decides that the forced disappearances of the child victims in this case constituted a multiple and continuing violation of their rights to personal liberty, humane treatment, life and recognition of juridical personality, in relation to the obligations to respect and guarantee rights. Therefore, *the Court declares the State of El Salvador responsible for the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and for the consequent violation of the rights enshrined in Articles 7, 5, 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof.*

97. The Inter-American Court emphasizes the serious nature of the facts *sub judice*, which occurred between 1980 and 1982, during the bloodiest phase of El Salvador's armed conflict (*supra* paras. 47 and 48). Indeed, the disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala were not isolated incidents, but formed part of a systematic pattern of forced disappearances of children by the State that was established during the armed conflict in El Salvador (*supra* paras. 49 and 50). Indeed, the State has acknowledged this fact (*supra* para. 19).

B. The rights of children, and of their next of kin, to the protection of the family, to private and family life, and to identity (Articles 11(2) and 17 in relation to Articles 19 and 1(1) of the American Convention)

¹⁷² Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 82, and *Case of García and Family v. Guatemala*. Merits, reparations and costs. Judgment of November 29, 2012. Series C No. 258, para. 96.

¹⁷³ Cf. *Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 155, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 82.

¹⁷⁴ The Convention establishes that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees." Article II of the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, on June 9, 1994, at the Twenty-fourth Regular Session of the General Assembly.

¹⁷⁵ Cf. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/61/177, of December 20, 2006; Article 7, paragraph 2 (i) of the Statute of Rome of the International Criminal Court, U.N. Doc. A/CONF.183/9, of July 17, 1998, and Working Group on Enforced or Involuntary Disappearances, General Observation Article 4 of the Statement on the Protection of All Persons from Enforced Disappearance, of January 15, 1996. Report to the Human Rights Commission. U.N. Doc. E/CN.4/1996/38, para. 55.

¹⁷⁶ Cf. *Case of Gómez Palomino v. Peru*. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Anzualdo Castro v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 140, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 113.

B.1 Arguments of the parties and of the Commission

98. The Commission argued that, taking into account that all the alleged victims were children at the time of their forced disappearance, it is pertinent to analyze the obligations derived from Article 17 of the Convention, interpreted jointly with Article 19 thereof. In this regard, it argued that, based on an interpretation of the American Convention in light of the *corpus iuris* on the rights of the child, even in an exceptional situation, the State through its agents, must protect the institution of the family as an essential mechanism for safeguarding the rights of the children under its jurisdiction. In the event that a child is separated from his or her immediate family, the State must work to preserve that bond by temporarily intervening and directing its actions toward reincorporating that child back into his or her family and community, provided that this is not contrary to the child's best interest.

99. In the instant case, the Commission held that the Salvadoran State itself, through its armed forces, caused the separation of the alleged victims from their original families through their enforced disappearance. Similarly, it affirmed that the soldiers that appropriated the children who are the presumed victims in this case, did not try to establish their identity to facilitate family reunification, but on the contrary, sought to separate them from their families of origin, as part of an official strategy known as "draining the water from the fish," which involved attacking mainly rural populations in areas considered to be guerrilla strongholds. Furthermore, it alleged that this violation continues today, since no adequate and effective steps have been taken to conduct a serious search for the alleged victims and to determine their fate or whereabouts. The Commission considers that, for more than three decades, this omission has impeded the re-establishment of family ties and, consequently, prevented the alleged victims from recovering their identity.

100. The Commission emphasized the inherent relationship between the right to a family and the right to identity, which are particularly affected in cases of forced disappearance of children. The Commission held that the breakup of the family structure and the separation of children from their families, not only leaves children in a state of absolute vulnerability, but also implies "a loss of identity, in many cases irreversible." Likewise, the Commission emphasized that the impact of family disintegration not only affects the individual and family contexts, but also the social context with inter-generational effects. For this reason, it stressed the importance that the Court establish these distinct effects in cases involving the disappearance of children "which include the dismemberment of the family unit and have a significant and undeniable social impact given the massive and widespread nature of these violations."

101. In brief, the Commission concluded that the State of El Salvador failed to fulfil its obligations under Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala. Likewise, the Commission concluded that the State failed to discharge its obligation to protect the family enshrined in Article 17 of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and of the next of kin identified.

102. The representatives argued that, at the time of their disappearance, the children were entitled to special protection under Article 19 of the American Convention, and that the State had an obligation to respect their right to be with their families, avoiding any actions that could affect the family's stability to the detriment of the children, as vulnerable minors. The representatives added that the forced separation of children from their families implies a rupture in their emotional relationships, in their safeguarding and personal care. They alleged that the State had not assumed "responsibility for healing these traumas, something that would only be possible by recognizing that the private pain of the families in question has its origin in structural, historical and political causes that compromise the State itself, not only for not having addressed them but also by having committed them." Likewise,

they held that, based on a systemic approach to psychological traumatology, it has been proven that forced disappearance is a form of trauma that severely damages family ties, provokes emotional chaos and is passed on involuntarily and unconsciously to the following generations, affecting family life. They affirmed that, in addition to those generations that directly experienced the traumatic situation, future generations will also suffer from the breaking of those ties. Therefore, they argued that the State continues to fail in its obligation to guarantee and restore the right to protection of the family, given to the lack of investigation, prosecution, punishment and reparation for the violations committed against the families.

103. The State acknowledged its responsibility for violating Articles 17 and 19 of the American Convention, as determined in the merits report of the Commission (*supra* para. 20).

B.2 Considerations of the Court

104. Article 17 of the American Convention recognizes that the family is the fundamental unit of society and must be protected. Hence, the family to which every child has a right is, first and foremost, his or her biological family, which includes the closest family members, who should provide protection to the child and, in turn, should be the principle subject of measures of protection by the State.¹⁷⁷ The Court has already pointed out that the State has the obligation not only to order and directly implement measures to protect children, but also to favor, in the broadest sense, the development and strengthening of the family nucleus,¹⁷⁸ given that the mutual enjoyment of the coexistence between parents and children constitutes a fundamental element of family life.¹⁷⁹ In its case law, the Court has already established that the separation of children from their families constitutes, under certain conditions, a violation of the right to a family.¹⁸⁰

105. The Court has also specified that Article 11(2) of the American Convention,¹⁸¹ which recognizes the right of every person to receive protection against arbitrary or abusive interference in his family life, is an implicit part of the family's right to protection.¹⁸²

106. For its part, Article 19 of the Convention establishes the obligation to adopt special measures of protection for all children, based on their condition as minors, and this has an impact on the interpretation of all the other rights established when the case relates to children. Thus, the Court has considered that the protection due to the rights of children, as subjects of law, must take into

¹⁷⁷ Cf. *Case of Fornerón and Daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 119, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A. No. 21, para. 272.

¹⁷⁸ Cf. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, para. 66; *Case of Chitay Nech v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment 25 May 25, 2010. Series C No. 212, para. 157, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 414.

¹⁷⁹ Cf. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, para. 72; *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 189, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 414.

¹⁸⁰ Cf. *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 187, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 414.

¹⁸¹ Article 11. Protection of honor and reputation

[...]

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

¹⁸² Cf. *Case of Atala Riffo and Daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 170, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 265.

consideration their intrinsic characteristics and the need to foster their development, offering them the necessary conditions to live and develop their aptitudes, taking full advantage of their potential.¹⁸³ In order to define the content and scope of the obligations assumed by the State in analyzing the rights of children, as it has done on previous occasions, the Court will refer to the international *corpus iuris* for the protection of the child.¹⁸⁴

107. Thus, from the provisions contained the Convention on the Rights of the Child,¹⁸⁵ which constitutes the *corpus iuris* for the protection of the child,¹⁸⁶ it may be inferred that the State must not only refrain from unduly interfering in the private or family relationships of the child, but must also adopt positive measures to ensure the child's full exercise and enjoyment of his or her rights.¹⁸⁷ This requires the State, in the context of its responsibility for the common good, to safeguard the preponderant role of the family in the protection of the child and to ensure that the public authorities offer assistance to the family through the adoption of measures that promote family unity.¹⁸⁸

108. The Court emphasizes that Articles 17 and 19 of the American Convention form part of the non-derogable fundamental rights that cannot be suspended, pursuant to Article 27 of the American Convention.

109. In analyzing and interpreting the scope of the provisions of the American Convention in the instant case, in which the facts occurred in the context of a non-international armed conflict, and in keeping with Article 29 of the American Convention, the Court finds it useful and appropriate, as it has on other occasions,¹⁸⁹ to have recourse to other international treaties, such as the Geneva Conventions of August 12, 1949,¹⁹⁰ and in particular, Article 3 common to the four conventions,¹⁹¹

¹⁸³ Cf. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, para. 61, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 66.

¹⁸⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Fornerón and Daughter v. Argentina*, *supra*, para. 44.

¹⁸⁵ El Salvador has been a party to the Convention on the Rights of the Child since July 10, 1990, which entered into force on September 2, 1990, in accordance with Article 49(1).

¹⁸⁶ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra*, para. 194, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 57.

¹⁸⁷ Cf. Articles 7, 8, 9, 11, 16, and 18 of the Convention on the Rights of the Child.

¹⁸⁸ Cf. *Case of the Dos Erres Massacres v. Guatemala*, *supra*, para. 190, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 107.

¹⁸⁹ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 179, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 141.

¹⁹⁰ Cf. In particular, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, approved on August 12, 1949, by the Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims, held in Geneva from April 21 to August 12, 1949, which entered into force on October 21, 1950, and was ratified by El Salvador on June 17, 1953.

¹⁹¹ Article 3 common to the Geneva Conventions of 1949 establishes the following: "Conflicts not of an international character: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b) the taking of hostages; c) outrages upon personal dignity, in particular, humiliating and degrading treatment; d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. 2) The wounded and

Additional Protocol II to the 1949 Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts, of June 8, 1977 (hereinafter "Additional Protocol II") to which the State is a party,¹⁹² and customary international humanitarian law,¹⁹³ as complementary instruments and in consideration of their specificity on this subject.

110. International humanitarian law protects children in a general way as part of the civilian population, that is, as persons who do not participate actively in hostilities, who should receive humane treatment and not be subject to attacks. Complementarily, children, who are most vulnerable to suffering violations of their rights during armed conflicts, benefit from special protection on account of their age, for which reason the States must provide them with the care and assistance they require. Article 38 of the Convention on the Rights of the Child¹⁹⁴ also reflects this principle. Within the array of measures included in treaties of international humanitarian law are those aimed at preserving the family unit and facilitating the search, identification and reunification of families dispersed as a result of armed conflict and, particularly, of unaccompanied and separated children. Furthermore, in the context of non-international armed conflicts, the State's obligations to children are defined in Article 4(3) of Additional Protocol II to the Geneva Conventions, which states that: "b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated [...]."¹⁹⁵

111. In light of these considerations, the State had a responsibility to protect the civilian population during the armed conflict, especially the children, who were in a situation of greater vulnerability and risk of having their rights affected. However, in this case, State agents acted completely outside the law, using official structures and facilities to perpetrate the forced disappearance of children through the systematic repression of certain segments of the population, considered as subversives or guerrillas, or in some way opposed to the Government. Consequently, *the Court decides that the State interfered with the family life of the then girl Emelinda Lorena Hernández and of the then boys José Adrián Rochac Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla and Ricardo Abarca Ayala, by illegally abducting and retaining them, violating their right to remain in their family group and to establish relationships with other individuals who formed part of it, in violation of Articles 11(2) and 17 of the American Convention, in relation to Articles 19 and 1(1) thereof.*

sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

¹⁹² El Salvador is a party to Additional Protocol II to the Geneva Conventions of 1949, regarding the protection of victims of armed conflicts not of an international character since November 23, 1978.

¹⁹³ Cf. International Committee of the Red Cross, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.

¹⁹⁴ Article 38 stipulates that:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

¹⁹⁵ According to the International Committee of the Red Cross this obligation requires that "Parties to the conflict must do their best to restore family ties, i.e., they should not only permit searches undertaken by members of dispersed families, but they should even facilitate them." Commentary on Additional Protocol II to the Geneva Conventions of 1949 concerning the protection of victims of armed conflicts not of an international character. Subparagraph B. Reunion of Families, para. 4553.

112. Furthermore, the State should have used all reasonable means at its disposal to determine the whereabouts of the then girl Emelinda Lorena Hernández and of the then boys José Adrián Rochac Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla and Ricardo Abarca Ayala in order to reunite them with their families as soon as circumstances allowed. On this particular point, the Court notes: (i) the time elapsed since the children's initial disappearance, without any information provided on their whereabouts or fate and with no actions taken to identify them; (ii) the excessive delay in opening the criminal investigations and the lack of progress therein, which has made it impossible to obtain relevant information to determine the fate or whereabouts of the victims (*infra* para. 144); (iii) the National Search Commission - responsible for taking the necessary steps to investigate and gather evidence on the possible whereabouts of the young people who disappeared when they were children during the armed conflict, and thereby help to determine what happened and reunite them with their families - only began to operate in 2011; and (iv) despite the Court's request, the State has not informed the National Search Commission of the starting date for the investigations related to the victims in this case or on the specific measures taken in relation to the search (*supra* footnotes 9 and 10). In light of the aforementioned points, *the Court considers that the State violated Article 17 of the American Convention, in relation to Articles 19 and 1(1) thereof, by failing to adopt all reasonable measures to reunite the families, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala.*

113. At the same time, the Court considers that these separations caused by State agents of families that have not yet been reunited, generated and continue to generate specific effects on each family member, as well as on the individual dynamics of each family (*infra* para. 121). For example, during the hearing María Juliana Rochac Hernández stated that these events caused "the breakup of [her] family."¹⁹⁶ For his part, José Arístides Bonilla Osorio explained that the events "practically tore the family apart."¹⁹⁷

114. The Court also takes note of the expert opinion (*supra* paras. 38 and 43), according to which forced disappearance can produce transgenerational repercussions. The expert witness Martha de la Concepción Cabrera Cruz affirmed that "[w]hen the concept of trauma and (family) ties are combined, we can formulate a principle -which is the principle of systematic and transgenerational psychological trauma- whereby a mother who has suffered trauma and has not healed inevitably transmits that experience to her son or daughter in one way or another. Therefore, a traumatic experience continues to have effects on the next generations."¹⁹⁸ She also explained that "[t]he families of disappeared children feel that they alone have experienced the loss of their sons and daughters, but in reality it is a collective problem"¹⁹⁹ and that "[the] collective trauma of war suffered by thousands of people is stored and frozen in the collective unconscious."²⁰⁰ Finally, she considered that "the healing process must focus on the family, in other words, it is the family that was affected and it is the family that

¹⁹⁶ Statement rendered by María Juliana Rochac Hernández at the public hearing before the Inter-American Court held on April 1, 2014.

¹⁹⁷ Statement rendered by José Arístides Bonilla Osorio at the public hearing before the Inter-American Court held on April 1, 2014.

¹⁹⁸ Expert opinion rendered by Martha de la Concepción Cabrera Cruz before the Inter-American Court at the public hearing held on April 1, 2014.

¹⁹⁹ Expert opinion "*Secuelas transgeneracionales de las desapariciones forzadas*" (Transgenerational after-effects of forced disappearances) rendered by Martha de la Concepción Cabrera Cruz, in March 2014 (merits file, volume I, folio 747).

²⁰⁰ Expert opinion "*Secuelas transgeneracionales de las desapariciones forzadas*" (Transgenerational after-effects of forced disappearances) rendered by Martha de la Concepción Cabrera Cruz, in March 2014 (merits file, volume I, folio 748).

should allow itself the space to heal and, in turn, the community, because we see that this was the result of the war, the war affected the community where that family lived.”²⁰¹

115. Accordingly, *the Court concludes that the State violated Articles 11(2) and 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin named in paragraph 34 supra.*

116. That said, regarding the right to identity, the Court has established in its case law –specifically in the cases of *Gelman v. Uruguay* and *Contreras et al. v. El Salvador*– that this right “can be conceptualized, in general, as a collection of attributes and characteristics that allow for the individualization of a person in society. In that sense, it includes several other rights according to the subject of the rights in question and the circumstances of the case.”²⁰² Thus, personal identity is intimately linked to a person’s specific individuality and private life, both of which are based on an historical and biological experience, and on the way in which each individual relates to others through the development of social and family ties.²⁰³ Moreover, the Court has recognized that identity is a right that encompasses several elements, including nationality, name and family relationships.²⁰⁴ In this regard, the Court recalls that the American Convention protects those elements as rights in themselves. However, not all of these rights will necessarily be involved in all cases linked to the right to identity. In the instant case, the impairment of the right to identity is reflected in arbitrary or abusive acts of interference in private and family life, as well as in its effects on the right to protection of the family and to enjoy family relationships.

117. Therefore, in the circumstances of the instant case, and taking into consideration the terms of the American Convention, interpreted in light of Article 31 of the Vienna Convention, the Court finds that the series of violations of the rights established in the American Convention that were analyzed constitute a violation of the right to identity, which is inherent to the human being according to Article 29 (c) of the American Convention, and is stipulated expressly in the Convention on the Rights of the Child.

C. Right to personal integrity of the next of kin

C.1 Arguments of the parties and of the Commission

118. Both the Commission and the representatives alleged the violation of the right to personal integrity of the next of kin of the disappeared children José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, owing to the suffering caused by their disappearance and the uncertainty regarding their fate or whereabouts. For its part, the State acknowledged the violation of Article 5 of the Convention to the detriment of the next of kin, based on the findings contained in the Commission’s merits report (*supra* para. 20).

C.2 Considerations of the Court

²⁰¹ Expert opinion rendered by Martha de la Concepción Cabrera Cruz before the Inter-American Court at the public hearing held on April 1, 2014.

²⁰² *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 122, and *Case of Fornerón and Daughter v. Argentina, supra*, para. 123.

²⁰³ *Cf. Case of Contreras et al. v. El Salvador, supra*, para. 113, and *Case of Fornerón and Daughter v. Argentina, supra*, para. 123.

²⁰⁴ *Cf. Case of Gelman v. Uruguay, supra*, para. 122, and *Case of Contreras et al. v. El Salvador, supra*, para. 112.

119. In numerous cases the Court has found that the next of kin of the victims of human rights violations may themselves be victims.²⁰⁵ In cases involving the forced disappearance of persons, the Court has considered that it is possible to presume harm to the mental and moral integrity of certain family members.²⁰⁶ This presumption is established *iuris tantum* with regard to mothers and fathers, daughters and sons, spouses and permanent life partners, provided that this responds to the specific circumstances of the case.²⁰⁷ The Court has further established that, in the context of forced disappearance, this presumption also applies to the brothers and sisters of disappeared victims, unless demonstrated to the contrary by the specific circumstances of the case.²⁰⁸ In the case of such family members, it is for the State to refute this presumption.²⁰⁹ As to the rest of the presumed victims, the Court must assess whether the evidence in the file proves any impairment of their right to personal integrity.²¹⁰

120. In the instant case, the State acknowledged its international responsibility for the violation of the right to personal integrity of all the disappeared victims' next of kin named by the Commission. Thus, bearing in mind the State's acknowledgement of responsibility, the Court presumes the violation of the right to humane treatment of all the next of kin indicated in paragraph 34 *supra*.

121. Together with the State's acknowledgement of responsibility, the Court observes that the testimony and the expert opinion received (*supra* paras. 38 and 43) reveal that, in one way or another, the personal integrity of the victims' next of kin was affected by one or several of the following situations: (i) they suffered personal, physical and emotional after-effects resulting from the disappearance of a loved one; (ii) they suffered an irreversible change in their immediate family unit and family life, affecting, *inter alia*, significant sibling relationships; (iii) they were involved in several actions, including the search for justice or information on the victims' whereabouts; (iv) the uncertainty surrounding the whereabouts of the victims has prevented grieving, prolonging the psychological effects of the disappearance on the next of kin, and (v) the State's failure to investigate and collaborate in efforts to determine the whereabouts of the victims and those responsible for the disappearances has exacerbated the different impacts suffered by the next of kin. These circumstances have had effects that persist over time and continue to this day, owing to the ongoing uncertainty regarding the whereabouts of the disappeared children Emelinda Lorena Hernández, José Adrián Rochac Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla and Ricardo Abarca Ayala.

122. At the same time, in its case law, the Court has established that withholding the truth about the whereabouts of a victim of forced disappearance constitutes a form of cruel and inhuman treatment for close family members.²¹¹ In addition, the Court has considered that the constant refusal

²⁰⁵ Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 233.

²⁰⁶ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 119, and *Case of García and Family v. Guatemala, supra*, para. 161.

²⁰⁷ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of González Medina and Family v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012 Series C No. 240, para. 270, and *Case of García and Family v. Guatemala, supra*, para. 161.

²⁰⁸ Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 286, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 227.

²⁰⁹ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 119, and *Case of García and Family v. Guatemala, supra*, para. 161.

²¹⁰ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 127, and *Case of Gomes Lund et al. (Guerrilha Do Araguaia) v. Brazil. Preliminary objections, merits and reparations*. Judgment of November 24, 2010. Series C No. 219, para. 235.

²¹¹ Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 114, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 301.

by the State authorities to provide information about the whereabouts of the victims or to conduct an effective investigation to elucidate what happened causes increased suffering to the next of kin.²¹² The circumstances of this case reveal that the suffering of the five families affected by the disappearance of their children has been exacerbated by the withholding of the truth about what happened and the whereabouts of the victims, and by the lack of collaboration from the State authorities to establish that truth, which consequently aggravated the violation of the next of kin's right to personal integrity.

123. The Court has also established that the elucidation of the fate or whereabouts of the disappeared victim serves to relieve the anguish and suffering of families caused by the uncertainty regarding the fate of the disappeared loved one.²¹³ In the instant case, the uncertainty and lack of information from the State about what occurred, which to a great extent continues today, has been a source of suffering and anguish for the next of kin, and has caused them feelings of insecurity, frustration and impotence owing to the public authorities' refusal to investigate the facts.

124. There is a clear link between the suffering of the next of kin and the violation of their right to know the truth (*infra* para. 170), which illustrates the complexity of forced disappearance and its numerous effects. For example, María Juliana Rochac Hernández stated: "I have never been able to get my little brother out of my mind since they took him; I remember him every December and I ask myself if my mother would have found him, because you ask yourself questions and carry that burden of wondering whether they killed him, where he was taken, how they have treated him... so many questions."²¹⁴ For her part, María del Tránsito Hernández Rochac stated that "I still remember those events and each time I feel pain, sadness, anxiety, sorrow, desperation and ask myself, where is my brother José Adrián Rochac?"²¹⁵ The next of kin suffer physical and psychological effects and the events have changed the dynamics of their families and communities. These effects, which are an integral part of the complex phenomenon of forced disappearance, continue for as long as the impunity regarding the proven facts persists.²¹⁶ (*infra* Chapter VII-2).

125. Based on the foregoing considerations, and in view of the State's acknowledgement of responsibility, *the Court concludes that the State violated the right to personal integrity recognized in Articles 5(1) and 5(2) of the American Convention in relation to Article 1(1) thereof, to the detriment of Alfonso Hernández Herrera, Sebastián Rochac Hernández, Tanislao Rochac Hernández, María Juliana Rochac Hernández, María del Tránsito Hernández Rochac, Ana Margarita Hernández Rochac, Nicolás Alfonso Torres Hernández, María Adela Iraheta, Julio Antonio Flores Iraheta, Felipe Flores Iraheta, María Estela Salinas de Figueroa, Amparo Salinas de Hernández, Josefa Salinas Iraheta, María Adela Hernández, José Juan de la Cruz Sánchez, Joel Alcides Hernández Sánchez, Valentina Hernández, Santiago Pérez, Juan Evangelista Hernández Pérez, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, María de los Ángeles Osorio, José de la Paz Bonilla, José Arístides Bonilla Osorio, María Inés Bonilla de Galán, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Petronila Abarca Alvarado, Daniel Ayala Abarca, José Humberto Abarca Ayala, Ester Abarca Ayala, Osmín Abarca Ayala and Paula Alvarado.*

²¹² Cf. *Case of Blake v. Guatemala. Merits*, *supra*, para. 114, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 228.

²¹³ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 155, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 249.

²¹⁴ Statement rendered before the Inter-American Court by María Juliana Rochac Hernández during the public hearing held on April 1, 2014.

²¹⁵ Affidavit rendered by María del Tránsito Hernández Rochac on March 7, 2014 (evidence file, volume X, affidavits, folio 4750).

²¹⁶ Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 103, and *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 172.

VII-2

VIOLATIONS RELATED TO THE INVESTIGATIONS: RIGHTS TO PERSONAL LIBERTY, JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS

Arguments of the parties and of the Commission

126. The Commission argued that the information available on the criminal cases shows that, to date, the investigations into the forced disappearances of José Adrián Rochac Hernández and Santos Ernesto Salinas have not advanced beyond the preliminary stages, or remain paralyzed, with no steps taken to collect evidence in order to determine the circumstances of the victims' disappearance, their whereabouts, or the possible perpetrators. The Commission considered it extremely serious that a long period of time had elapsed since the State learned of the facts without having ordered an adequate and diligent investigation, thereby perpetuating a situation of impunity. According to the Commission, the information available indicates that the lack of results in this process has been due to generalized inactivity on the part of the authorities in charge of the investigation.

127. According to Commission, the measures ordered to search for the children through the *habeas corpus* actions lacked any diligence and were limited to treating the matter as a regular deprivation of liberty in normal circumstances, without taking into consideration that the alleged facts unfolded in a context characterized by a systematic pattern of disappearances of children, and that the search measures should have responded to the particularities of those contexts. The Commission considered that the motive given for dismissing the *habeas corpus* actions, in all five cases, is so laconic that it suggests the ineffectiveness of this remedy in practice.

128. During the public hearing, the Commission emphasized that, given the lack of progress made in prosecuting and identifying the possible perpetrators, the Amnesty Law has not been applied in these cases. However, it considered that it necessarily has an effect, in general terms, on the lack of investigation on the part of the prosecution service and the lack of progress on the part of the judicial authorities. The Commission also indicated that these effects are so obvious that, following the Court's decision in the *Case of the Massacres of El Mozote*, it was necessary to file an action of unconstitutionality before the Supreme Court so that it could issue a specific and concrete mandate and, based on the outcome of that action of unconstitutionality or mandate, eventually order the judicial authorities and the prosecution service to continue with these investigations. Thus, the Commission considered that the very existence of the amnesty law has effects that are clearly reflected in the lack of progress and answers in the investigations.

129. The Commission concluded that the Salvadoran State violated the rights to judicial guarantees and judicial protection, enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, as well as their named next of kin.

130. The representatives recalled that the victims' next of kin have sought access to justice through appropriate legal remedies to locate their children, but that 30 years after their disappearance, these families express frustration and despair at the State's failure to carry out serious investigations. They argued that the report of the Ombudsman's Office, issued on September 2, 2004, on the forced disappearance of the Serrano Cruz sisters and others, which also mentions the victims in the instant case, was forwarded to the Attorney General, *inter alia*, and should have served as *notitia criminis*. Furthermore, this being a crime that is subject to public prosecution and a crime against humanity, it should have been investigated *ex officio*, according to domestic law, given that the Attorney General's Office also has full control over criminal investigations and criminal actions.

131. With respect to the various decisions issued by the Constitutional Chamber of the Supreme Court in the *habeas corpus* proceedings, in the sense of not granting constitutional protection owing to a lack of evidence to confirm the existence of the alleged constitutional violations, the representatives recalled that it is the duty of a judge appointed specifically for a given case to collect the evidence, but that in all the proceedings reported, the judge's actions were limited to requesting reports from the Ministry of National Defense and the Head of the Joint Chiefs of Staff of the Armed Forces, with both these officials responding that no records existed related to the detention of children during the respective operations.

132. As to the situation of impunity, the representatives expressed concern that none of the prosecution proceedings have resulted in criminal action against the perpetrators and masterminds responsible for the forced disappearances, which would indicate that no substantial progress has been made in the investigations. They explained that most of the cases investigated by the public prosecution service were opened in 2009 - in other words, almost 29 years after the events occurred- and have remained under investigation for the past 4 years. Furthermore, the auxiliary agents have so far been unable to identify the perpetrators or the possible masterminds, who would be high-ranking officials who served in the Armed Forces during those years and are publicly known to have participated in the military operations in question, mainly through newspaper reports on those dates.

133. The representatives noted that, since the year 2000, there has been a certain legal ambiguity regarding the application of the constitutionality ruling issued in files 24-97 and 21-98, in which the General Amnesty Law for the Consolidation of Peace was declared constitutional. However, it was left to the discretion of the judges to decide whether or not to apply it in each specific case under their consideration, and where the parties claim the application of diffuse control of constitutionality that is the right of judges, but not of prosecutors, who must comply with it because it remains the law of the country. Thus, the representatives indicated that its non-applicability has not been declared in the instant case, because in no case has it been possible to attribute individual criminal responsibility. The representatives argued that "the ambiguous effect of the Amnesty Law can be maliciously used to avoid activating criminal proceedings in the pre judicial stages, in other words, in the administrative stages" and indicated that "the Attorney General's auxiliary agents who have been in charge of the complaints filed, have not commented on or addressed the fact that they have not issued a summons to any person after so many years of investigation, as they have done in other cases." They admitted that it is difficult to ensure that the State, through the Public Prosecution Service, implements the measure ordered in the *Case of the Massacres of El Mozote*.

134. The representatives pointed out that to date, the truth of what occurred is not known and that the case remains in total impunity, given the failure by the Attorney General's Office to investigate. They argued that the right to know the truth in cases involving serious human rights violations, particularly crimes against humanity as in the instant case, acquires a special significance. The effects of not knowing the truth in cases of serious human rights violations and crimes against humanity result in "multiple offenses, because this affects people's emotional integrity on an individual and collective basis, as well as the healthy social and political development of the organized community, seriously harming its dignity as a group and its social fabric." Ignorance of the truth in these cases produces generalized impunity that makes it impossible to rebuild the social fabric and results in a loss of confidence in the institutions responsible for delivering justice. Therefore, the representatives considered that the right to the truth in this case is an individual right to the due process of investigation, a collective right of access to public information and, furthermore, a right consistent with the political freedoms inherent to democratic systems. In the instant case, the representatives argued that the State violated the right to learn the truth about the fate or whereabouts of the children given that it has not established the mechanisms necessary to elucidate the truth. Finally, they considered that only knowledge of the truth, through legally established means, is capable of healing individuals, families and Salvadoran society as a whole; consequently, the State and its competent

institutions have an urgent duty to investigate the truth, make it public and compensate the victims.

135. The State did not comment specifically on these arguments, but acknowledged the violation of Articles 8 and 25 of the Convention based on the contents of the Commission's merits report (*supra* para. 20). However, the State pointed out that the Amnesty Law has not been applied in the investigations into the facts of this case and cited the ruling on constitutionality issued on September 26, 2000, by the Constitutional Chamber of the Supreme Court in files 24-97 and 21-98, which allowed for the possibility that in specific cases the judges might consider not applying the 1993 Amnesty Law, for example for human rights violations committed during the internal armed conflict, such as forced disappearances. The State also indicated that a new action of unconstitutionality is pending before the Constitutional Chamber, and referred to a series of advances in domestic case law. It also indicated that the task of investigating the massacres that occurred during the armed conflict has been centralized in the Human Rights Unit of the Attorney General's Office.

Considerations of the Court

136. The Court notes that three types of proceedings were initiated in El Salvador regarding the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala: investigations of human rights violations by the Office of the Human Rights Ombudsman; criminal investigations by the Public Prosecution Service (*Ministerio Público*), and constitutional proceedings of *habeas corpus* before the Constitutional Chamber of the Supreme Court.

137. In light of the State's acknowledgement of responsibility, and bearing in mind the serious nature of the facts in this case, it is pertinent to analyze the different proceedings undertaken, in order to determine whether these constituted an effective remedy to guarantee to the victims and their families their rights to justice, to know the truth and to reparation, in the following order: a) the obligation to initiate an investigation *ex officio*; b) lack of due diligence in the criminal investigations, and c) the *habeas corpus* proceedings.

138. In this order of considerations, the Court will address the legal and factual obstacles that prevented the State from complying with its obligation to investigate cases of forced disappearance, giving rise to a situation of impunity, based on its deliberations in the case *Contreras et al. v. El Salvador* regarding the grounds for the obligation to investigate the facts of forced disappearance, and the specific implications in the case of children, in the context of a systematic pattern of serious human rights violations.²¹⁷

139. The Court has established that the right of access to justice requires an effective investigation of the facts to determine the corresponding criminal responsibilities within a reasonable time. Hence, given the need to guarantee the rights of those who have been affected, a prolonged delay may, in itself, constitute a violation of judicial guarantees.²¹⁸ The Court has also indicated that the State bodies responsible for investigating the forced disappearance of persons in order to determine their whereabouts, clarify what happened, identify those responsible and punish them, must perform their tasks diligently and exhaustively.²¹⁹ It is pertinent to recall that, in cases of forced disappearance, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place

²¹⁷ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, paras. 126 to 130.

²¹⁸ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, paras. 142 to 145, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 192.

²¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 145.

where the victim might be found deprived of liberty.²²⁰ In this case, that obligation was reinforced by the fact that the victims were children at the time of the events, one of them in her early infancy, so that the State had the obligation to ensure they were found as soon as possible. The legal rights involved in the investigation make it obligatory to redouble efforts as regards the measures that must be taken to fulfill this objective, because the passage of time has a directly proportionate relationship to the limitations to – and, in some cases, the impossibility of – obtaining evidence and/or testimony, making it difficult and even rendering ineffective or invalid, the probative measures taken in order to elucidate the facts investigated,²²¹ identify the possible authors and participants, and determine possible criminal responsibilities. Despite the foregoing, national authorities are not exempt from making all necessary efforts to comply with their obligation to investigate.²²² Inaction or negligent action on the part of the State and its bodies is not compatible with its obligations under the American Convention, particularly if essential human rights are at stake.²²³ Thus, the States must provide the corresponding authorities with the necessary logistic and scientific resources to gather and process evidence and, in particular, the authority to access pertinent documentation and information to investigate the facts denounced and obtain indications or evidence of the whereabouts of the victims.²²⁴

140. It is also important to recall that, in its case law, the Court has considered the content of the right to know the truth, particularly in cases of forced disappearance. In the *Case of Velásquez Rodríguez v. Honduras* the Court affirmed the “right of the next of kin of the victim to know his/her fate and, if it were the case, where the remains are.”²²⁵ In such cases it is understood that the next of kin of disappeared persons are victims of the facts that constitute forced disappearance, which grants them the right to have the facts investigated and that those responsible be tried and, where appropriate, punished.²²⁶ The right to know the truth of the next of kin of victims of serious human rights violations forms part of the right of access to justice.²²⁷

A. Duty to initiate an investigation ex officio

141. According to the evidence, on May 31, 1996, the representatives of the Search Association filed a complaint with the Office of the Human Rights Ombudsman in which it set out a total of 141 cases of children who had been victims of forced disappearance, all in the context of the Salvadoran armed conflict.²²⁸ The Ombudsman’s Office issued a decision on March 30, 1998, under file number SS-0449-96, referring to seven cases illustrative of the forced disappearance of children during the armed conflict, and indicating that members of the Armed Forces of El Salvador were responsible for

²²⁰ Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 134, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 145.

²²¹ Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 185.

²²² Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 135, and *Case of Palma Mendoza et al. v. Ecuador. Preliminary objection and merits*. Judgment of September 3, 2012. Series C No. 247, para. 94.

²²³ Cf. *Case of Garibaldi v. Brazil, Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 130, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 145.

²²⁴ Cf. *Case of Tiu Tojin v. Guatemala*, *supra*, para. 77, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 182.

²²⁵ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 181.

²²⁶ Cf. *Case of Blake v. Guatemala. Merits*, *supra*, para. 97, and *Case of Radilla Pacheco v. Mexico*, *supra*, para. 180.

²²⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 181; *Case of Anzualdo Castro v. Peru*, *supra*, para. 118, and *Case of Gelman v. Uruguay*, *supra*, para. 243.

²²⁸ Cf. Telefax issued by the *Asociación Pro-Búsqueda* sent to the Office of the Human Rights Ombudsman on May 31, 1996 (evidence file, volume IV, annex 7 to the submission of the case, folio 1875), and list of cases presented by the *Asociación Pro-Búsqueda* to the Office of the Human Rights Ombudsman on May 31, 1996 (file of proceedings before the Commission, volume II, folios 982 to 985).

those disappearances.²²⁹ Based on new information presented by the Search Association on March 5, 2002, concerning the disappearance of children during the armed conflict, the Ombudsman's Office issued a decision on February 10, 2003, establishing the State's non-compliance with the institutional resolution of March 1998 and ratifying "the State's non-delegable obligation to investigate, prosecute and punish those responsible for massacres, arbitrary, summary or extrajudicial executions of persons, forced disappearances and other serious crimes denounced and confirmed by the Office of the Human Rights Ombudsman."²³⁰ Subsequently, on September 2, 2004, the Ombudsman's Office issued another decision in which it confirmed the State's non-compliance with the resolutions of 1998 and 2003, and reiterated its recommendations, "especially those concerning the promotion of full access to the truth, justice and reparation for the families of children who were victims of forced disappearance during the armed conflict."²³¹ In that resolution, the Ombudsman's Office confirmed that it had received well-founded information concerning 136 cases of forced disappearance of children during the Salvadoran armed conflict, additional to the seven cases investigated by the Ombudsman's Office and presented in its 1998 resolution, which it considered "illustrates, with tragic clarity, the characteristics common to this large number of crimes against humanity, and fully demonstrates its systematic and ongoing nature at that time."²³² Among these cases, it included those of "José Adrián Hernández Rochac", "Emelinda Lorena Hernández Sánchez", "Manuel Antonio Bonilla Osorio" and "Ricardo Ayala."²³³ The Ombudsman's Office also ordered that its decision be notified to the Attorney General of the Republic, an order made effective on September 7, 2004.²³⁴ However, there is no record that criminal investigations were opened in compliance with that order of the Ombudsman's Office of 2004 (*infra* para. 144). Furthermore, as was acknowledged by the State, in the case of Santos Ernesto Salinas his mother had filed a complaint with the Office of the Attorney General in August 2002, which had not been admitted (*supra* para. 66).

142. The Court reiterates that, although a complaint filed with the Ombudsman's Office can result in effective and useful actions in cases of alleged human rights violations, it is clear that the facts denounced were also brought to the attention of the Office of the Attorney General, who had the responsibility of initiating the corresponding criminal proceedings.²³⁵

143. Consequently, *the Court finds that, since the State did not initiate, without delay, a criminal investigation into what happened to José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, even though it had knowledge that they had disappeared at different times (supra para. 141), the State failed to fulfill its duty to*

²²⁹ Cf. *Case Contreras et al. v. El Salvador*, *supra*, para. 134, and Report of the Human Rights Ombudswoman on the forced disappearance of the sisters Ernestina and Erlinda Serrano Cruz, their current impunity and the pattern of violence in which their disappearances occurred, of September 2, 2004 (evidence file, volume V, annex 1 to the pleadings, motions and evidence brief, folios 2033 to 2037).

²³⁰ Report of the Human Rights Ombudswoman on the forced disappearance of the sisters Ernestina and Erlinda Serrano Cruz, its current impunity and the pattern of violence in which those disappearances occurred, of September 2, 2004 (evidence file, volume V, annex 1 to the pleadings, motions and evidence brief, folio 2043).

²³¹ Report of the Human Rights Ombudswoman on the forced disappearances of the sisters Ernestina and Erlinda Serrano Cruz, its current impunity and the pattern of violence in which those disappearances occurred, of September 2, 2004 (evidence file, volume V, annex 1 to the pleadings, motions and evidence brief, folios 2197 to 2198).

²³² Report of the Human Rights Ombudswoman on the forced disappearances the sisters Ernestina and Erlinda Serrano Cruz, its current impunity and the pattern of violence in which those disappearances occurred, of 2 September of 2004 (evidence file, volume V, annex 1 to the pleadings, motions and evidence brief, folio 2106).

²³³ Cf. Report of the Human Rights Ombudswoman on the forced disappearances of the sisters Ernestina and Erlinda Serrano Cruz, its current impunity and the pattern of violence in which those disappearances occurred, of September 2, 2004 (evidence file, volume V, annex 1 to the pleadings, motions and evidence brief, folios 2125, 2127 and 2132).

²³⁴ Cf. Record of notification of the Attorney General of September 7, 2004 (evidence file, volume IV, annex 19 to the submission of the case, folio 1995).

²³⁵ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 135.

investigate those forced disappearances ex officio.

B. Lack of due diligence in the criminal investigations

144. The Court has confirmed that, in its submission brief, the Commission referred to the investigations undertaken up to September 2003, at which time the State had only opened an investigation into the forced disappearance of José Adrián Rochac Hernández.²³⁶ The State forwarded a copy of the investigation file opened by the Public Prosecutor's Office of Soyapango for the forced disappearance of José Adrián Rochac Hernández, as a result of the complaint filed by his father on April 12, 2002 (*supra* para. 57), containing information up to October 30, 2013 (Case File 321-UMM-D-02). The information available also indicates that in 2009, a few days prior to the hearing before the Inter-American Commission, criminal investigations were opened into the forced disappearances of Santos Ernesto Salinas by the Prosecutor's Office of San Vicente (Case File 908-UDVSV-2009), Manuel Antonio Bonilla and Ricardo Abarca Ayala by the Prosecutor's Office of San Vicente (Case File 909-UDVSV-2009), and Emelinda Lorena Hernández by the Prosecutor's Office of San Francisco Gotera (Case File 908-UDVOFM-2009); these investigations were in their initial stages, without having identified the possible authors.²³⁷ However, the Commission's merits report did not include the facts related to those investigations. Therefore, in this section, the Court will determine the omissions and failings committed by the authorities based on the factual context provided by the Commission, regarding which the State acknowledged its responsibility, and the evidence provided concerning the investigation into the forced disappearance of José Adrián Rochac Hernández.

145. From the information provided it is clear that, after the complaint was filed for the forced disappearance of José Adrián Rochac Hernández, in August 2003, efforts were made to obtain information on possible incursions by the army, by taking a statement from the petitioner and from a neighbor.²³⁸ However, the procedural activity only began in November 2009. In other words, initially the investigation remained inactive for more than six years.²³⁹

146. A number of evidence gathering procedures were carried out including: an interview with the petitioner;²⁴⁰ taking statements from individuals cited as witnesses by the petitioner;²⁴¹ visual inspection and mapping of the site of the events, and compiling an album of photographs of the site;²⁴² official written notices were sent to the Chief of Staff of the Armed Forces²⁴³ and the Minister

²³⁶ With respect to the disappearance of Santos Ernesto Salinas, the Commission indicated that "[t]here is no information on the impetus and/or result of the criminal investigation." Report on Merits No. 75/12 issued by the Inter-American Commission on November 7, 2012, para. 224. However, previously it had indicated that "the officials did not admit the complaint, indicating that she had to go to the city of San Salvador," which was acknowledged by the State. *Cf.* Merits Report No. 75/12 issued by the Inter-American Commission on November 7, 2012, para. 104.

²³⁷ See, for example, the letter of the *Asociación Pro-Búsqueda* addressed to the Commission of Justice and Human Rights of the Legislative Assembly on December 3, 2010 (evidence file, volume V, annex 33 to the pleadings, motions and evidence brief, folios 2451 to 2467), which mentions that in the investigation regarding Emelinda Lorena Hernández, begun on October 30, 2009, only three interviews were conducted.

²³⁸ *Cf.* Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 3992 and 3993).

²³⁹ *Cf.* Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folio 4007).

²⁴⁰ *Cf.* Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4234 to 4236).

²⁴¹ *Cf.* Statement of María Juliana Rochac Hernández of December 7, 2010, in Case File 321-UMM-D-02 at the Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4341 to 4345).

²⁴² *Cf.* Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folio 4020 and 4258 to 4263).

²⁴³ *Cf.* Official letters of November 9, 2009, March 26, 2010 and August 26, 2010 in Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4009 to 4010; 4256 to 4257; 4317 to 4318).

of National Defense²⁴⁴ requesting information on members of the armed forces and on military operations in the area and on the date of the facts, to which no response was received or, when there was a response, the answer was that no information had been found about the operations at the place and on the date of the events;²⁴⁵ a request for authorization to inspect the files in the judicial archives on adoptions or protective proceedings carried out between 1980 and 1993;²⁴⁶ a request to the National Registry of Natural Persons for certification for José Adrián Rochac Hernández, the response being that there was no record of that person's identity document,²⁴⁷ and for witnesses;²⁴⁸ and checking possible migratory movements by land, sea or air of José Adrián Rochac Hernández, without finding any record.²⁴⁹

147. These investigations are still ongoing, but as yet none of the possible perpetrators have been identified or brought to trial; some actions are still pending, such as making further requests for information from the Joint Chiefs of Staff, taking witness statements and inspecting files related to the adoption of children.

148. In analyzing the effectiveness of the investigations conducted in this case, the Court advises that, from the evidence it appears that although the authorities in charge of the investigations carried out certain fact-finding activities, they did not exhaust all the measures that should have been taken to identify the possible perpetrators and, if appropriate, bring charges against them.

149. Thus, no steps were taken to inspect newspaper archives which could have provided information on the individuals who participated in the military operations conducted in the place and at the time of the facts;²⁵⁰ and the investigation did not incorporate the relevant sections of the Report of the Truth Commission for El Salvador, which contain the names of some of the soldiers who took part in the operations, such as those related to the *Massacres of El Mozote and nearby places*.²⁵¹ Similarly, the conclusions reached by the Ombudsman's Office and the evidence provided to the investigations indicated the military units that supposedly participated in the operations and named some of the authorities in charge of them. However, that information was not used in any line of investigation and no member of the Armed Forces was charged or summoned to testify. In other words, none of the investigations tried to obtain further evidence to confirm or disprove the responsibility of the individuals accused.

²⁴⁴ Cf. Official letters of November 29, 2010, March 4, 2013, and reply of March 8, 2013, in Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4327 to 4328, 4505 and 4524).

²⁴⁵ Cf. Official letters received on September 7 and December 22, 2010, in Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4319 and 4351).

²⁴⁶ Cf. Case File 321-UMM-D-02, at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4315 to 4316).

²⁴⁷ Cf. Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4323 and 4324).

²⁴⁸ Cf. Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4374 to 4375).

²⁴⁹ Cf. Case File 321-UMM-D-02 at the Public Prosecutor's Office of Soyapango (evidence file, volume VIII, folios 4526 to 4529).

²⁵⁰ For example, the expert witness Iglesias mentioned that during the period of the forced disappearances in this case "[t]he Armed Forces had what was known as the Armed Forces Press Committee COPRESA, which had very clear reports about where the operations were being carried out, the names of the officers responsible, and this was published and sent out in newsletters and [...] it was even published in the press – in other words, there is information." Expert opinion rendered by Ricardo Alberto Iglesias Herrera before the Inter-American Court in the public hearing held on May 17, 2011, in the case of Contreras et al. v. El Salvador. See also press reports describing the operations related to these cases (evidence file, volume V, annex 30 to the pleadings, motions and evidence brief).

²⁵¹ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 84, citing the Report of the Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador, 1992-1993*.

150. The Court finds that the investigations conducted have not taken into account the context of the facts, their complexity, the patterns that explain how they were perpetrated, the complex network of people involved, or the special position within the State structure, at that time, of the individuals who could be responsible. On this point, the Court has found that in events such as those alleged in this case, given their context and complexity, it is reasonable to consider that there are different degrees of responsibility at different levels.²⁵² However, this is not reflected in the investigations. Consequently, the authorities in charge of the investigations do not appear to have followed clear and logical lines of investigation that would have taken those elements into account. Furthermore, obvious omissions can be observed in the gathering of evidence. Thus, the Court considers that the State has not acted diligently with respect to this obligation.

151. As to the steps taken to determine the possible whereabouts of the disappeared victims, although certain actions were carried out by the National Search Commission and some procedures were carried out by the Attorney General's Office, the State has not provided any information to show that it has exhausted all possible efforts to determine the whereabouts of the victims, according to the set of possible effective procedures in response to the *modus operandi* concerning the disappearance of children during the armed conflict, which were specified in the *Case of Contreras et al.*²⁵³ The Court notes that, parallel to the investigations carried out by those in charge of the criminal prosecution, the National Search Commission is currently conducting inquiries in the context of its powers to determine the whereabouts of the disappeared victims (*supra* para. 60). From the evidence in the file, the Court infers that there is a lack of coordination between these two State bodies, which is required to achieve greater efficacy in the investigations.

152. The Court finds that the situation confirmed in this case coincides with what was determined opportunely with respect to the investigations conducted in the cases of the *Serrano Cruz Sisters* and *Contreras et al.*, in which the investigative authority failed to take diligent and exhaustive measures to gather evidence, creating a situation of impunity.²⁵⁴

153. For its part, based on its experience in these cases, the Search Association has identified (*supra* para. 49), the following obstacles that cut across the investigations related to disappeared children: a) failure to carry out procedures such as interviews with key witnesses identified from the start of the investigations; b) no requests for information have been made or investigative powers used to require State institutions to provide relevant information in their power; c) rotation of assistant prosecutors, which hinders the continuity of the proceedings and a clear investigation strategy.²⁵⁵

154. The Court finds that, in the cases it has examined, there has not been a serious and decisive investigation strategy leading to the identification and prosecution of the presumed perpetrators. On this point, in cases such as this, the Court has considered that the authorities in charge of the investigation have an obligation to ensure that in the course of their inquiries they assess the

²⁵² Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 203, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 194.

²⁵³ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 152.

²⁵⁴ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, *supra*, paras. 89 to 98 and 105 to 106, and *Case of Contreras et al. v. El Salvador*, *supra*, paras. 147 to 155 and 168 to 169.

²⁵⁵ Cf. Letter of the *Asociación Pro-Búsqueda* addressed to the Attorney General of the Republic on February 22, 2013 (evidence file, volume V, annex 12 to the pleadings, motions and evidence brief, folios 2312 to 2313). See also, Letter of the *Asociación Pro-Búsqueda* addressed to the Commission of Justice and Human Rights of the Legislative Assembly, dated December 3, 2010 (evidence file, volume V, annex 33 to the pleadings, motions and evidence brief, folios 2451 to 2467).

systematic patterns that allowed serious human rights violations to be committed.²⁵⁶ In other words, the facts cannot be considered in isolation. Therefore, in order to guarantee its effectiveness, the investigation must be conducted taking into account the complexity of the facts, which occurred in the context of counterinsurgency operations carried out by the Armed Forces, and the structure to which the individuals who were probably involved in them belonged. Thus, the State must make full use of its investigative powers so as to avoid any omission in the collection of evidence and in following logical lines of investigation, in order to effectively determine the whereabouts of the disappeared victims, clarify what happened, identify those responsible and, if appropriate, punish them.

155. The representatives, the Commission and the State agreed that the General Amnesty Law for the Consolidation of Peace has not been applied in the cases *sub judice*. However, the Commission and the representatives affirmed that the fact that this Amnesty Law is still in force constitutes a disincentive for the authorities in charge of the investigations to act (*supra* paras. 128 and 133).

156. From the evidence provided, it is clear that Legislative Decree N° 486 "General Amnesty Law for the Consolidation of Peace," issued in El Salvador on March 20, 1993,²⁵⁷ has not been expressly applied in order to close the investigation initiated as a result of the facts of this case. However, the Court has verified that, at least in the investigation into the disappearance of José Adrián Rochac Hernández, the case file contains a copy of the Law of National Reconciliation and of the General Amnesty Law for the Consolidation of Peace, together with a report that mentions a communication sent by the prosecutor in charge of the investigation to the human rights prosecutor, who had indicated that this law was not applicable to the crime of forced disappearance of persons. This demonstrates that, given the lack of a clear institutional position on the criminal prosecution of actions such as those in the instant case, doubts persist as to whether the Amnesty Law would or would not be applicable in such cases. These doubts, in turn, are reflected in the limited progress made in the investigations.

157. From the information provided by the representatives and the State, it appears that to date the State has not adopted measures, in relation to grave human rights violations, designed to ensure that the aforesaid Amnesty Law did not produce effects in the past, does not have any at present, and will not produce effects in the future. As to the ruling issued by the Constitutional Chamber of the Supreme Court on September 26, 2000, in files 24-97 and 21-98, the Court pointed out in a previous case that in practical terms, this had not resulted in the re-opening of the investigations.²⁵⁸ Moreover, there is no evidence that the body in charge of criminal prosecutions has issued a directive on the non-applicability of that law to the investigation of facts such as those in this case, which in turn could cause the procedures undertaken to amount to a mere formality but not to a firm decision to advance in the investigations.

158. The Court considers it pertinent to recall that in the cases of the *Serrano Cruz Sisters v. El Salvador and Contreras et al. v. El Salvador*, concerning human rights violations involving the forced disappearance of children during the armed conflict, the Court held that because these were grave human rights violations, and given the continuing or ongoing nature of forced disappearance, in which

²⁵⁶ Cf. *Case of La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 156, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 257.

²⁵⁷ Legislative Decree in force from March 22, 1993, which states: "Full, absolute and unconditional amnesty shall be granted to all those who participated, in any way, in committing political crimes or common crimes related to political crimes, or in common crimes committed by at least 20 individuals prior to January 1, 1992, even if judgment has been handed down against such persons, or proceedings have been initiated against them, and this pardon shall apply to all those who have participated." Cf. Legislative Decree N° 486, *Ley de Amnistía General para la Consolidación de la Paz* (General Amnesty Law for the Consolidation of Peace), of March 20, 1993, published in the Official Gazette N° 56, Volume 318, of March 22, 1993 (evidence file, volume VIII, folios 4016 to 4019).

²⁵⁸ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, paras. 293 and 294.

the effects persist until the fate or whereabouts of the victims is known and their identity is determined, the State must “refrain from resorting to mechanisms such as amnesty for the perpetrators, or any other similar exclusion of responsibility.”²⁵⁹ Likewise, it is important to recall that the Court has already assessed the content and scope of the Legislative Decree N° 486 “General Amnesty Law for the Consolidation of Peace” in the *Case of the Massacres of El Mozote and nearby places v. El Salvador*, and in its judgment has determined that, “given its manifest incompatibility with the American Convention, the provisions of the General Amnesty Law for the Consolidation of Peace that impede the investigation and punishment of the serious human rights violations that occurred in [that] case lack legal effects and, therefore, cannot continue to hinder the investigation of [those] facts [...] and the identification, prosecution and punishment of those responsible, nor can they have equal or similar impact with respect to other cases of serious human rights violations recognized in the American Convention that may have occurred during the armed conflict in El Salvador.”²⁶⁰

159. In brief, it was the responsibility of the authorities in charge of pursuing the investigations to channel them correctly and in a timely manner from the outset in order to establish the identity of those responsible for the disappearances, and to determine the fate or whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, based on the context in which they took place. In the Court’s opinion, the actions of the authorities in charge of pursuing the investigations have not been exhaustive and have not allowed the inquiries to advance, or to determine coherent lines of investigation. In addition, it should be emphasized that during their initial stages, the domestic investigations were plagued by long periods of inactivity due to the absence of procedural activity *ex officio* by the body responsible for the investigation. In the Court’s opinion, this has compromised their seriousness and due diligence, since with the passage of time, the possibility of collecting and presenting pertinent evidence that would clarify the facts and determine the corresponding responsibilities has been unjustifiably affected.

160. The Court notes that more than 30 years have elapsed since the events took place and 12 years have passed since the first investigation was opened, yet the criminal proceedings remain in their initial stages, and those responsible have not been individualized, prosecuted or punished. This greatly exceeds the term that could be considered reasonable for such purposes. Therefore, the Court considers that the State has not conducted serious, diligent and exhaustive investigations, within a reasonable time, into the facts surrounding the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala.

161. In light of these considerations and of the State’s acknowledgement of responsibility, *the Court finds that the State failed to comply with the requirements of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and of their next of kin.*

C. Habeas corpus proceedings

162. The Court recalls that Articles 7(6) and 25 of the Convention encompass different spheres of protection. Article 7(6) of the Convention²⁶¹ has its own juridical content, consisting of the direct

²⁵⁹ *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, para. 172, and *Case of Contreras et al. v. El Salvador, supra*, para. 185(d).

²⁶⁰ *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 296.

²⁶¹ Article 7(6) of the Convention establishes that: “Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide, without delay, on the lawfulness of his arrest or detention and order

protection of personal or physical liberty, by means of the judicial mandate addressed to the corresponding authorities ordering them to bring detainees before a judge so that the latter may examine the legality of the detention and, if appropriate, order the release of the individual in question.²⁶² The Court has considered that the remedy of *habeas corpus*, or the presentation of the person, is the ideal measure to guarantee liberty, monitor respect for life and personal integrity, and prevent an individual's disappearance or uncertainty about his place of detention.²⁶³ In this regard, the Court's case law has established that these remedies should not only exist formally in law, but should also be effective.²⁶⁴ Given that the principle of effectiveness (*effet utile*) crosscuts the protection due to all the rights recognized in the Convention, as it has on other occasions,²⁶⁵ the Court finds that, in application of the *iura novit curia* principle, which is repeatedly validated by international case law inasmuch as the judge has the authority, and even the obligation, to apply the pertinent legal provisions in a case, even when it is not expressly invoked by the parties,²⁶⁶ it is appropriate to assess the arguments related to the effectiveness of the *habeas corpus* actions in relation to the aforementioned provision, and not in relation to Article 25 of the Convention, as alleged by the representatives and the Commission and recognized by the State.

163. In the instant case, five *habeas corpus* actions were filed before the Constitutional Chamber of the Supreme Court, one for each of the victims of forced disappearance, namely: on October 16, 2002, by Alfonso Hernández Herrera on behalf of José Adrián Rochac Hernández²⁶⁷; on October 17, 2002, by María Adela Iraheta on behalf of Santos Ernesto Salinas;²⁶⁸ on November 15, 2002 by María Adela Hernández on behalf of Emelinda Lorena Hernández;²⁶⁹ on December 25, 2002 by María de los Ángeles Osorio on behalf of Manuel Antonio Bonilla;²⁷⁰ and on February 18, 2002, by Petronila Abarca Alvarado on behalf of Ricardo Abarca Ayala.²⁷¹

164. The body of evidence reveals that once the applications for *habeas corpus* proceedings had been admitted, an executing judge was appointed for each case. As to the measures taken in the

his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies."

²⁶² Cf. *Habeas Corpus under Suspension of Guarantees* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A. No. 8, paras. 33 and 34, and *Case of Contreras et al. v. El Salvador, supra*, para. 157.

²⁶³ Cf. *Habeas Corpus under Suspension of Guarantees* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87, *supra*, para. 35, and *Case of García and Family v. Guatemala, supra*, para. 142.

²⁶⁴ Cf. *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 129, and *Case of Contreras et al. v. El Salvador, supra*, para. 158.

²⁶⁵ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 77; *Case of Vélez Loo v. Panama, supra*, para. 123, and *Case of Contreras et al. v. El Salvador, supra*, para. 157.

²⁶⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and case *Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 92.

²⁶⁷ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by Alfonso Hernández Herrera on October 16, 2002 (evidence file, volume IV, annex 11 to the submission of the case, folios 1890 to 1893).

²⁶⁸ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by María Adela Iraheta on October 17, 2002 (evidence file, volume IV, annex 13 to the submission of the case, folio 1897).

²⁶⁹ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by María Adela Hernández on November 15, 2002 (evidence file, volume V, annex 23 to the pleadings, motions and evidence brief, folio 2367).

²⁷⁰ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by María de los Ángeles Osorio on December 25, 2002 (evidence file, volume V, annex 27 to the pleadings, motions and evidence brief, folio 2381).

²⁷¹ Cf. Writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court filed by Petronila Abarca Alvarado on February 18, 2002 (evidence file, volume V, annex 31 to the pleadings, motions and evidence brief, folio 2438).

context of the *habeas corpus* proceedings, it is clear that the executing judge in each case merely sent an official letter to the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces or inspected certain files; they accepted the answers received from the authorities regarding the non-existence of records or information relating to operations or the possible restriction of the liberty of the then children, without requesting an explanation about the mechanisms used by the authorities to reach that conclusion (*supra* paras. 58, 67, 73, 85 and 86).

165. In rulings dated March 3²⁷² and 6²⁷³, and May 26,²⁷⁴ 2003, the Constitutional Chamber dismissed all the aforementioned *habeas corpus* proceedings citing the same arguments. In its considerations, the Constitutional Chamber differentiated these cases from other precedents in which it acknowledged the constitutional violation of the right to physical liberty, based on the following arguments: a) "there were elements that indicated the probability of a violation of the right to physical liberty, elements that would suggest, at that time, that it was indeed a case of forced disappearance of persons, such as the birth certificate of the disappeared minors, a document that was used to prove their existence; as well as the report [...] stating that steps had been taken to determine the whereabouts of the beneficiaries, and a record of these proceedings that included *witness statements confirming the existence of the operation and the disappearance of the minors*"; b) "given the existence of a report provided by the respondent authority, stating that that there was no record of any operation in the place and on the dates indicated by the claimant, this Court considered it necessary to weigh up the beneficiaries' right to physical liberty and the denial of the fact by the respondent authorities—by virtue of not having established that those minors had died - and therefore to grant the protection of the right to physical liberty of the beneficiaries"; c) unlike the aforementioned precedent, "the petitioner does not provide any evidence to suggest that we are indeed before a case of forced disappearance of persons, given that he merely recounted the facts concerning the supposed forced disappearance, attaching only the birth certificate of the then minor to the complaint; this confirms the birth of the beneficiary and his record before the competent authority, *but does not provide any indication whatsoever of the existence of the alleged constitutional violation*"; d) "given that this Court only has the word of the petitioner, on the one hand, on which to base its ruling, and on the other hand, the report provided by the respondent authority, which denies that the aforementioned facts took place, it is appropriate to dismiss this *habeas corpus* action, given the lack [...] of minimum indicia that would establish a degree of probability regarding the restriction of the beneficiary's right to physical liberty; therefore, since the elements or 'indicia' establishing that they were deprived of liberty were not proven -specifically in the case of the forced disappearances- the Chamber therefore lacks a subject on which to rule"; and e) the foregoing "does not imply returning to case law criteria that have already been superseded, which demanded proof of 'detention' and, in addition, considered the 'forced disappearance of persons' as a merely criminal act."

166. Unlike other precedents, in which the judge examined the investigations by the Ombudsman's Office and the criminal investigation conducted up until that time in each case,²⁷⁵ in the case of José Adrián Rochac Hernández no information was requested from the prosecutor who received the complaint (*supra* para. 144), a fact that was confirmed in the *habeas corpus* application. In the other

²⁷² Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 216-2002 on March 3, 2003 (evidence file, volume V, annex 11 to the pleadings, motions and evidence brief, folios 2308 to 2310); Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 217-2002 on March 3, 2003 (evidence file, volume IV, annex 15 to the submission of the case, folios 1904 to 1906), and Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 238-2002 on March 3, 2003 (evidence file, volume IV, annex 20 to the submission of the case, folios 2000 to 2002).

²⁷³ Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding number 18-2003 on March 6, 2003 (evidence file, volume V, annex 32 to the pleadings, motions and evidence brief, folios 2447 to 2449).

²⁷⁴ Cf. Ruling issued by the Constitutional Chamber of the Supreme Court in *habeas corpus* proceeding No. 25-2003 on May 26, 2003 (evidence file, volume V, annex 28 to the pleadings, motions and evidence brief, folios 2387 to 2389).

²⁷⁵ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 160.

cases, the absence of a criminal investigation was deemed sufficient reason to dismiss the *habeas corpus* action. Furthermore, the individuals offered as witnesses, or those individuals identified in positions of command, in each of the *habeas corpus* applications, were not summoned to testify (*supra* paras. 58, 67, 73 and 84).

167. The Court has found that the Constitutional Chamber imposed a disproportionate burden of proof on the plaintiffs, given the lack of diligence in the procedural actions aimed at gathering all the evidence offered and taking into account the broad powers of the executing judge which, together with the military authorities' refusal to provide information, rendered the remedy ineffective. This is also reflected in the failure to take into account the systematic pattern of forced disappearances of children during the armed conflict and the fact that the authorities of the Armed Forces and the Ministry of Defense systematically denied the judicial authorities and the Public Prosecution Service information and access to the military archives and files.²⁷⁶ Moreover, they denied the very existence of operations in cases of this nature, even though newspaper reports that are public knowledge, some of which were provided as evidence in this case, showed that these operations did indeed take place and even provided names, at least, of the individuals in command.²⁷⁷

168. The Court acknowledges that the State enumerated several advances in terms of the rulings issued in *habeas corpus* proceedings related to cases of forced disappearance of persons. Specifically, the State indicated that the Constitutional Chamber of the Supreme Court had modified its case law criteria, concluding that *habeas corpus* is an "appropriate" mechanism for examining cases of forced disappearance and that it currently accepts different means of providing proof of the subject of the proceeding.²⁷⁸ Although these changes in case law represent judicial progress for the protection of disappeared persons and their next of kin, the measures were not sufficient in this case to address the ineffectiveness that has characterized the proceedings related to forced disappearances during the armed conflict.

169. *Therefore, the Court decides that the attempted habeas corpus proceedings were not effective for determining the whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and failed to acknowledge the constitutional violation of their right to physical liberty; moreover, these proceedings did not exhort the Office of the Attorney General of the Republic to take the necessary measures, in accordance with its constitutional powers, and therefore the protection afforded through the aforesaid proceedings was illusory. Consequently, in application of the principle of iura novit curia, the Court finds that the State violated Article 7(6) of the American Convention, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and of their next of kin.*

D. Conclusion

170. More than 30 years have elapsed since the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, without any of the perpetrators or masterminds having been identified and brought to trial, and without the full truth of the facts or the children's whereabouts being known. Thus, a situation of total impunity prevails. Therefore, in the instant case, the State has still not satisfied the

²⁷⁶ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 169.

²⁷⁷ See press reports describing the operations related to these cases (evidence file, volume V, annex 30 to the brief of pleadings, motions and evidence).

²⁷⁸ Among others, the State mentioned the rulings issued by the Constitutional Chamber of the Supreme Court of El Salvador in *habeas corpus* proceedings No. 379-2000 and 378-2000 on March 20 and 21, 2002, and in *habeas corpus* proceeding 203/204/205-2007 on February 24, 2010.

right of the next of kin to know the truth, which is subsumed in the right of the victim or their next of kin to obtain from the competent State authorities, clarification of the facts of the violations and the corresponding responsibilities, by way of an investigation and prosecution as established in Articles 8 and 25(1) of the Convention.²⁷⁹

171. The failure to comply with the obligation to open an investigation *ex officio*, the absence of clear and logical lines of investigation that would have taken into account the context of the facts and their complexity, the long periods of procedural inactivity, the refusal to provide information on the military operations, the lack of diligence and thoroughness in the investigations by the authorities in charge of them, and the lack of coordination between the various State bodies, permit the Court to conclude that all the domestic proceedings have not constituted effective remedies to determine the fate or to discover the whereabouts of the victims, or to guarantee their rights of access to justice and to know the truth, through the investigation and eventual punishment of those responsible, and full reparation for the consequences of the violations.

172. Finally, in the instant case the Court has confirmed that the State's power was used as a means and a resource for violating rights that should have been respected and guaranteed.²⁸⁰ This situation was aided by the impunity surrounding these grave violations, encouraged and tolerated in all the investigations, which have neither been consistent with each other nor sufficient to properly elucidate the facts. Consequently, they have not satisfactorily fulfilled their obligation to investigate effectively the forced disappearance of the then children.

173. For the aforementioned reasons, *the Court concludes that the State violated the rights recognized in Articles 7(6), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and of their next of kin.*

VIII REPARATIONS (Application of Article 63(1) of the American Convention)

174. Based on the provisions of Article 63(1) of the American Convention,²⁸¹ the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary law on State responsibility.²⁸²

175. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the

²⁷⁹ Cf. *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 206, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 220.

²⁸⁰ Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 66, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 300.

²⁸¹ Article 63(1) of the Convention states: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

²⁸² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Human Rights Defender et al. v. Guatemala*, *supra*, para. 243.

consequences of those violations.²⁸³

176. The Court has established that reparations must have a causal connection to the facts of the case, the violations declared, the damage proved, and the measures requested to repair the resulting harm. Therefore, the Court must observe the concurrence of these elements in order to rule appropriately and in accordance with the law.²⁸⁴

177. Before examining the reparations claimed, the Court advises that the instant case is the third case brought before it concerning human rights violations related to the forced disappearance and appropriation of thousands of children during the Salvadoran armed conflict, a phenomenon that has produced diverse effects both in the individual and the collective spheres. In the cases of *the Serrano Cruz Sisters* and *Contreras et al.*, the Court ordered several measures of reparation aimed at comprehensively redressing the damage. Thus, in addition to pecuniary compensation, measures of restitution and rehabilitation, the Court also ordered measures of satisfaction²⁸⁵ and guarantees of non-repetition,²⁸⁶ as measures of special relevance, aimed at redressing the magnitude of the effects and the collective nature of the harm caused beyond the individual victims of the respective cases, and as a mechanism to help prevent the occurrence of similar human rights violations in future. Moreover, as was emphasized in the preceding chapter, in the *Case of the Massacres of El Mozote and nearby places*, among other measures of reparation, the Court ordered the State to ensure that the General Amnesty Law for the Consolidation of Peace would never again represent an obstacle to the investigation of the facts that were the subject of that case or to the identification, prosecution and punishment of those responsible for these and other similar serious human rights violations that took place during the armed conflict in El Salvador.

178. Both the representatives and the Commission appreciated the State's acknowledgment of responsibility and the good will expressed in this case, and in previous cases, but noted the lack of correlation between this position and its compliance with measures of a structural nature, particularly regarding access to justice through the effective investigation of cases. The State, for its part, expressed its willingness to adopt several of the measures requested and indicated that it did "not dispute the need to put into practice its statements and acknowledgements and to ensure its procedural actions are consistent with this position." However, in light of the experience accumulated in the two previous cases, it considered it necessary to specify the terms and scope of its acceptance of the measures requested.

179. The Court reiterates that the State must prevent the recurrence of human rights violations such as those described in this case and must therefore take all pertinent legal, administrative and other measures necessary to prevent similar events from occurring in the future, in fulfilment of its obligations to safeguard and guarantee the fundamental rights recognized by the American

²⁸³ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 26, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 413.

²⁸⁴ Cf. *Case of Ticona Estrada v. Bolivia*, *supra*, para. 110, and *Case of Human Rights Defender et al. v. Guatemala*, *supra*, para. 245.

²⁸⁵ These measures seek, *inter alia*, the recognition of the dignity of the victims or to transmit an official message of reprobation of the human rights violations in question, and to prevent the repetition of violations such as those in the instant case. Cf. *Case of Cruz Flores v. Peru. Merits, reparations and costs*. Judgment of November 18, 2004. Series C No. 115, para. 164.

²⁸⁶ "Guarantees of non-repetition [...] will contribute to prevention." Principle 23 of *Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. Doc. A/Res/60/147. Resolution approved by the United Nations General Assembly on December 16, 2005, Principle 23.

Convention.²⁸⁷ Therefore, in the instant case, in addition to the criteria already established, it is necessary to assess the relevance and timeliness of reiterating certain reparations, bearing in mind those previously ordered in the aforementioned cases or, if appropriate, to order again or not order those that are now being requested again and that had not been required previously.

180. Taking into account the violations of the American Convention declared in previous chapters of this judgment, and the considerations outlined in the preceding paragraphs, the Court will now examine the claims presented by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation, in order to establish measures²⁸⁸ aimed at repairing the harm caused to the victims.

A. Injured party

181. Under the terms of Article 63(1), those who have been declared victims of the violation of any right embodied in the Convention are considered injured parties. Therefore, this Court considers that the following are "injured parties": José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, together with the 35 next of kin named in the Commission's merits report and recognized by the State, who are listed in paragraph 34 *supra* of this judgment and who, as victims of the violations declared in this judgment, will be the beneficiaries of the reparations ordered below by the Court.

B. Obligation to investigate the facts that resulted in the violations and to identify, prosecute and, if appropriate, punish those responsible, as well as to determine the whereabouts of the victims

182. The Commission noted that "the situation of impunity in the instant case is merely a reflection of a situation of structural impunity in relation to cases of serious human rights violations that took place during the armed conflict in general, and in cases of forced disappearance of children in particular." Consequently, it considered that the measures related to the investigation and punishment of those responsible "must begin by considering the structural deficiencies already described, including the effect of the Amnesty Law and the absence of investigative and judicial institutions capable of responding to the situation experienced during El Salvador's armed conflict."

Considerations of the Court

183. For the Court it is evident that the victims of prolonged impunity, as confirmed in the two previous cases and in the instant case in relation to the investigation of forced disappearances of children during the armed conflict, suffer different adverse effects in their search for justice, not only of a pecuniary nature, but also distress and damage of a psychological and physical nature, and to their life project, as well as other possible disruptions in their social relationships, and in the dynamics of their families and communities.²⁸⁹

184. The Court reiterates that both the investigation and the search for disappeared persons are imperative State obligations, and reaffirms the importance of conducting these actions in accordance

²⁸⁷ Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 153, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 260.

²⁸⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 208.

²⁸⁹ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 3, 2006. Series C No. 140, para. 256, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 305.

with international standards, with an approach that takes into account that the victims were children at the time of the facts. Thus, it is essential that the State adopt clear and concrete strategies designed to overcome impunity in the prosecution of forced disappearances of children during the Salvadoran armed conflict, in order to highlight the systematic nature of this crime that particularly affected Salvadoran children, and thereby prevent such events from being repeated.

185. Therefore, in this section the Court will consider all the requested measures of reparation that are correlated to the investigations aimed at determining the whereabouts of the victims and those responsible for their forced disappearance and for other related illegal acts.

1. Investigation, identification, prosecution and, if appropriate, punishment of all the perpetrators and masterminds

186. Both the Commission and the representatives asked the Court to order the State to conduct a full, impartial, exhaustive and effective investigation to identify, prosecute and, if appropriate, punish all those responsible for the disappearances and related crimes to the detriment of the child victims in the instant case. In addition, the Commission asked the Court to order the State to conduct the investigations required to identify and punish those who participated in the concealment of the facts and the denial of justice. The representatives requested that the State investigate the officials and/or employees responsible for the investigations and reiterated their request that the State be ordered to establish a Special Commission within the Office of the Attorney General of the Republic to investigate the disappearance of children, or to train a specialized human rights unit to investigate cases of disappeared children during the armed conflict, with specialized prosecutors and sufficient resources, given the "evident inertia in the investigation of those responsible. The State merely indicated that, although it had acknowledged that the obligation to investigate would be guided and promoted by the National Commission to Search for Disappeared Children during the Internal Armed Conflict, this did not preclude actions undertaken by the Salvadoran judicial system for the same purpose and with the aim of investigating and identifying the perpetrators and masterminds responsible for the forced disappearance of the children in the instant case.

Considerations of the Court

187. In Chapter VII-2 of this judgment, the Court declared the violation of the rights to judicial guarantees and judicial protection given that the domestic proceedings, taken as a whole, have not constituted effective remedies to determine the fate or to discover the whereabouts of the victims, or to guarantee their rights of access to justice and to know the truth, through the investigation and eventual punishment of those responsible, together with full reparation for the consequences of the violations. Thus, more than 30 years after the events took place and 12 years after the first investigations were opened, impunity prevails along with the lack of effectiveness in the investigations and criminal proceedings. This is reflected in the fact that none of those responsible has been identified or even linked to the investigations.

188. Bearing in mind the request made by the Commission and the representatives, as well as its case law,²⁹⁰ the Court orders that the State continue, effectively and with the utmost diligence, the investigations already opened, and that it open any others that may be necessary to identify, prosecute and, if appropriate, punish those responsible for the forced disappearance of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and for other unlawful acts connected with their disappearance. This obligation must be fulfilled within a reasonable time, in order to establish the truth of the facts and to determine the possible criminal responsibilities, considering the criteria established for investigations in cases of

²⁹⁰ Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 181, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 244.

forced disappearances,²⁹¹ and removing all *de facto* and *de iure* obstacles that perpetuate impunity in this case.²⁹² In particular, the State must:

- a) Take into account the systematic pattern of forced disappearances of children in the context of the Salvadoran armed conflict, as well as the large-scale military operations during which the facts of this case took place, so that the pertinent investigations and proceedings can be conducted, taking into account the complexity of these facts and the context in which they occurred, avoiding omissions in the collection of evidence and following logical lines of investigation based on a proper assessment of the systematic patterns that gave rise to the facts under investigation;
- b) Identify and individualize all the perpetrators and masterminds of the forced disappearances of the victims and other related unlawful acts. Due diligence in the investigations means that all the State authorities are obliged to collaborate in the collection of evidence; consequently, they must provide the judge, prosecutor or other judicial authority with all the information required and refrain from actions that obstruct the progress of the investigative process;
- c) Ensure that the competent authorities carry out the corresponding investigations *ex officio* and that, to do so, they are provided with and use all the necessary logistic and scientific resources to collect and process the evidence and that, in particular, they have the authority to access pertinent documentation and information to investigate the facts denounced and to promptly take the measures and make the inquiries that are essential to elucidate what happened to the disappeared persons in this case;
- d) Since grave human rights violations are at issue,²⁹³ and considering the continuing or permanent nature of forced disappearance, the effects of which persist until the fate or whereabouts of the victims has been established and their identity determined, the State must refrain from resorting to mechanisms such as amnesty for the perpetrators, or any other similar provision, such as prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem* or any similar exemption of responsibility to avoid this obligation, and
- e) Guarantee that the investigations into the facts that constituted the forced disappearances in this case remain, at all times, in the ordinary jurisdiction.

189. Also, in the circumstances of the present case, and based on the provisions established in the *Case of Contreras et al.*, the Court orders the State to adopt other measures, such as:

- a) Establish mechanisms for coordination between the different State bodies and institutions with powers to investigate and monitor cases that are being processed for the forced disappearance of children during the armed conflict; to this end, a database on the matter must be set up and kept updated in order to ensure the most coherent and effective investigations;

²⁹¹ Cf. *Case of Anzualdo Castro v. Peru*, *supra*, paras. 62 to 67 and 122 to 124, and *Case of Contreras et al. v. El Salvador*, *supra*, paras. 126 to 130.

²⁹² Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 277, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 185.

²⁹³ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, *supra*, paras. 171 and 172; *Case of Contreras et al. v. El Salvador*, *supra*, para. 185, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 318 and fourth operative paragraph.

- b) Develop protocols for procedures in this matter with an interdisciplinary approach and train the officials involved in the investigation of serious human rights violations so that they are able to use the available legal, technical and scientific elements;
- c) Promote pertinent actions of international cooperation with other States in order to facilitate the collection and exchange of information, as well as other relevant legal actions;
- d) Ensure that the different bodies of the justice system involved in the case have the human, financial, logistical, scientific and other resources necessary to perform their tasks adequately, independently and impartially, and adopt the necessary measures to guarantee that judicial, prosecutorial and investigative officials and other agents of justice have an adequate security and protection system, which takes into account the circumstances of the cases for which they are responsible and the place where they work, so that they can perform their functions with due diligence, and to protect witnesses, victims and next of kin; and
- e) Guarantee that public officials and private citizens do not obstruct, sidetrack or unduly delay the investigations aimed at elucidating the truth of the facts, through appropriate and effective mechanisms.

190. As to the representatives' request that the Office of the Attorney General of the Republic create a Special Commission or train members of the Human Rights Unit on the issue of forced disappearance of children, the Court does not consider it pertinent to order an additional measure, given that those set forth in the preceding paragraph provide an adequate framework within which that body can articulate the mechanisms that are best suited to its organic structure, with the aim of establishing effective internal coordination to monitor cases involving the forced disappearance of children during the armed conflict, in order to achieve more coherent and effective investigations.

191. Finally, the State must ensure that victims, or their next of kin, have full access and capacity to act at all stages of the investigation and prosecution of those responsible.²⁹⁴ In addition, the results of the corresponding proceedings must be made public so that Salvadoran society can learn about the facts that are the subject of this case, as well as those responsible for them.²⁹⁵

2. *Determination of the whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala*

192. The Commission asked the Court to order the State to conduct a thorough, impartial and effective investigation into the fate or whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala and, in the event that they are found, to make the necessary efforts to ensure family reunification. In the event that they are no longer alive, the State must adopt the measures necessary to return the remains to their next of kin. In its final arguments, the Commission asked that the Court, in addition to establishing the State's obligation to determine the fate or whereabouts of the victims, make specific reference in its judgment to: (i) the current legislative process and the need to ensure the juridical security and continuity of the National Search Commission; (ii) the need to allocate sufficient budget and specialist and interdisciplinary personnel; (iii) the need to establish and implement coercive mechanisms to address the supposed lack of cooperation from other State entities; and (iv) the need to create effective channels of coordination with the Public Prosecution Service and the judicial authorities.

²⁹⁴ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 245.

²⁹⁵ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs, supra*, para. 118, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 245.

193. The representatives asked the Court to order the State to conduct an impartial, expeditious, serious and exhaustive search, and to make all possible efforts to determine the whereabouts of the victims as soon as possible. They argued that, if it is determined that the victims are alive, the State must assume the costs of reuniting the families and of providing adequate psychosocial care. In the event that their remains are found, the State must return these to their next of kin as soon as possible and cover the possible funeral expenses. The representatives also advised that the National Search Commission must be involved in these matters. In this regard, they enumerated several obstacles to the performance of its functions to investigate and determine the whereabouts and situation of the disappeared children, namely: (i) the lack of a strategy with its own lines of investigation; (ii) the absence of protocols to ensure the flow of information to the families; (iii) it has not used its powers to inspect *de officio* the State's documentary records and archives; (iv) its mandate was due to expire on May 31, 2014; and (v) it does not have its own budget or logistic resources. Therefore, the representatives considered that the State should consolidate the said Commission through its creation by legislative decree.

194. For its part, the Commission asked the State to "adopt the measures required to ensure the effectiveness and continuation, for the time that is necessary, of the Search Commission, the search web page and the genetic information system that is being implemented in the context of the measures ordered by the Inter-American Court of Human Rights in the *Case of the Serrano Cruz Sisters*. In particular, it must ensure that these measures are ordered through legal mechanisms that guarantee their juridical security and the necessary budgetary allocation."

195. The State acknowledged its obligation to investigate the fate or whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, which would be carried out through the National Search Commission. Consequently, it reaffirmed its commitment to ensure the continuity of that Commission. In its final arguments, the State reported in detail on the background, creation and work carried out by the National Search Commission, indicating that the decree that created it was amended on February 19, 2014, modifying its period of validity for an indefinite term, along with other aspects of its operation. The State also indicated that it did not object to the representatives' request, since the current terms do not exclude the possibility of consolidating the establishment of this Commission by ordering its creation via Legislative Decree.

Considerations of the Court

196. It has been established in the instant case that José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala remain disappeared, and that the State has not provided information to effectively determine their fate or whereabouts or to ensure their reliable identification to date (*supra* para. 93). The Court stresses that these victims disappeared approximately 30 years ago, so it is reasonable for their families to expect that their whereabouts be determined. This constitutes a measure of reparation and, therefore, gives rise to the correlative obligation of the State to meet it.²⁹⁶ It would also alleviate the families' anguish and suffering caused by the uncertainty.²⁹⁷

197. Consequently, the State must conduct a thorough search, as soon as possible, making every effort to determine the whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala. The search must be

²⁹⁶ Cf. *Case of Neira Alegría et al. v. Peru*. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 249.

²⁹⁷ Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 155, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 249.

carried out in a systematic and rigorous manner, with adequate and appropriate human, technical and scientific resources and, if necessary, with cooperation from other States and international organizations. These measures must be reported to the next of kin and, where possible, conducted in their presence.

198. This effort to determine the victims' whereabouts must be carried out through the National Search Commission for Children who Disappeared during the Internal Armed Conflict or through the institution or body considered most appropriate and efficient. In any case, the institution or body conducting the search must offer guarantees of independence and impartiality; possess the necessary human, financial, logistic, scientific and other resources to conduct efficient investigations and to determine the whereabouts of the young people who disappeared when they were children during the armed conflict; have the capacity and initiative to adopt the necessary measures to investigate and collect evidence about the possible whereabouts of the children who disappeared during the armed conflict; and ensure that all State institutions and authorities are obliged to cooperate by providing information and access to all their files and records.²⁹⁸

199. In the event that, following the steps taken by the State, any of the victims are found alive, the State must assume the costs of identifying them using reliable methods, reuniting them with their families and providing them with the necessary psychosocial care; it must also provide the means for re-establishing their identity and make the necessary efforts to facilitate family reunification, if they so wish. If the victims are found to be deceased, their previously identified remains must be returned to their next of kin as soon as possible and without cost. Also, the State must cover the funeral expenses, as appropriate, in accordance with the wishes of the next of kin.²⁹⁹

200. As to the National Search Commission, in the *Case of Contreras et al.* the Court did not consider it pertinent to order, again, the requested measures of reparation related to the seventh operative paragraph of the judgment in the *Case of the Serrano Cruz Sisters*,³⁰⁰ because they have already been established in that judgment and compliance with the Court's ruling is still being evaluated during the stage of monitoring compliance with judgment. Similarly, for the same reasons, the Court does not find it pertinent to refer in this judgment to the possible obstacles faced by that Commission and, therefore, to the request by the Inter-American Commission and the representatives. Nevertheless, the Court welcomes the fact that the Search Commission's work has been extended indefinitely, although this should not be understood as an assessment of the mechanism through which this modification took place.

3. *Request to strengthen the scientific and forensic capabilities to support the search for disappeared children*

201. The representatives requested that, in view of the State's non-compliance with measures ordered in the *Case of the Serrano Cruz Sisters*, the Court reiterate to the State its obligation to create a genetic information system and to include the component of physical and facial composites (identikit pictures) showing how the disappeared children might look nowadays if they were to be found alive, given that this element would strengthen its technical and scientific capabilities for the investigation of these cases and would also facilitate the identification of disappeared persons who are currently alive.

²⁹⁸ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, paras. 184 to 188.

²⁹⁹ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 185, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 252.

³⁰⁰ The Court ordered the State to "adopt the following measures to determine the whereabouts of Ernestina and Erlinda Serrano Cruz: establishment of a national commission to trace the young people who disappeared during the armed conflict when they were children, with the participation of civil society; creation of a search web page; and creation of a genetic information system." *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, seventh operative paragraph.

202. The State reaffirmed its commitment to make progress on this point and cited the efforts made to develop capacity in aspects of forensic, anthropological and genetic investigation, in the context of compliance with the judgment in the *Case of the Massacres of El Mozote and nearby places*.

Considerations of the Court

203. In the seventh operative paragraph of the judgment in the *Case of the Serrano Cruz Sisters*, issued in March 2005, the Court ordered the State to adopt "all necessary measures to create a genetic information system that allows genetic data that can contribute to determining and clarifying the relationships and identification of the disappeared children and their next of kin to be obtained and conserved."³⁰¹ Through its monitoring compliance procedure, the Court notes that, more than nine years after that measure was decreed, it has still not been implemented, since "it has not been created yet and no specific actions have been taken toward its implementation."³⁰² In this case, the State did not provide information to indicate any progress regarding the above ruling.

204. The Court does not consider it pertinent to order again the measures of reparation requested, since these were established in the judgment mentioned in the preceding paragraph and compliance with these continues to be evaluated in the monitoring compliance with judgment stage. Nevertheless, the Court reiterates the importance of complying with this measure to ensure that the victims can be identified and their relationship determined. Furthermore, given that the next of kin of those who were children at the time of the events are of an advanced age, it is urgent to collect and preserve genetic samples in order to be able to carry out the identification of the disappeared children in future.

205. That said, regarding the request that this system include physical and spoken (identikit) portraits with age progression techniques, the Court understands that requiring the State to adopt "all measures necessary" for the creation of a genetic information system would entail the obligation to adopt best practices to achieve that objective. Therefore, it is not pertinent to order a subsequent or additional measure.

4. *Guarantee access to military files containing information useful for the determination of the whereabouts of the disappeared children*

206. Alluding to the measure of reparation ordered in the tenth operative paragraph in the *Case of Contreras et al*, the representatives indicated that, in this case, public institutions such as the armed forces should make available all documentation that could provide information to aid the search for children and that the State should be required to order institutional and administrative efforts to overcome the obstacles faced in obtaining useful information for the investigation. They also considered that "it is important that the State require soldiers involved in the military operations to provide information, given that many of them have relevant information that has not been provided." Therefore, the representatives asked the Court that, "given the impunity faced in this case, as in other cases of child victims of forced disappearance," to order the State to make available to the public all documentation containing essential information for the localization of the victims in this case and of all the children who remain disappeared.

207. The State acknowledged that "access to information in these types of archives is a right of the victims and their representatives." The State also recalled that El Salvador's legal system establishes provisions requiring the public authorities, without exception, to provide information on cases such as

³⁰¹ *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, seventh operative paragraph.

³⁰² *Case of the Serrano Cruz Sisters v. El Salvador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, paragraphs 30 and 31.

those examined in these international proceedings. Furthermore, some institutions have the constitutional or legal power to request such information pursuant to their mandate, especially in response to requests from the judicial authorities, the Office of the Attorney General and the Human Rights Ombudsman. The also State reported that on April 8, 2011, the Law on Access to Public Information went into effect. This law established an internal mechanism for accessing information, including that related to governmental activities presumably linked to the disappearance of children during the internal armed conflict, and created the Institute for Access to Public Information as the body responsible for safeguarding the application of that law.

Considerations of the Court

208. In the *Case of Contreras et al.*, the Court ordered the State to “adopt the pertinent and appropriate measures to guarantee to agents of justice, as well as Salvadoran society, public, technical and systematized access to the archives that contain useful information that is relevant to the investigation in cases prosecuted for human rights violations during the armed conflict.”³⁰³

209. In the instant case, as in previous ones,³⁰⁴ the Court has observed that one of the constraints to progress in the investigations is the lack of access to the information contained in archives on the counterinsurgency operations, and on the individuals and military units that took part in the operations in which the victims in this case were disappeared, including their rank, functions and responsibilities. Since this information is of vital importance for advancing the judicial investigations and those of the Public Prosecution Service, as well as for helping to identify and individualize those responsible, the Court deems it pertinent to reiterate that the State must adopt, as soon as possible, pertinent and adequate measures to guarantee to agents of justice and Salvadoran society, public, technical and systematic access to the archives containing information that is useful and relevant to the investigation in cases involving human rights violations during the armed conflict. These measures must be supported by adequate budgetary allocations. This implies that the National Search Commission and the Public Prosecution Service and, where appropriate, the judicial authorities, must make use of their powers to enter the relevant facilities and, if applicable, inspect the corresponding archives.

5. Request to adapt domestic legislation

210. The representatives considered that the General Amnesty Law for the Consolidation of Peace constitutes an obstacle to justice, and therefore asked the Court to urge the State to adapt its domestic legislation to the standards of international human rights law and order the State to conduct investigations into the involvement of all military, paramilitary or other personnel who could have participated in the disappearance of the children in the instant case.

211. The State did not present specific arguments regarding these requests, although it provided information related to the General Amnesty Law for the Consolidation of Peace (*supra* para. 135).

Considerations of the Court

212. The Court has indicated previously that, given the seriousness of these human rights violations, and considering the continuing or permanent nature of forced disappearance, the effects of which persist until the fate or whereabouts of the victims has been established and their identity determined, the State must refrain from resorting to mechanisms such as amnesty for the perpetrators, or any

³⁰³ *Case of Contreras et al. v. El Salvador, supra*, tenth operative paragraph.

³⁰⁴ *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, paras. 93 to 96, and *Case of Contreras et al. v. El Salvador, supra*, paras. 168 and 169.

other similar provision to avoid this obligation (*supra* para. 188 d).

213. Furthermore, in the *Case of the Massacres of El Mozote and nearby places* it ordered the State to ensure that the General Amnesty Law for the Consolidation of Peace never again represents an obstacle to the investigation of the events that are the subject of this case or to the identification, prosecution and eventual punishment of those responsible for these and other similar grave human rights violations that occurred during the armed conflict in El Salvador.³⁰⁵ This obligation is binding upon all of the State's powers and organs, which are required to exercise "conventionality" control *ex officio* between domestic norms and the American Convention, obviously within the framework of their respective jurisdictions and the corresponding procedural regulations.³⁰⁶ Therefore, the Court does not consider it pertinent to order, once again, the measure of reparation related to the regulatory reforms requested in relation to the General Amnesty Law for the Consolidation of Peace, since this was established in the judgment *supra* and compliance with the Court's order is still being evaluated during the stage of monitoring compliance with judgment; nevertheless, the Court reiterates its non-applicability to the investigation of the facts in this case.

C. Measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition

1. Restitution

a) *Assume the costs and implement the procedures and arrangements necessary to restore the identity of the disappeared children in this case*

214. The representatives requested that the State assume the costs and implement the relevant procedures for restoring the identity of the children in this case, should they be found alive and require this at a given moment; this must include guarantees for their return to El Salvador if they should request it, and the correction of the corresponding documents. The State agreed to carry out the actions necessary to restore the identity of the victims in this case, should they be found and should they so wish, since any actions taken would be subject to the decisions of the young people found.

Considerations of the Court

215. The Court considers that this measure is included within those ordered in paragraph 199 *supra*, inasmuch as the State must assume the costs of identifying the victims using reliable methods, of reuniting them with their families and of providing the necessary psychosocial care; it must provide the means for re-establishing their identity and make efforts to facilitate family reunification, if they so wish. Bearing in mind the possible fate of the disappeared children (*supra* para. 50. e), the Court makes it clear that this measure requires the State to guarantee - where appropriate and according to the particular circumstances of the victim found and, if they so wish - the conditions for their permanent return to El Salvador with psychosocial support appropriate to their needs.

2. Rehabilitation

a) *Comprehensive medical, psychological and/or psychiatric assistance for the victims*

216. The representatives requested that the State provide "special medical and psychosocial

³⁰⁵ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 318 and fourth operative paragraph.

³⁰⁶ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 318.

assistance, free of charge, to the next of kin of the children in this case and to José Adrián Rochac, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, Ricardo [Abarca Ayala], and Emelinda Lorena Hernández, should they be found alive,” so that they can have access to a nationally recognized health center, chosen by mutual agreement with the beneficiaries, with psychological care provided by specialists in treating victims of serious human rights violations. Likewise, they indicated the “need for the State to give priority to medical care for the next of kin in this case and to guarantee appropriate medicines for their ailments” and, “until an appropriate system is in place, to provide an insurance policy in the private system, for the highest amount, to cover the medical care of the next of kin, including the deductibles, avoiding any expenditure to the victims.” They also requested that, if any of the children in the instant case should be found abroad, and if they should decide not to return to the country, they should be granted a sum of money.

217. Regarding the representatives’ request, in its final written arguments the Commission indicated that the medical and psychological care required must be specialized and based on an individual assessment of the situation of each individual and of each family group. It also indicated that the State had the immediate obligation to provide specialized medical and psychological assistance and that, once this was implemented, with guarantees of continuity and with sufficient resources for its effective operation, the State could use the comprehensive psychosocial care program designed for victims of serious human rights violations that occurred during the armed conflict, as a mechanism to channel that assistance.

218. The State assumed responsibility for providing medical and psychological assistance for the victims in the instant case through the country’s network of public hospitals and at the community level. It agreed with the representatives that some of the victims in the instant case had already received care through the public health system, but would be treated according to their specific needs. It indicated that, to this end, it has implemented the following actions: (i) in relation to psychosocial care, the Ministry of Health has trained key personnel at local level to provide care to victims of human rights violations during the armed conflict; (ii) it has worked to build capacity to ensure that victims of human rights violations receive differentiated assistance in relation to the rest of the population, through awareness-raising and training directed at medical personnel and staff involved in the care of patients in different areas; and (iii) it has begun distributing an identification card specifying the victims’ status as beneficiaries, in keeping with the judgments of the Inter-American Court, in order to guarantee them effective and timely care.

Considerations of the Court

219. The Court assesses positively the actions taken by the State to provide medical care to some of the victims in this case, and acknowledges the general measures implemented to guarantee medical and psychosocial treatment for the victims of grave human rights violations in El Salvador. As it has done in other cases,³⁰⁷ the Court finds it necessary to order measures of reparation to provide adequate care for the psychological and physical ailments suffered by the victims as a result of the violations established in this judgment. Therefore, having confirmed the violations and the harm suffered by the victims, the Court deems it necessary to order measures of rehabilitation in this case.

220. To help repair this harm, the Court establishes the State’s obligation to provide medical, psychological and/or psychiatric treatment to the victims who request it, free of charge, immediately, adequately and effectively, in its specialized health care institutions. The treatment must include the provision of any medication they may need, also free of charge, based on the ailments of each person. If the State is unable to provide these services, it must obtain them from specialized private or civil society institutions. Also, to the extent possible, the respective treatments must be provided in the

³⁰⁷ Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 198.

health centers nearest to their places of residence³⁰⁸ in El Salvador for the time necessary. When providing the psychological or psychiatric treatment, the particular circumstances and needs of each victim must be taken into account, so that individual, family and collective treatment is provided to them, according to the agreement reached with each victim, and after an individual evaluation.³⁰⁹ The victims, or their legal representatives, have six months from notification of this judgment to inform the State of their intention to receive psychological and/or psychiatric treatment.³¹⁰

221. In addition, the Court observes that, according to information from the representatives, some of the victims' next of kin do not live in El Salvador. Assuming that these persons request health care under the terms of the preceding paragraph, the State must grant them, once, the sum of US\$ 7,500.00 (seven thousand, five hundred United States dollars) to cover the cost of medical, psychological and/or psychiatric treatment, as well as medications and other related expenses, so that they can receive this care at their place of residence.³¹¹

222. As to the children who remain disappeared, in the event that they are found alive, they will also be beneficiaries of this measure of reparation. Therefore, the Court establishes that the State must provide them with the aforementioned medical, psychological and/or psychiatric treatment within six months (*supra* para. 220) from the time they are informed about this measure, and once their whereabouts have been established and their identity determined.

223. As to the representatives' request that the Court consider granting a sum of money to any victims who may be found abroad and who decide not to return to the country, bearing in mind the possible locations of the disappeared children (*supra* para. 50 e), the Court considers that, should the whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala be established, and if they are found to live abroad and decide not to return to the country, El Salvador must provide a sum of money to cover the costs of their medical, psychological and/or psychiatric treatment, as well as other related expenses, in their place of residence.³¹² Consequently, the Court orders that the State grant them, once, within six months of the beneficiaries' communicating their intention not to return to El Salvador, the sum of US\$ 7,500.00 (seven thousand five hundred United States dollars) for medical, psychological and/or psychiatric treatment, and for medicines and other related expenses.

3. Satisfaction

a) Act of public acknowledgment of international responsibility

224. The representatives asked the Court to order the State to carry out a public act in acknowledgment of its international responsibility. They specified that this act must take place at the "Monument to the Disappeared Child," located in the municipal park of Tecoluca, department of San Vicente, on March 29, the Day of the Disappeared Child in El Salvador, a symbolic date of remembrance, and that it must be publicized on a full page in each newspaper with a national

³⁰⁸ Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 256.

³⁰⁹ Cf. *Case of the 19 Merchants v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 256.

³¹⁰ Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2014. Series C No. 215, para. 252, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 256.

³¹¹ Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 340.

³¹² Cf. *Case of Loayza Tamayo v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 42, paras. 106. a) and m), and 129.d), and *Case of Contreras et al. v. El Salvador*, *supra*, para. 201.

circulation. The State confirmed its intention to implement this measure through a public act and to try to reach a prior agreement with the victims and their representatives on the means of compliance, including the selection of a place and date of symbolic importance.

Considerations of the Court

225. As it has done in other cases,³¹³ the Court orders the State to carry out a public act of acknowledgment of international responsibility for the facts of this case, referring to the violations established in this judgment. This act must be carried out by means of a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on the method of complying with the public act of acknowledgement, as well as on its characteristics, such as the place and date on which it will be held.³¹⁴ The State must also cover the cost of transporting the victims and publicizing this act in the media.³¹⁵ The State has one year from notification of this judgment to implement this measure.

b) Publication of the judgment

226. The representatives asked the Court to order the State to publish the full judgment once, both in the Official Gazette and in a national newspaper with wide circulation, as well as on the web page of all public institutions involved in these cases and on the web page of the Salvadoran Armed Forces. In their final arguments the representatives also called for the publication of "a segment of a popular version" of the judgment. The State acknowledged the importance of publishing the judgments issued by the Court in the country, "since this contributes to the reparation of the victims," and agreed to publish the official summary of the judgment, once, in the Official Gazette and in a newspaper with wide national circulation, and to make the full judgment available on an official web site, for one year.

Considerations of the Court

227. The Court considers, as it has in other cases,³¹⁶ that, within six months of notification of this judgment, the State must publish:

- a) The official summary of this judgment prepared by the Court, once, in the Official Gazette;
- b) The official summary of this judgment prepared by the Court, once, in one (1) national newspaper with wide circulation, and
- c) The whole of this judgment, for one year, on one (1) official national web site, as well as on the official web site of the Armed Forces of El Salvador, in a manner accessible to the public.

228. As to the request made by the representatives in their final arguments (*supra* para. 226), the Court observes that it was not submitted at the proper procedural moment, that is, during the submission of the pleadings and motions brief; therefore, it is time-barred and will not be

³¹³ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 307.

³¹⁴ Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009 Series C No. 196, para. 202, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 307.

³¹⁵ Cf. *Case of Myrna Mack Chang v. Guatemala, supra*, para. 278, and *Case of Contreras et al. v. El Salvador, supra*, para. 203.

³¹⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 79, and *Case of Human Rights Defender et al. v. Guatemala, supra*, para. 261.

considered.³¹⁷

c) *Request for the designation of schools with the names of the victims*

229. The representatives asked the Court to order the State to designate a school in each area where the children in this case disappeared, with a plaque showing their names and a description of the facts that led to their disappearance, in order to preserve the historical memory, honor the dignity of the victims and educate the school community in general on these events from an historical perspective. However, in their final arguments, the representatives withdrew their request for this measure of reparation in this case.

230. For its part, based on the reasons outlined previously, the State asked the Court not to order the naming of schools in the instant case. Nevertheless, it indicated that, should it be ordered to carry out this measure, the State has a regulatory mechanism to make its implementation feasible.

Considerations of the Court

231. The Court takes note of the position expressed by the representatives and the State and, in light of the representatives' decision to withdraw their request, decides that it is not pertinent to order this measure of reparation in the instant case. As to the measure ordered in the *Case of Contreras et al.*, the Court will monitor compliance opportunistically in the relevant proceeding.

d) *Construction of a "garden museum" to honor the memory of forcibly disappeared children*

232. The representatives proposed that the State establish a garden museum as a space to commemorate the children who were forcibly disappeared during the armed conflict and to raise awareness among the visiting public, both nationals and foreigners. To this end, they considered that the State should prepare educational charts with multimedia tools, information and testimonies on reunification to explain its significance. The representatives proposed the Cuscatlán Park as the site for the construction of the garden museum. They also requested that the families of the victims in this case be invited to the inauguration, in which a plaque would be unveiled containing a brief account of the disappearances.

233. The State expressed its willingness to promote the construction of a garden museum, considering that such a measure would not only serve as a form of reparation for the victims and their next of kin in this case, but also for other families who have suffered the forced disappearance of their children in El Salvador. However, it indicated that, should this measure be ordered, it would require prior planning with the competent national bodies to define the details of the project, such as the most appropriate location and other characteristics, with the victims and their representatives.

Considerations of the Court

234. The right to know the truth entails having full and complete knowledge about the acts that took place, the people who participated in them, the specific circumstances and, in particular, the violations perpetrated and their motivation. In cases of forced disappearance of persons, the right to the truth also has a special facet: the knowledge of the fate and whereabouts of the victims.³¹⁸ The Court considers that, aside from the work carried out by various organizations to determine the fate

³¹⁷ Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 359, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 221.

³¹⁸ Cf. ECOSOC, Report of the Office of the United Nations High Commissioner for Human Rights, "Study on the Right to Truth", Doc. E/CN.4/2006/91, January 9, 2006.

and whereabouts of the victims and the prosecution of those responsible, the State has an obligation, as a measure of reparation aimed at satisfying the right of society as a whole to know the truth, to use appropriate mechanisms to keep alive the memory of the victims and give transparency to events in which human rights were violated, through the establishment of public memorials, monuments or museums, etc.

235. In several cases, the Court has ordered the construction of monuments, usually accompanied by the placement of a plaque describing the facts of the case and containing the names of the victims,³¹⁹ or the placement of commemorative plaques at existing monuments or significant public spaces,³²⁰ in order to recall the events that resulted in human rights violations, keep alive the memory of the victims, and awaken public awareness in order to prevent the repetition of such grave events in the future. In other cases, the Court has considered requests for the construction of a museum³²¹ and a memorial park.³²²

236. The Court appreciates the State's willingness to comply with the reparation requested by the representatives in this case. Given the scale of the systematic practice of forced disappearance of children during the armed conflict in El Salvador, the context in which the facts of the present case took place, the Court considers it important to order that the State, as part of an effort to build and preserve the collective memory regarding the forced disappearance of children, establish a "garden museum" to remember the children who were forcibly disappeared during the armed conflict. The State is granted a period of five years from notification of this judgment to build a "garden museum."

e) Request for a comprehensive psychosocial support program for the next of kin of children who disappeared during the armed conflict and for young people who have been found and who require it

237. The representatives argued that the next of kin of disappeared persons and of those who were found again have suffered severe trauma from the moment of their separation, and that this harm has proven to be irreversible and transmissible to future generations. Consequently, the representatives considered that the State should make a commitment to rebuild these family relationships by creating a psychosocial support program for the young people who have been found again, and their next of kin, with a special fund for that purpose, overseen by experts in the matter. Also, based on the expert opinion of Martha de la Concepción Cabrera Cruz regarding the scope of transgenerational harm, the representatives emphasized three aspects resulting from forced disappearance: the rupture of family and social ties; the multigenerational damage that is implicitly reproduced by a victim in his or her human relationships; and the need for collective healing. The representatives considered that, "given the systematic and collective pattern that gave rise to the disappearances, this was not ordinary or common violence, but rather a specific type of political

³¹⁹ Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*, *supra*, para. 44. f); *Case of 19 Merchants v. Colombia*, *supra*, para. 273; *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 115; *Case of Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 218; *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 315; *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 278; *Case of Goiburú et al. v. Paraguay*, *supra*, para. 177; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 471; and *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 265.

³²⁰ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 286; *Case of the Ituango Massacres v. Colombia*, *supra*, para. 408; *Case of the Miguel Castro-Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 454; *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 236; *Case of La Rochela Massacre v. Colombia*, *supra*, para. 277; *Case of Anzualdo Castro v. Peru*, *supra*, para. 201; and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 251.

³²¹ Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, paras. 169 and 170.

³²² Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, paras. 347 to 349.

violence that had repercussions at many levels: individual, family and social; and in many aspects: financial, health and in access to education and to justice, that is, in the life project.” For this reason, they considered it necessary to “adopt a systematic pattern of comprehensive reparations, to heal the damaged relationships throughout society, in other words, to move beyond individual or family support, toward a psychosocial healing at the community, collective and social levels,” with the following actions: provide comprehensive healthcare programs and support from institutions that offer a life with human dignity that will contribute to improve the quality of life of the next of kin of victims of forced disappearance; promote knowledge of the truth by opening up the military archives and other records kept by public institutions; create memorial museums to educate the new generations about the events that took place; write the history of the events that occurred and publish it through stories and narrations that recount what happened in the country, and open up routes of hope for the families; create a center that provides comprehensive psychosocial support, with a highly committed multidisciplinary team capable of implementing appropriate intervention strategies and a cross-cutting human rights program to address the multidimensional complexity of the victims’ lives and next of kin of *Asociación Pro Búsqueda*. The center should be established by the next of kin and victims and staffed by professionals in psychosocial support, with social sensitivity in managing the psychosocial trauma resulting from human rights violations. It should offer a program for all family members who are searching for their children and for young people who have been found, differentiating between adults and young populations; allow young people the possibility of changing their given names and surnames with governmental support; and, create a *web* page where young people from all countries can connect with each other and organize face-to-face international meetings –promoted by the State– where they can meet each other in person and share their experiences.

238. The State did not comment on this request for reparation.

Considerations of the Court

239. The Court recalls that, in the *Case of Contreras et al.*, it welcomed and took note of the agreements and coordination achieved between the State and the representatives in order to establish a comprehensive program of psychosocial care for victims of forced disappearance who have been found and their next of kin, as well as the next of kin of those who are still missing, and indicated that this aspect would not be monitored by the Court. Therefore, the Court does not consider it appropriate to order this measure in the instant case.

4. Guarantees of non-repetition

a) Education and training measures

240. The representatives requested the creation of a general course on human rights at the University of El Salvador, with a specific topic on the crime of forced disappearance, including cases of children who disappeared during the internal armed conflict, in order to “dismantle existing prejudices and construct a vision based on the dignity of the victims and with a serious academic approach that will raise awareness among different social sectors in the long term.” They pointed out that the course should take into account the academic and scientific knowledge accumulated by the country’s only public university, which has the largest number of students, in order to ensure that it is effective, as well as the Search Association, given its expertise in this topic. The representatives also asked that a diploma course on “Transitional Justice” be imparted to public officials involved in implementing the measures of reparation ordered by the Court, and providing assistance to victims of forced disappearance, with the aim of raising awareness about topics related to transitional justice in cases of forced disappearance and the State’s obligation to redress the damage caused to the victims. Likewise, the representatives proposed the creation of a course on historical memory in the educational curriculum for third cycle and high school students, emphasizing knowledge of the judgments delivered by the Inter-American Court in cases of disappeared children. This, in

consideration that “[t]he current middle and high school education programs only include the topic of El Salvador’s Peace Accords, the contents of which are only mentioned superficially; thus, it is necessary to deepen students’ knowledge of the impacts caused by the armed conflict on disappeared children and also on their families.” To summarize, the representatives considered it necessary to modify the academic syllabus throughout the education system to include the topics of human rights of disappeared children during the internal armed conflict and the inter-American system for the protection of human rights. Finally, the representatives expressed their willingness to hold a dialogue with State representatives to sign an institutional agreement to implement these measures and that this agreement be taken as an indicator of compliance.

241. The State expressed a positive view of the proposal to revise the school study programs, in order to expand and strengthen knowledge of El Salvador’s historical memory, related to the serious human rights violations committed during the internal armed conflict, and pointed out that the current social studies program for third cycle and high school students includes topics on relevant aspects of El Salvador’s history, including the armed conflict.

Considerations of the Court

242. The Court recognizes that human rights education at different levels is crucial to ensure the non-repetition of events such as those that occurred in the instant case and to promote values such as tolerance and mutual respect. Furthermore, teaching people about historical processes, such as El Salvador’s internal armed conflict and, in particular, the situation of children who disappeared during that armed conflict, is essential to keep alive the historical memory in the future generations.

243. In consideration of the foregoing, the Court advises that the measures requested aim to satisfy those objectives in areas that are complementary, that is, at the level of middle and university education and at the professional level. Therefore, the Court takes note of the State’s willingness to review the study plans and encourages the adoption of correlative measures.

244. Furthermore, the Court deems it pertinent to order the State to implement, within a reasonable time, permanent human rights programs directed at the police, prosecutors, judges and the military, as well as officials in charge of providing assistance to the families and victims of forced disappearance. These programs should include topics such as the human rights of children who disappeared during the internal armed conflict, the inter-American system for the protection of human rights, and the doctrine of conventionality control.

5. Other measures requested

245. The Commission asked the Court to order the State to adopt measures of non-repetition to ensure that a comprehensive child protection system is implemented effectively, including the strengthening and adaptation of standards of the Civil Registry and the adoption system. The State did not comment on this request.

246. Although the adoption of abducted children formed part of the *modus operandi* in forced disappearances during the Salvadoran armed conflict, (*supra* para. 50. e), the Court considers that, under the terms in which this request for reparation is expressed, and the lack of arguments in this regard, it is not appropriate to order said measure since it is not directly related to the violations established in the instant case.

247. The representatives asked the Court to order a program to guarantee the victims’ next of kin and their children who express an interest in studying, access to education, leading to professional development and financial improvement, “in order to guarantee a right to which they did not have access or opportunities due to the circumstances of the armed conflict, which caused them to be

uprooted, forcibly displaced and denied the right to a formal, comprehensive and quality education, so that now they are not sufficiently trained to insert themselves into a competitive labor market with access to decent remuneration.” The State referred to the scholarships it has granted, indicating that El Salvador has made progress in adopting measures to guarantee access to education with dignity for children, and to ensure that they have fair access and continuity in the education system. The State added that, as part of the Reparation Program for Victims of Serious Human Rights Violations during the armed conflict, it has considered granting scholarships for higher education and postgraduate studies for victims and their next of kin who are registered as such, and that a process of registration has already been carried out. Thus, the State agreed to promote this measure, and to offer opportunities for technical training to those who require it.

248. The representatives also asked the Court to order the State to reform all its domestic legislation to include provisions expressly prohibiting those accused of committing human rights violations from holding public office or any elected position or direct appointment to second tier positions. Similarly, they requested that the State be ordered “to comply with previous judgments delivered against it, especially with regard to not exalting the names of human rights violators, such as in the case of the Third Infantry Brigade, named ‘Colonel Domingo Monterrosa Barrios’ or the school named after Colonel Ernesto Vargas, in the Department of Morazán.” The State did not comment on that request.

249. The representatives further argued that the Search Association has been, and remains, the only organization that has concerned itself with responding to the clamor of the victims who have suffered the forced disappearance of their children, which has involved a major financial expenditure for the provision of holistic care. Therefore, the representatives requested that the State of El Salvador assume the historical debt in other cases of forced disappearance of children, allocating a percentage of the nation’s general budget to subsidize the Search Association’s work in those cases that have not yet been resolved, for a period of 10 years or for as long as the Court deems appropriate, considering the complexity of the problems of disappeared children. The State did not comment on that request.

250. The Court considers that this judgment and the reparations ordered therein are sufficient and adequate to compensate the victims for the violations suffered in the instant case,³²³ and therefore does not find it necessary to order the measures requested by the representatives.

D. Compensation

1. Pecuniary damage

251. The Commission asked the Court to adequately compensate the victims in this case and to include both pecuniary and non-pecuniary aspects. The representatives asked the Court to order the State to pay pecuniary compensation to the victims in this case and to their next of kin for the pecuniary and non-pecuniary damages they suffered, especially those of an irreversible nature. In relation to loss of earnings, it considered that the State has “the obligation to compensate the family members in this case for the financial harm suffered directly because of the forced disappearance of their next of kin, which clearly implied a deterioration in their living conditions and in their mental and physical health and affected their productive capacity, given the emotional and social effects that the families of victims of these types of human rights violations are known to suffer.” They pointed out that, in order to estimate loss of earnings, in equity, it is necessary to take into account the victim’s age at the time of their forced disappearance, their life expectancy, their life project, the financial gains that they might have obtained and their income. As to consequential damages, they considered that certain related expenses should be included, such as medical treatment and medicines for the victims’ next of kin, the expenses incurred in the search for their children and in monitoring the

³²³ Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 359, and *Case of Human Rights Defender et al. v. Guatemala*, *supra*, para. 281.

domestic judicial proceedings and those incurred by the victims or their families in their efforts to discover the truth. In this regard, they requested that the State reimburse the costs and expenses incurred by the victims and their representatives in the present case, which has involved them in numerous expenditures to finance the national and international proceedings in pursuit of truth and justice. Thus, they asked that the Court take into consideration the standards established in its judgment in the *Case of Contreras et al.* at minimum, but also requested that it take into account the prolonged harmful effects that continue over time. The State did not comment on that request.

Considerations of the Court

252. In its case law the Court has developed the concept of pecuniary damage and established criteria for appropriate compensation. In particular, it has established that pecuniary damage “involves the loss of or detriment to the victim’s income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case.”³²⁴

253. In this case, the representatives have requested that the Court set an amount for loss of earnings and consequential damages in favor of the victims’ next of kin. In the section on costs and expenses, the Court will also assess the financial expenditures made by the Search Association in the course of searching for the victims in this case, since the outlay for certain items is also related to expenses incurred in promoting the domestic investigations.

254. With regard to loss of earnings, as it has done in other cases of forced disappearance³²⁵ in which a victim’s whereabouts are not known, the Court may award compensation for loss of income, which includes the earnings that the victim would have received based on his probable lifetime. Nevertheless, the Court notes an inconsistency in the representatives’ argument, since they are requesting this compensation for the next of kin for the effects they allegedly suffered; however, they considered that to calculate the amount due, they should take into account information related to the victims of forced disappearance, who were children at the time of their initial disappearance. Moreover, the representatives did not provide essential data such as life expectancy in El Salvador, the income earned by the victims, their potential future income, or the possible salaries in the country, to make that calculation. Consequently, the Court does not have sufficient elements to make that determination, and therefore dismisses this aspect of the petition.

255. As to consequential damages, the Court considers that, given the search efforts carried out directly by the victims’ next of kin in adverse situations, and the expenses they incurred as a result of the effects they experienced due to the forced disappearances confirmed in this case, it is reasonable to establish the following amounts for consequential damages:

Name	Relationship	Amount
Rochac Hernández Family		
Alfonso Hernández Herrera	Father	US\$ 5,000.00
Sebastián Rochac Hernández	Brother	US\$ 1,000.00
Tanislao Rochac Hernández	Brother, deceased	US\$ 1,000.00
María Juliana Rochac Hernández	Sister	US\$ 1,000.00
María del Tránsito Hernández Rochac	Sister	US\$ 1,000.00
Ana Margarita Hernández Rochac	Sister	US\$ 1,000.00
Nicolás Alfonso Torres Hernández	Brother	US\$ 1,000.00
Salinas Iraheta Family		

³²⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 266.

³²⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 46 and 47, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 280.

María Adela Iraheta	Mother, deceased	US\$ 5,000.00
Julio Antonio Flores Iraheta	Brother	US\$ 1,000.00
Felipe Flores Iraheta	Brother	US\$ 1,000.00
María Estela Salinas de Figueroa	Sister	US\$ 1,000.00
Amparo Salinas de Hernández	Sister	US\$ 1,000.00
Josefa Salinas Iraheta	Sister, deceased	US\$ 1,000.00
Hernández Sánchez Family		
María Adela Hernández	Mother	US\$ 5,000.00
José Juan de la Cruz Sánchez	Father, deceased	US\$ 5,000.00
Joel Alcides Hernández Sánchez	Brother	US\$ 1,000.00
Valentina Hernández	Maternal grandmother	US\$ 1,000.00
Santiago Pérez	Maternal grandfather	US\$ 1,000.00
Juan Evangelista Hernández Pérez	Maternal uncle	US\$ 1,000.00
José Cristino Hernández	Maternal uncle	US\$ 1,000.00
Eligorio Hernández	Maternal uncle	US\$ 1,000.00
Rosa Ofelia Hernández	Maternal aunt	US\$ 1,000.00
Bonilla Osorio Family		
María de los Ángeles Osorio	Mother	US\$ 5,000.00
José de la Paz Bonilla	Father, deceased	US\$ 5,000.00
José Arístides Bonilla Osorio	Brother	US\$ 1,000.00
María Inés Bonilla de Galán	Sister	US\$ 1,000.00
María Josefa Rosales	Maternal grandmother	US\$ 1,000.00
María Esperanza Alvarado	Aunt	US\$ 1,000.00
Luis Alberto Alvarado	Uncle	US\$ 1,000.00
Abarca Ayala Family		
Petronila Abarca Alvarado	Mother	US\$ 5,000.00
Daniel Ayala Abarca	Brother	US\$ 1,000.00
José Humberto Abarca Ayala	Brother	US\$ 1,000.00
Ester Abarca Ayala	Sister	US\$ 1,000.00
Osmín Abarca Ayala	Brother	US\$ 1,000.00
Paula Alvarado	Grandmother	US\$ 1,000.00

2. Non-pecuniary damage

256. The Commission asked the Court to adequately compensate the victims in this case and to include both pecuniary and non-pecuniary aspects. The representatives requested that the Court order the State to pay compensation to the victims and their next of kin for the pecuniary and non-pecuniary damage caused, especially for damage of an irreversible nature. The State did not comment on said request.

Considerations of the Court

257. International case law has repeatedly established that the judgment can constitute *per se* a form of reparation.³²⁶ Nevertheless, in its case law the Court has developed the concept of non-pecuniary damage and has established that it “may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to the individual, as well as other changes of a non-pecuniary nature in the living conditions of the victims or their next of kin.”³²⁷

258. The Court has established that the psychological, physical and moral integrity of the then children who were victims of forced disappearance in this case were affected, resulting in feelings of

³²⁶ Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 448.

³²⁷ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of January 30, 2014. Series C No. 276, para. 156.

loss, abandonment, intense fear, uncertainty, anguish and pain.³²⁸ Likewise, the Court has established that, owing to the facts of this case, the victims' next of kin suffered psychological effects and irreversible harm to their immediate family, uncertainty regarding the whereabouts of the victims and a feeling of impotence due to the lack of cooperation from the State authorities and the resulting impunity for more than three decades (*supra* paras. 120 to 124). Accordingly, the Court deems it pertinent to establish the following amounts in favor of the victims, as reasonable compensation for non-pecuniary damage:

Name	Relationship	Amount
Rochac Hernández Family		
José Adrián Rochac Hernández	Disappeared victim	US\$ 80,000.00
Alfonso Hernández Herrera	Father	US\$ 50,000.00
Sebastián Rochac Hernández	Brother	US\$ 10,000.00
Tanislao Rochac Hernández	Brother, deceased	US\$ 10,000.00
María Juliana Rochac Hernández	Sister	US\$ 10,000.00
María del Tránsito Hernández Rochac	Sister	US\$ 10,000.00
Ana Margarita Hernández Rochac	Sister	US\$ 10,000.00
Nicolás Alfonso Torres Hernández	Brother	US\$ 10,000.00
Salinas Iraheta Family		
Santos Ernesto Salinas	Disappeared victim	US\$ 80,000.00
María Adela Iraheta	Mother, deceased	US\$ 50,000.00
Julio Antonio Flores Iraheta	Brother	US\$ 10,000.00
Felipe Flores Iraheta	Brother	US\$ 10,000.00
María Estela Salinas de Figueroa	Sister	US\$ 10,000.00
Amparo Salinas de Hernández	Sister	US\$ 10,000.00
Josefa Salinas Iraheta	Sister, deceased	US\$ 10,000.00
Hernández Sánchez Family		
Emelinda Lorena Hernández	Disappeared victim	US\$ 80,000.00
María Adela Hernández	Mother	US\$ 50,000.00
José Juan de la Cruz Sánchez	Father, deceased	US\$ 50,000.00
Joel Alcides Hernández Sánchez	Brother	US\$ 10,000.00
Valentina Hernández	Maternal grandmother	US\$ 10,000.00
Santiago Pérez	Maternal grandfather	US\$ 10,000.00
Juan Evangelista Hernández Pérez	Maternal uncle	US\$ 10,000.00
José Cristino Hernández	Maternal uncle	US\$ 10,000.00
Eligorio Hernández	Maternal uncle	US\$ 10,000.00
Rosa Ofelia Hernández	Maternal aunt	US\$ 10,000.00
Bonilla Osorio Family		
Manuel Antonio Bonilla	Disappeared victim	US\$ 80,000.00
María de los Ángeles Osorio	Mother	US\$ 50,000.00
José de la Paz Bonilla	Father, deceased	US\$ 50,000.00
José Arístides Bonilla Osorio	Brother	US\$ 10,000.00
María Inés Bonilla de Galán	Sister	US\$ 10,000.00
María Josefa Rosales	Maternal grandmother	US\$ 10,000.00
María Esperanza Alvarado	Aunt	US\$ 10,000.00
Luis Alberto Alvarado	Uncle	US\$ 10,000.00
Abarca Ayala Family		
Ricardo Abarca Ayala	Disappeared victim	US\$ 80,000.00
Petronila Abarca Alvarado	Mother	US\$ 50,000.00
Daniel Ayala Abarca	Brother	US\$ 10,000.00
José Humberto Abarca Ayala	Brother	US\$ 10,000.00
Ester Abarca Ayala	Sister	US\$ 10,000.00
Osmín Abarca Ayala	Brother	US\$ 10,000.00
Paula Alvarado	Grandmother	US\$ 10,000.00

³²⁸ Cf. *Case of Contreras et al. v. El Salvador*, *supra*, para. 85.

E. Costs and expenses

259. The representatives asked the Court to grant, in equity, the reimbursement of the costs and expenses to the Search Association for the investigation of these cases. In principle, these were processed at the domestic level and are now being processed at the international level, but on both occasions have entailed disbursements for transportation, messenger and communications services, food and lodging for victims, professional services, expenses related to the investigations carried out by the Search Association as part of the search effort, and the workshops imparted to different people, including the victims in the present case. The representatives asked that the Court take the amounts allocated in previous cases, for example the total of US\$ 70,000.00 allocated in the *Case of Contreras et al. v. El Salvador*, as a minimum for calculating an amount corresponding to the time, work and resources used in the search for the victims during more than 18 years. At the time of the submission of the pleadings and motions brief, the expenses incurred by the Search Association in the instant case totaled US\$ 168,128.59 (one hundred and sixty-eight thousand, one hundred and twenty-eight United States dollars with fifty-nine cents). Together with their final written arguments, the representatives submitted receipts totaling US\$ 3,977.04 (three thousand nine hundred and seventy-seven United States dollars and four cents).

260. The State asked the Court to ascertain that the corresponding costs and expenses were properly and sufficiently accredited and in keeping with the amounts established as a precedent in the judgments handed down in the cases of *the Serrano Cruz Sisters* and *Contreras et al.* It also noted that the amount requested in this case exceeds the standard of precedents set by the Court and asked it to establish a reasonable *quantum*. Regarding the vouchers submitted as evidence by the representatives, the State pointed out that some are not fully legible or are not clearly related to expenses incurred exclusively for the purposes of this case, and argued that the amount claimed significantly exceeds the standard amount for reparations. The State requested that the Court pay attention to the documentation submitted by the representatives to justify their outlay for costs and expenses, for the following reasons: some of the vouchers presented as photocopies are not completely legible; some of the vouchers submitted for fuel expenses are provisional invoices or business invoices not registered with the Finance Ministry, or cash receipts or checks that are not suitable for documenting expenditures, are not registered with the tax authorities or are documents not authorized by these and, therefore, are not instruments admitted by the tax administration, according to tax laws; some vouchers are estimates that do not document an expenditure that has actually been made; some documented expenses are clearly not related to the current international proceedings or are expenses that have not been incurred exclusively for the purposes of this case, such as fuel, vehicle maintenance, purchase of a vehicle and payment of insurance policies; expenses are reported that do not correspond to salaries and are presented interchangeably with payrolls, some of which are not signed, together with checks and cash receipts, with the possible duplication of expenses corresponding to salaries; most of the expenses submitted for legal expenses are not related to the legal proceedings, since they include payments for rent, food and transportation; expenses are reported for a hearing before the Commission held in 2010, which is not related to this case and travel expenses that exceed a reasonable *quantum*. In addition, the representatives report various expenditures, mostly on salaries, for which they present receipts chargeable to international cooperation funds, which are public or private solidarity funds, the purpose of which was to finance activities to strengthen the Search Association and the ensuing investigation of cases.

261. With respect to the foregoing, the representatives pointed out that different documents support the various expenditures made by the Association over the years in processing the instant case and that, being a non-profit institution, it does not generate its own resources and therefore receives support from international cooperation funds that are used to cover certain actions related to investigating cases and promoting victims' rights. However, this does not affect its right to request that the respondent State recognize the procedural costs due, for which reason they asked the Court to interpret the documentation according to accounting principles and assess the entire body of

evidence and the arguments according to the rules of sound judicial discretion.

Considerations of the Court

262. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.³²⁹

263. In the first place, with regard to the State's request that the costs and expenses be in keeping with the amount established as precedent in the judgment delivered in the *Case of the Serrano Cruz Sisters*, the Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation (*supra* para. 262), since the actions undertaken by the victims to obtain justice, at both the domestic and the international levels, involve expenditures that must be compensated when the State's international responsibility is declared in a judgment. With regard to their reimbursement, it is the Court's responsibility to prudently assess their scope, including the expenses incurred before the authorities of the domestic jurisdiction, as well as those arising during the course of the proceedings before this Court, bearing in mind the circumstances of the specific case and the nature of the international jurisdiction of protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses reported by the parties, provided that the *quantum* is reasonable.

264. The Court has indicated that "the claims of the victims or their representatives in relation to costs and expenses and the supporting evidence must be submitted to the Court at the first procedural opportunity, that is, in the pleadings and motions brief. Nevertheless, these claims may be updated subsequently, in line with the new costs and expenses incurred during the proceedings before this Court."³³⁰ Furthermore, the Court reiterates that it is not sufficient to merely submit evidentiary documents; rather, the parties are required to present arguments relating the evidence to the fact that it is considered to represent and, in the case of alleged financial expenses, to establish clearly the items and the justification for them.³³¹

265. As to the evidence regarding the financial expenditures made by the Search Association, the Court has confirmed that it incurred expenses during the litigation of the case at both the domestic and the international levels. Those expenses relate to transportation, accommodation, stationery, and messenger and communication services, among other items, for which the Association forwarded the relevant vouchers. In addition, some expenses incurred by the Search Association correspond to the search for the victims in this case. Finally, some expenses relate to workshops imparted by the Search Association to different individuals, including the victims in this case.

266. With regard to the State's arguments concerning the receipts forwarded by the representatives, the Court observes that: a) some payment vouchers indicate an expenditure that has no clear or precise connection with this case; b) some vouchers refer to office supplies and the employee payroll without indicating the specific percentage that corresponds to the expenses in this case, and c) some payment vouchers are illegible and the sum they are intended to prove or the item of expenditure cannot be determined. The items to which they refer have been deducted, in fairness, from the calculation established by the Court.

³²⁹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of J v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 418.

³³⁰ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 328.

³³¹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 277, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 328.

267. Taking into account the foregoing considerations, the Court finds that the Search Association's proven expenses total approximately US\$ 112,000.00 (one hundred and twelve thousand United States dollars). The Court considers it reasonable to add a further amount to this sum for the time, work and resources used to search for the victims for more than 18 years, and for its continued efforts to that end. Consequently, the Court decides to establish, in equity, a total sum of US\$ 180,000.00 (one hundred and eighty thousand United States dollars) for the *Asociación de Pro-Búsqueda de Niños y Niñas Desaparecidos* to cover the costs and expenses incurred during its work of searching for the five victims and for the litigation of this case at the domestic and international levels. This amount shall be paid directly to the representative organization. The Court considers that, in the proceeding to monitor compliance with this judgment, it may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.

F. Reimbursement of expenses to the Victims' Legal Assistance Fund

268. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."³³² In the instant case, the required financial assistance from said Fund was granted to cover the travel and accommodation expenses to enable María Juliana Rochac Hernández, José Arístides Bonilla Osorio and the expert witness Martha de la Concepción Cabrera Cruz to appear before the Court and render their respective statements and expert opinion at the public hearing held at the seat of the Court, in the city of San José, Costa Rica, and the costs of formalizing and sending the two affidavits of the witnesses proposed by the representatives (*supra* para. 7).

269. The State had an opportunity to present its observations on the expenditures made in this case, which amounted to US\$ 4,134.29 (four thousand, one hundred and thirty four United States dollars and twenty-nine cents). El Salvador argued that the details of the expenses presented, in relation to the beneficiaries and the expenses covered, is consistent with the order that granted the financial assistance. However, the State observed that certain additional charges were specified related to the means of payment used, together with an additional charge made for changes to the date or time on the airline ticket of the expert witness, Martha de la Concepción Cabrera Cruz, despite the formal notification of the order of the President, of March 3, 2014, which set the date and time of the public hearing in this case. Consequently, the State requested that these costs be excluded from any reimbursement ordered by the Court to said Fund.

Considerations of the Court

270. In application of Article 5 of the Rules of the Fund, the Court will now consider whether to order the respondent State to reimburse the Legal Assistance Fund of the Inter-American Court for the expenditures incurred, taking into consideration the observations presented.

271. Based on the violations declared in this judgment, and considering that the petitioners complied with the requirements to access the Fund, the Court orders the State to reimburse said Fund in the amount of US\$ 4,134.29 (four thousand, one hundred and thirty-four United States dollars and twenty-nine cents) for necessary expenses incurred for the appearance of the witnesses and the expert witness at the public hearing in this case, as well as for the formalization and sending of two

³³² AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during the XXXVIII Regular Session of the OAS, at the fourth plenary session, held on June 3, 2008, "Creation of the Legal Assistance Fund of the Inter-American System of Human Rights", Operative Paragraph 2.a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the Permanent Council of the OAS, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American System of Human Rights", Article 1(1).

affidavits. This amount must be reimbursed within 90 days from the notification of this judgment.

G. Method of compliance with the payments ordered

272. The payment of the compensation ordered in favor of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala must be made to accounts or certificates of deposit in their name, in a solvent Salvadoran banking institution, in United States dollars, and on the most favorable financial terms allowed by Salvadoran law and banking practice. If, after ten years, said sums have not been claimed, they must be paid to the mothers and/or fathers in equal parts, with the interest accrued, or, if they have died, to their rightful heirs, who will have two years to claim them. If, after two years, these amounts have not been claimed, they will revert to the State with the accrued interest.

273. The State must pay compensation for pecuniary and non-pecuniary damages and for the reimbursement of costs and expenses ordered in this judgment directly to the persons and organizations indicated therein, within one year from notification of this judgment, under the terms of the following paragraphs.

274. If the beneficiaries have died, or should die before they receive their respective compensation, it will be paid directly to their rightful heirs, in accordance with the applicable domestic laws. In this regard, the Court has noted that Tanislao Rochac Hernández,³³³ María Adela Iraheta,³³⁴ Josefa Salinas Iraheta,³³⁵ José Juan de la Cruz Sánchez³³⁶ and José de la Paz Bonilla,³³⁷ have died prior to the delivery of this judgment.

275. The State must fulfill its monetary obligations through payment in United States dollars.

276. If for reasons attributable to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts specified within the period indicated, the State must deposit said amounts into an account or certificate of deposit in the beneficiaries' name, in a solvent Salvadoran banking institution, in United States dollars and on the most favorable financial terms allowed by law and banking practice. If, after ten years, the compensation has not been claimed, it will revert to the State with the accrued interest.

277. The amounts allocated in this judgment as compensation and as reimbursement of costs and expenses must be paid in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

278. If the State should fall into arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it must pay interest on the amount owed, corresponding to the banking interest on arrears in El Salvador.

³³³ As indicated in the final written arguments of the representatives of May 2, 2014, page 29.

³³⁴ Cf. Death certificate of María Adela Iraheta issued by the Family Status Registry of the Municipal Office of San Vicente (evidence file, volume XI, annexes to the final written arguments, folio 4948).

³³⁵ Cf. Death certificate of Josefa Salinas Iraheta issued by the Family Status Registry of the Municipal Office of Usulután (evidence file, volume XI, annexes to the final written arguments, folio 4955).

³³⁶ Cf. Death certificate of José Juan de la Cruz Sánchez issued by the Family Status Registry of the Municipal Office of Villa de Meanguera (evidence file, volume XI, annexes to the final written arguments, folio 4959).

³³⁷ Cf. Death certificate of José de la Paz Bonilla issued by the Family Status Registry of the Municipal Office of San Esteban Catarina (evidence file, volume XI, annexes to the final written arguments, folio 4929).

IX OPERATIVE PARAGRAPHS

279. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. It accepts the acknowledgment of international responsibility by the State, under the terms of paragraphs 18 to 36 of this judgment.
2. The State is responsible for the violation of the rights to personal liberty, to humane treatment, to life and to the recognition of juridical personality, recognized in Articles 7, 5, 4(1) and 3 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, under the terms of paragraphs 92 to 97 of this judgment.
3. The State is responsible for the violation of the right to family life and to the protection of the family, recognized in Articles 11(2) and 17 of the American Convention on Human Rights, in relation to Articles 19 and 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and in relation to Article 1(1) thereof, to the detriment of their next of kin indicated in paragraph 34 of this judgment, under the terms of paragraphs 104 to 117 thereof.
4. The State is responsible for the violation of the right to humane treatment, recognized in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala indicated in paragraph 34 of this judgment, pursuant to paragraphs 119 to 125 thereof.
5. The State is responsible for the violation of the rights to judicial guarantees and to 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 José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and the next of kin indicated in paragraph 34 of this judgment, under the terms of paragraphs 136 to 161 and 170 to 173 thereof.
6. The State is responsible for the violation of the right to personal liberty, recognized in Article 7(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and of their next of kin indicated in paragraph 34 of this judgment, under the terms of paragraphs 162 to 173 thereof.

AND ORDERS

Unanimously, that:

7. This judgment is *per se* a form of reparation.

8. The State shall continue effectively and with the utmost diligence the investigations opened, and shall open any others that may be necessary in order to identify, prosecute and, where appropriate, punish all those responsible for the forced disappearances of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and for other related unlawful acts, pursuant to paragraphs 187 to 191 of this judgment.
9. The State shall conduct, as soon as possible, a thorough search, making every effort to determine the whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla and Ricardo Abarca Ayala, and shall adopt all appropriate and necessary measures for the restoration of their identity in the event of being found alive, pursuant to paragraphs 196 to 199 and 215 of this judgment.
10. The State shall adopt pertinent and adequate measures to guarantee to the judicial officials, as well as to Salvadoran society, public, technical and systematized access to archives that contain useful and relevant information for the investigation of cases of human rights violations during the armed conflict, pursuant to paragraphs 208 to 209 of this judgment.
11. The State shall provide, immediately, the necessary medical, psychological and/or psychiatric treatment to those victims who request it; otherwise, it shall pay the sum established, pursuant to paragraphs 219 to 223 of this judgment.
12. The State shall organize a public act of acknowledgment of international responsibility for the facts of the instant case, pursuant to paragraph 225 of this judgment.
13. The State shall make the publications ordered, pursuant to paragraph 227 of this judgment.
14. The State shall build a "garden museum" in memory of the children who were forcibly disappeared during the armed conflict, pursuant to paragraphs 234 to 236 of this judgment.
15. The State shall carry out the training ordered, pursuant to paragraph 244 of this judgment.
16. The State shall pay the amounts established in paragraphs 255, 258 and 267 of this judgment, as compensation for pecuniary and non-pecuniary damages and for reimbursement of costs and expenses, as appropriate, pursuant to paragraphs 272 to 278.
17. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount expended during the processing of this case, under the terms established in paragraphs 271 and 278 of this judgment.
18. The State shall, within one year of notification of this judgment, submit to the Court a report on the measures adopted in compliance therewith.
19. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has fully complied with all the measures ordered herein.

Done in Spanish, at San José, Costa Rica, on October 14, 2014.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary