

INTER-AMERICAN COURT OF HUMAN RIGHTS*
CASE OF GIRÓN *ET AL.* V. GUATEMALA
JUDGMENT OF OCTOBER 15, 2019
(Preliminary objection, merits, reparations and costs)

In the case of *Girón et al. v. Guatemala*,

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

Eduardo Ferrer Mac-Gregor Poisot, President,
Eduardo Vio Grossi, Vice President,
Humberto Antonio Sierra Porto,
Elizabeth Odio Benito,
Patricio Pazmiño Freire, and
Ricardo Pérez Manrique,

also present,

Pablo Saavedra Alessandri, 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, 42, 65 and 67 of the Rules of Procedure of the Inter-American Court (hereinafter “the Court’s Rules of Procedure” or “the Rules of Procedure”), delivers this judgment structured as follows:

* Judge Eugenio Raúl Zaffaroni recused himself from taking part in this case under the provisions of Article 21 of the Court’s Rules of Procedure, and this was accepted by the full Court

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On November 30, 2017, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”), under the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure, submitted to the jurisdiction of the Inter-American Court the case of *Girón et al.* against the Republic of Guatemala (hereinafter also “the State” or “Guatemala”). The Commission indicated that the case related to a series of violations in the context of the criminal proceedings against Roberto Girón and Pedro Castillo Mendoza (hereinafter also “Messrs. Girón and Castillo” or “the alleged victims”) for the crimes of aggravated rape and murder, which culminated in the imposition of the death penalty and their execution by firing squad. According to the Commission, the State had violated the rights of the alleged victims because they had not had adequate time or means to prepare their defense and had not been assisted by counsel provided by the State when providing their confessions. It also alleged that the public defenders appointed to assist them were law students who lacked the necessary professional experience and qualifications to conduct an adequate defense in criminal proceedings.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a. *Petition.* On July 11 and August 14, 1996, the Commission received two petitions submitted, respectively, by the Magnus F. Hirschfeld Centre for Human Rights and the Guatemalan *Instituto de Estudios Comparados en Ciencias Penales* (hereinafter also “IECCP”) together with the *Centro de Acción Legal en Derechos Humanos* (hereinafter also “CALDH”) on behalf of Roberto Girón (hereinafter also “Mr. Girón”) and Pedro Castillo Mendoza (hereinafter also “Pedro Castillo” or “Mr. Castillo”).

b. *Precautionary measures.* On September 9, 1996, the Commission asked the State to adopt precautionary measures to suspend the execution of Roberto Girón and Pedro Castillo Mendoza. On September 11, 1996, the State informed the Commission that, in the opinion of the Supreme Court of Justice, it was not possible to admit the request for precautionary measures because the powers to grant them had not been provided for, especially at the actual procedural stage of the case. On September 13, 1996, the alleged victims were executed by firing squad.

c. *Report on Admissibility and Merits.* On July 5, 2017, pursuant to Articles 35 and 50 of the Rules of Procedure, the Commission issued Report on Admissibility and Merits No. 76/17 (hereinafter also “the Report on Admissibility and Merits,” “Report No. 76/17” or “the Report”) in which it reached a series of conclusions¹ and made several recommendations to the State.

d. *Notification to the State.* The Commission notified the report to the State in a communication of August 30, 2017, granting it two months to provide information on compliance with the recommendations. The State failed to submit any information within the time frame indicated by the Commission.

¹ The Commission concluded that Guatemala was responsible for the violation of the rights established in Articles 4(1), 4(2), 5(1), 5(2), 8(2), 8(2)(c), 8(2)(e) and 25(1) of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of this instrument, to the detriment of Roberto Girón and Pedro Castillo Mendoza. The Commission also concluded that the State was responsible for the violation of Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

3. *Submission of the case to the Court.* On November 30, 2017, the Commission submitted to the Court all the facts and alleged human rights violations described in the Report on Admissibility and Merits.

4. *Request of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to conclude and declare the international responsibility of Guatemala for the alleged violation of the rights indicated in the conclusions to the Report on Admissibility and Merits. Additionally, the Commission asked the Court to order the State to provide certain measures of reparation that will be described and analyzed in the corresponding chapter.

II PROCEEDINGS BEFORE THE COURT

5. *Appointment of inter-American public defenders.* In its brief submitting the case, the Commission indicated that the *Centro de Acción Legal en Derechos Humanos* had acted as the petitioners' representative. In communications of January 8 and 19, 2018, addressed to the CALDH, the Court asked it to confirm that it was representing the alleged victims. However, on January 24, 2018, the CALDH advised that it had been unable to communicate with the families of either of the alleged victims and that, based on its institutional policy, it could not continue to represent them before the Court. Following communications with the Inter-American Association of Public Defenders (AIDEF),² on February 27, 2018, the Association's General Coordinator advised the Court that Lorena Padován and Johanny Castillo Sabari (hereinafter "the representatives") had been appointed inter-American public defenders to provide legal representation for Messrs. Girón and Castillo.

6. *Notification of the case to the State and to the representatives.* The Court notified the submission of the case by the Commission to the State and to the representatives on March 5 and 6, 2018, respectively.

7. *Brief with pleadings, motions and evidence.* On May 4, 2018, the representatives presented their brief with pleadings, motions and evidence (hereinafter also "pleadings and motions brief") together with its annexes. The representatives agreed substantially with the Commission's arguments and conclusions and also alleged the violation of Article 8(1), 8(2) paragraphs (d), (f), (g) and (h), 8(3), and 8(5) of the American Convention, to the detriment of the alleged victims. They added that the State was responsible for the violation of Article 5(1) and 5(2) of the American Convention, in relation to Articles 8(1), 1(1) and 2 of the Convention, to the detriment of their next of kin. Lastly, they asked that the Court order the State to adopt diverse measures of reparation and for reimbursement of certain costs and expenses.

8. *Answering brief.* On August 7, 2018, the State submitted to the Court its brief answering the Commission's submission of the case, and with observations on the pleadings and motions brief (hereinafter "answering brief")³ and the annexes. In this brief, the State contested the alleged violations and submitted a preliminary objection of *res judicata*.

² In a communication of the Secretariat dated February 13, 2018, and on the instructions of the President of the Court, the General Coordinator of AIDEF was asked that, based on article 2 of the Memorandum of Understanding between the Court and the Association, he appoint, within 10 days, the defender who would assume the legal representation in this case and advise where the pertinent communications should be notified.

³ On April 10, 2018, the State appointed Jorge Luis Borrayo Reyes, President of COPREDEH, and Felipe Sánchez González, Executive Director of COPREDEH, as its Agents for this case.

9. *Observations on the preliminary objection.* On October 4 and 16, 2018, the Commission and the representatives, respectively, forwarded their observations on the preliminary objection filed by the State, and asked the Court to reject it.

10. *Final written procedure.* Having examined the principal briefs presented by the Commission and by the parties, and in light of the provisions of Articles 15, 45 and 50(1) of the Court's Rules of Procedure, the President, in consultation with the full Court, decided that it was not necessary to call for a public hearing based on the circumstances of the case and in the absence of a factual dispute. This decision was communicated by an order of the President dated February 14, 2019.⁴ In this order, the President also required that the statements of two deponents, one witness and four expert witnesses offered by the representatives, and a joint expert opinion proposed by the Commission and the representatives, be received by affidavit.⁵ In addition, he decided the financial assistance that would be provided by the Court's Legal Assistance Fund. Following an extension of the time limit at the request of the representatives, the affidavits were received on March 6, 7 and 11, 2019. On March 18, 2019, the affidavit with the joint opinion proposed by the Commission was received.

11. *Final written observations and arguments.* On April 8, 2019, the Commission presented its final written observations and, on April 12, 2019, the representatives and the State forwarded their respective final written arguments.

12. *Disbursements from the Legal Assistance Fund.* On August 23, 2019, on the instructions of the President of the Court, the Inter-American Court's Secretariat forwarded information to the State on the disbursements made from the Fund in this case and, in keeping with Article 5 of the Rules for the Operation of the Legal Assistance Fund of the Inter-American Court of Human Rights, it granted the State a time frame for presenting any observations it deemed pertinent. The State presented its observations on September 2, 2019.

13. *Deliberation of the case.* The Court began deliberating this judgment on October 15, 2019.

III JURISDICTION

14. The Inter-American Court has jurisdiction to hear this case under the provisions of Article 62(3) of the American Convention because Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

IV PRELIMINARY OBJECTION

A. Preliminary objection of *res judicata*

⁴ Cf. *Case of Girón et al. v. Guatemala*. Order of the President of the Court of February 14, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/gironcastillo_14_02_19.pdf. Following a request by the representatives, in a communication of February 21, 2019, the Court granted an extension of the time limit for presenting the affidavits until March 11, 2019.

⁵ On March 4, 2019, the President of the Court issued an order in which he agreed to a request by the Commission to change the method for the presentation of the joint expert opinion of Parvais Jabbar and Edward Fitzgerald. This opinion was also offered in the cases of *Ruiz Fuentes*, and *Martínez Coronado*, both against Guatemala. An extension was granted until March 18, 2019, for its presentation by affidavit. Available at: http://www.corteidh.or.cr/docs/asuntos/ruizfuentes_mart%C3%ADnezc coronado_gir%C3%B3nyotro_valenzuela%C3%A1vila_rodr%C3%ADguezrevolorioyotros_04_03_19.pdf.

A.1. Arguments of the State and observations of the representatives and of the Commission.

15. The **State** filed the preliminary objection of “*res judicata*” because it considered that “the procedural circumstances” of the case involving the alleged victims “were at all times in accordance with the *corpus iuris* in force in Guatemala. In other words, the due process established in the domestic criminal procedural laws was complied with, a final judgment convicting the accused was handed down, the appeals filed by the accused were exhausted and, lastly, the final judgment delivered by the court that heard the case and convicted the accused was executed.” In addition, it argued that for almost 20 years, Guatemala had not applied the death penalty. Accordingly, it asked that the Court admit the objection.

16. In their observations, the **representatives** argued that, when filing its objection, the State had not complied with the requirements established in Article 42(2) of the Court’s Rules of Procedure because it had failed to indicate the legal grounds on which its request was based, and had not submitted evidence to support the request, merely indicating that all the actions taken at the domestic level in the criminal proceedings against the direct alleged victims had been consistent with due process. They added that the State had not justified the provisions of Article 47(d) of the American Convention. Consequently, they asked the Court to declare the objection inadmissible.

17. The **Commission** argued that the State’s assertion did not constitute a preliminary objection; rather, fundamentally, the question corresponded to the merits of the case. Therefore, it asked the Court to “reject the so-called objection of *res judicata* filed by the State.”

A.2. Considerations of the Court

18. The Court recalls that preliminary objections are acts by which a State seeks, in a preliminary manner, to prevent the analysis of the merits of a disputed matter and, to this end, it may file an objection against the admissibility of a case or of the Court’s competence to hear a specific case or any of its aspects based either on the person, the matter, the time or the place, provided that its arguments are of a preliminary nature.⁶ If these arguments cannot be considered without a preliminary examination of the merits of the case, they cannot be analyzed by means of a preliminary objection.⁷

19. The State argued the “objection of *res judicata*” because it understood that there had been no violation of human rights in this case and, thus, the Court would not have competence to examine violations in the context of the criminal proceedings. However, this is precisely what will be discussed when examining the merits of the matter. When assessing the merits of the case, the Court will determine whether the domestic proceedings respected the exercise of, and respect for, the international obligations of the State. Therefore, the Court finds that the arguments presented do not constitute a preliminary objection because they do not include the reasons why this case would be inadmissible or the Court without competence to hear it. Consequently, the Court declares the preliminary objection filed by the State inadmissible.

⁶ Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 19.

⁷ Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Gorioitía v. Argentina, supra*, para. 19.

V PRELIMINARY CONSIDERATIONS

A. Arguments of the parties and of the Commission

20. Regarding the determination of the victims, in Report No. 76/17 the Commission indicated that the alleged victims are Roberto Girón and Pedro Castillo Mendoza.

21. In their pleadings and motions brief, the representatives indicated that, in addition to Roberto Girón and Pedro Castillo Mendoza, other alleged victims should be recognized and that these were the next of kin of Mr. Castillo Mendoza, namely: Emilio Castillo Gómez (father, deceased), Blanca Delia Castillo Mendoza (sister, deceased), Dora Alicia Castillo Mendoza (sister), Berta Lidia Mendoza (sister) and Oscar Castillo Mendoza (brother). They added that, at the time they submitted the pleadings and motions brief, they had been unable to locate any members of Roberto Girón's family (see footnote 131 *infra*).

22. The State indicated that it "did not call into question the capacity of the petitioners to ask that the next of kin of Messrs. Girón and Castillo Mendoza be considered alleged victims, [but it considered that if the] Court ruled to provide financial redress to the next of kin of the perpetrators of a crime that shocked Guatemalan society, it would be encouraging a resurgence of the debate on whether or not the application of the death penalty in the country was admissible."

B. Considerations of the Court

23. Regarding the identification of the alleged victims, the Court recalls that Article 35(1) of its Rules of Procedure establish that the case will be submitted by the presentation of the Merits Report which must include the identification of the alleged victims. Thus it corresponds to the Commission to identify the alleged victims in a case before the Court precisely and at the appropriate procedural moment,⁸ subject to the exceptional circumstances contemplated in Article 35(2) of the Court's Rules of Procedure according to which, when it has been justified that it was not possible to identify them because the case involves massive or collective violations, the Court will decide whether to consider those individuals as victims, at the appropriate time, based on the nature of the violation.⁹

24. In the instant case, none of the exceptions established in Article 35(2) of the Court's Rules of Procedure are present. Therefore, pursuant to the provisions of Article 35(1) of the Rules of Procedure and the relevant precedents in which this Court has ruled in this regard, the Court concludes that it is not appropriate to consider the next of kin of either Pedro Castillo Mendoza or Roberto Girón as alleged victims.

VI EVIDENCE

A. Admission of documentary evidence

⁸ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Gorioitía v. Argentina, supra*, para. 25.

⁹ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Gorioitía v. Argentina, supra*, para. 25.

25. In this case, as in others,¹⁰ the Court admits the probative value of those documents presented by the parties and by the Commission at the proper procedural moment (*supra* paras. 1, 7 and 8), that were not contested or challenged and whose authenticity was not questioned, as well as the helpful evidence presented by the State and the representatives.¹¹

B. Admissibility of testimonial and expert evidence

26. The Court finds it pertinent to admit the statements and the expert opinions provided by affidavit,¹² insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

VII FACTS

27. In this chapter, the Court will establish the facts of this case based on the factual framework submitted to the Court by the Commission, taking into consideration that no factual dispute exists between the arguments presented by the Commission, the representatives and the State. The facts will be described as follows: (A) Guatemalan legislation, and (b) Criminal proceedings and execution of Roberto Girón and Pedro Castillo.

A. Guatemalan legislation

A.1. Laws in force in Guatemala at the time of the facts

28. Article 18 of the Guatemalan Constitution recognizes the possibility of imposing the death penalty.¹³ Article 43 of the Criminal Code of the Republic of Guatemala (Decree No. 17-73) (hereinafter "the Criminal Code") establishes that the death penalty "is of an exceptional nature and may only be imposed in cases expressly established by law and shall not be executed until all legal remedies have been exhausted."¹⁴

¹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Gorioitía v. Argentina, supra*, para. 27.

¹¹ On March 19, 2019, the State and the representatives were asked to present various documents as helpful evidence. On March 26, 2019, the representatives submitted part of the documentation requested and made several clarifications. On April 9, 2019, following an extension of the time frame, the State submitted several documents.

¹² On March 6, 2019, the affidavits prepared by Dora Alicia Castillo Mendoza de Luna, Berta Lidia Mendoza, Edy Iván Bocanegra Conde, Alejandro Rodríguez Barillas, and Enrique Oscar Stola were received. On March 7, 2019, the expert opinion of Luis Arroyo Zapatero provided by affidavit was received, and on March 11, 2019, the affidavit prepared by María Fernanda López Puleilo was received. On March 18, 2019, Parvais Jabbar and Edward Fitzgerald submitted an affidavit with their joint expert opinion.

¹³ Constitution of the Republic of Guatemala decreed by the Constituent Assembly, May 31, 1985, amended by referendum, Legislative Decision 18-93.

Article 18. Death penalty. The death penalty may not be imposed in the following cases.

- a. Based on presumptions;
- b. On women
- c. On those over sixty years of age;
- d. On those convicted of political crimes and common crimes related to political crimes, and
- e. On those convicted and whose extradition has been granted under this condition.

All pertinent legal remedies, including cassation, shall be admissible against a sentence imposing the death penalty; the remedy of cassation will always be admitted for its processing. The sentence shall be executed after all remedies have been exhausted.

The Congress of the Republic may abolish the death penalty.

¹⁴ Criminal Code, Decree No. 17-73 of the Congress of the Republic of Guatemala, promulgated on July 27, 1973.

Article 43. The death penalty. The death penalty is exceptional in nature and may only be imposed in the cases expressly established by law and shall only be executed after all legal remedies have been exhausted.

The death penalty may not be imposed:

29. Article 175 of the Criminal Code in force in 1993 defined the crime of aggravated rape as follows:

If owing to, or as a result of, rape the victim should die, twenty to thirty years' imprisonment shall be imposed. The death penalty shall be imposed if the victim is less than ten years of age.¹⁵

30. Decree No. 20-96, which came into force in May 1996, amended this crime as follows:

If owing to, or as a result of, rape the victim should die, 30 to 50 years' imprisonment shall be imposed. The death penalty shall be imposed if the victim is less than 10 years of age.¹⁶

31. In Guatemala, the death penalty was imposed infrequently up until the 1990s. However, starting in 1996¹⁷ the State again began to impose this, first by firing squad pursuant to Decree No. 234 of the Congress of the Republic,¹⁸ and then by lethal injection after Decree No. 234 had been derogated by Decree No. 100-96 of November 1996 establishing this new method of execution.¹⁹

32. Decree No. 159 of the National Legislative Assembly of April 19, 1892, established the appeal for clemency as the last recourse available to obtain a pardon or the commutation of the sentence under Guatemalan law, and regulated the procedure to put this in practice. On June 1, 2000, the Congress of the Republic of Guatemala replaced Decree No. 159 by Legislative Decree No. 32-2000.²⁰

A.2. Rules for the appointment of defense counsel

33. Regarding the possibility of the accused being assisted by defense counsel, article 144 of the Code of Criminal Procedure established the following:

The accused may be assisted by a lawyer from the moment he provides his preliminary statement. During this procedure, he must provide the name of a defense counsel and, if he does not do so, he will be advised that he must do this within the following five days [...].²¹

34. On this issue, article 154 of the Code of Criminal Procedure establishes that:

The judge may also appoint as defenders articulated law clerks from the country's universities and law firms and, to this end, the latter shall send lists to the president of the judicial body. Those lists will be updated each year.²²

-
1. For political crimes.
 2. When the conviction is based on presumptions.
 3. On women.
 4. On men over sixty years of age.
 5. On those whose extradition has been granted under this condition.

In such cases, and provided the death penalty has been commuted to deprivation of liberty, the maximum term of imprisonment shall be applied (file of evidence attached to the pleadings and motions brief, annex 10, fs. 1819 to 1937).

¹⁵ Criminal Code, Decree No. 17-73, article 175, *supra*.

¹⁶ Decree No. 20-96 of the Congress of the Republic of Guatemala of May 9, 1996, Available at: <https://www.congreso.gob.gt/consulta-legislativa/Decree-detalle/?id=823>.

¹⁷ Cf. Amnesty International, *Guatemala, The return of the death penalty*. March 1997, p. 3 (file of evidence attached to the pleadings and motions brief, annex 8, fs. 1627 to 1635).

¹⁸ Decree No. 234 of the Congress of the Republic of Guatemala of May 21, 1946.

¹⁹ Law establishing the procedure for execution of the death penalty. Decree No. 100-96 of the Congress of the Republic of Guatemala of November 28, 1996. Article 7 stipulates: "After the decisions referred to in the preceding article have been read, the death penalty shall be executed by the procedure of lethal injection [...]."

²⁰ Decree No. 32-2000 of the Congress of the Republic of Guatemala of June 1, 2000, Available at: <https://www.congreso.gob.gt/consulta-legislativa/Decree-detalle/?id=620>.

²¹ Code of Criminal Procedure of the Republic of Guatemala of June 27, 1973. article 144 (file of evidence attached to the pleadings and motions brief, annex 10, f. 2139).

²² Code of Criminal Procedure of the Republic of Guatemala, article 154, *supra*.

A.3. Amendments to the regulation of the death penalty in Guatemala

35. In 2009, Decree No. 09-2009 was promulgated derogating article 175 of the Criminal Code which established the death penalty in certain cases of rape.²³

36. On February 11, 2016, the Constitutional Court of Guatemala declared that the second paragraph of article 132 of the Criminal Code was unconstitutional; this related to considering the dangerousness of the agent as a criterion for applying the death penalty. Moreover, it indicated that this decision had “general” effects.²⁴

37. In the judgment on merits, reparations and costs in the case of *Fermín Ramírez v. Guatemala* handed down by the Court on June 20, 2005, this Court determined that “the introduction into the criminal text of the dangerousness of the agent as a criterion for the criminal classification of the acts and the application of certain punishments is not compatible with freedom from *ex post facto* laws and, therefore, contrary to the Convention. [...]” Consequently, it concluded that the State had violated “Article 9 of the Convention, in relation to Article 2 thereof, for having maintained in force the part of article 132 of the Criminal Code that refers to the dangerousness of the agent, once Guatemala had ratified the Convention.”²⁵

38. Subsequently, in the order of the Inter-American Court of February 6, 2019, on monitoring compliance with judgment in the case of *Fermín Ramírez v. Guatemala*, the Court, referring to the judgment of the Constitutional Court of February 11, 2016, indicated that:

It would appear that the said judgment of the Constitutional Court declared the unconstitutionality of the only phrase of article 132 of the Criminal Code that established the possibility of applying the death penalty. It is not clear from the said judgment whether any possibility of applying the death penalty for the crime of murder in Guatemala has been eliminated, or whether it merely eliminated the possibility of applying it based on the dangerousness of the agent. However, based on the representatives’ assertion that a new legislative bill exists that would again apply the death penalty eliminating the phrase concerning the type of crime [...], it would appear that it did eliminate the

²³ Law against sexual violence and exploitation and trafficking of persons, Decree No. 09-2009 of the Congress of the Republic of Guatemala of March 20, 2009, article 69, Available at: https://www.congreso.gob.gt/detalle_pdf/Decrees/13124.

²⁴ *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of February 6, 2019, considering paragraph 10:

This court [the Constitutional Court] considers that the word “dangerousness” contained in the contested phrase as a decisive element for the imposition of a punishment is detrimental to the principle of legality, because only those actions classified as a crime or offense and penalized by the law prior to their perpetration are punishable. Given that dangerousness is an endogenous characteristic whose inherent nature prevents determining precisely the right protected that could be harmed, the punishment imposed would be linked to a hypothetical conduct [...].

It is even more serious that a psychobiological situation is relevant to impose a punishment of the magnitude of the death penalty, which would merely reflect a significant step backwards in the humanization of the old repressive system, whose rigorous retributive theories saw capital punishment as an absolute solution to the problem of crime [...].

The Constitutional Court [...] declares: I. Admissible the action of partial general unconstitutionality [...] against the penultimate paragraph of article 132 of the Criminal Code, the phrase – “however, the death penalty shall be applied instead of the maximum prison sentence if the circumstances of the act and of the occasion, the way it was carried out and the determinant motives reveal a particular dangerousness of the agent. Those to whom the death penalty is not applied for this crime may not be granted a reduction in the punishment for any reason” – is declared unconstitutional. II. Consequently, it will cease to have effect the day after the publication of this ruling in the *Diario de Centro América*.

²⁵ *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs.* Judgment of June 20, 2005. Series C No. 126, paras. 96 and 98, and *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs.* Judgment of May 10, 2019. Series C No. 376, para. 31. Regarding the dangerousness of the agent, see also: *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 133, para. 77, and *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment, supra*, considering paragraph 6.

possibility of applying the death penalty for that crime from the country's laws. In this regard, in the hypothesis that, according to the laws of Guatemala, it is understood that the death penalty has been annulled for the crime of murder, the Court finds it necessary to recall that Article 4 of the American Convention reflects a "progressive and irreversible process" that "absolutely prohibits the re-establishment of capital punishment for any crime, so that the decision of a State Party to the Convention, whensoever it was adopted, to abolish the death penalty becomes, *ipso jure*, a final and irrevocable decision." The Convention "is clearly of a progressive nature; thus, without going so far as to decide on the abolition of the death penalty, it adopts the necessary provisions to definitively limit its application and its scope, so that its use is gradually reduced until it is finally eliminated." In this way, if the death penalty was eliminated from the law for the crime of murder, it cannot be reinstated for that crime.²⁶

39. In this order, the Court also noted that, at the date of the State's most recent report "there were no prisoners sentenced to death [in Guatemala], and capital punishment had not been applied since 2002 [...] [, and it took] note [...] [of the] general suspension of the application of this punishment linked to compliance with the measure of reparation [established in the judgment in this case] related to the obligation to regulate commutations of sentence in [its] jurisdiction."²⁷

B. Criminal proceedings and execution of Roberto Girón and Pedro Castillo

B.1. Facts with regard to the criminal proceedings and execution of Messrs. Girón and Castillo

40. Roberto Girón and Pedro Castillo were accused of the crime of the aggravated rape of a four-year old girl which took place on April 18, 1993.

41. On April 19, 1993, Roberto Girón gave his preliminary statement before the first trial judge. The judge advised him that he could appoint a defense counsel and that he had five days to do so, or the court would appoint a public defender, and Mr. Girón responded that he would appoint one later. In his statement, the alleged victim indicated that he had been detained on April 18, 1993, and had not been informed of the reason for his detention. The alleged victim was asked about the part played by Pedro Castillo Mendoza in the perpetration of the crime and he replied: "It was not me, possibly it was him with other people."²⁸

42. On the same day, April 19, 1993, and before the same official, Pedro Castillo Mendoza provided his preliminary statement. The corresponding record indicates that the alleged victim was informed that he had been "detained for the crime of aggravated rape [...] and] that [he could] appoint a defense counsel who [could] be present during [that] procedure, and [that he had] five day to do this; to the contrary, the court would appoint a public defender; the deponent indicated that he w[ould] do this later." During the said statement, the judge asked him if he was under the influence of drugs, alcohol, medication or narcotics during the crime and he responded that he was in his right mind, as was Roberto Girón. The judge also asked him why he had raped and caused the death of the child, and he replied: "I don't know what came over us; I don't know what we were thinking," and he then added that "I have never committed any crime and it is the first time I did, but I don't know what came over us, me and my co-worker, Roberto Girón, and I don't remember whose idea it was to act in this way [...]."²⁹

²⁶ *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment, supra, considering paragraph 13, and Case of Martínez Coronado v. Guatemala, supra, para. 32*

²⁷ *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment, supra, considering paragraph 8, and Case of Martínez Coronado v. Guatemala, supra, para. 33.*

²⁸ *Cf. Record of preliminary statement of April 19, 1993, before the first trial judge (evidence file, annexes to the Merits Report, annex 1, fs. 3 to 7).*

²⁹ *Cf. Record of preliminary statement of April 19, 1993, before the first trial judge (evidence file, annexes to the Merits Report, annex 2, fs. 9 to 14).*

43. On April 22, 1993, the Second Trial Court ordered the pre-trial detention of Roberto Girón and Pedro Castillo Mendoza, indicating that "in order to issue the order for pre-trial detention it is necessary: (i) that there is adequate information that a crime has been committed, and (ii) that there are sufficient reasonable motives to believe that the person detained has committed this or taken part in it. An examination of the case file reveals that, in this proceeding, there are grounds to order the measure of pre-trial detention against the accused identified above [...], so that it is necessary to rule in accordance with the law."³⁰

44. On April 27, 1993, LCC was appointed public defender for Roberto Girón,³¹ and Edy Iván Bocanegra Conde was appointed public defender for Pedro Castillo Mendoza. Both were law students rather than practicing lawyers.³²

45. On May 5, 1993, the second trial judge organized a confrontation between the defendants. The corresponding record indicates that, during this procedure, only the defendants were present without their corresponding defense counsel, and that they did not agree on "every aspect" of the facts.³³

46. On May 12, 1993, the First Criminal Trial Court of the Department of Escuintla decided to open criminal proceedings against Roberto Girón and Pedro Castillo Mendoza for the crime of aggravated rape.³⁴ On June 2³⁵ and 14,³⁶ 1993, the respective defense counsel presented their arguments.

47. On June 18, 1993, the First Criminal Trial Court of Escuintla decided to open the proceedings to evidence and indicated that a public hearing would be held on July 29, 1993; it also scheduled the procedure to receive the statements of CECL, JECT, PJR and JCME. However, this was procedure was not conducted because the list of questions "presented by [Mr. Giron's] defense, on being opened and appraised by the judge, [was] undated and [was] not signed."³⁷

48. On October 4, 1993, the First Criminal Trial Court of Escuintla (hereinafter also "the First Trial Court") delivered judgment convicting the defendants, as follows:

³⁰ Cf. Order of pre-trial detention issued by the Second Trial Court on April 22, 1993 (evidence file, annexes to the Merits Report, annex 3, fs. 16 to 19).

³¹ Cf. Record of designation of April 27, 1993 (file of annexes to the Merits Report, annex 4, f. 21).

³² It is an uncontested fact that Edy Iván Bocanegra Conde acted as defense counsel for Pedro Castillo. Cf. Judgment of the First Criminal Trial Court of Escuintla of October 4, 1993 (evidence file, annexes to the Merits Report, annex 9, fs. 45 to 57).

³³ Cf. Record of confrontation between the defendants by the second trial judge on May 5, 1993 (file of annexes to the Merits Report, annex 5, fs. 23 and 24).

³⁴ Cf. Decision of the First Criminal Trial Court of the Department of Escuintla of May 12, 1993 (evidence file, annexes to the Merits Report, annex 6, fs. 26 to 28).

³⁵ Brief of LCC presented to the first criminal trial judge of the Department of Escuintla on June 2, 1993 (evidence file, annexes to the Merits Report, annex 7, fs. 30 to 38). In this brief, he indicated, in relation to the evidence provided to the proceedings, that "the measures taken reveal that there are discrepancies between the statements of the witnesses, the captors and the police report, and also no one knew for sure that [his] client had participated in the crime."

³⁶ Brief of Edy Iván Bocanegra Conde presented to the first criminal trial judge of the Department of Escuintla on June 14, 1993 (evidence file, annexes to the Merits Report, annex 8, fs. 40 to 43). In this brief, he indicated that his "client had been accused of aggravated rape; [however,] [...] there were mitigating circumstances that modify his criminal responsibility because he confessed to the crime in his preliminary statement and, in doing so, had helped to clarify the crime of which he is accused."

³⁷ Decision of the First Criminal Trial Court of the Department of Escuintla of June 18, 1993 (evidence file, annexes to the answering brief, fs. 2432 and 2433). It should be noted that the record of the failure to hold the hearing of July 15, 1993, does not mention JCME (evidence file, annexes to the answering brief, f. 2438).

a) Probative value is granted to the preliminary statement provided by the defendant, Roberto Girón, [...], because it constitutes an undue confession accepting facts that prejudice him, such as [...] the fact that he was found to be carrying a bloodstained machete;

b) Probative value is granted to the preliminary statement provided by Pedro Castillo Mendoza, [which ...] constitutes an acceptable confession [in which he] indicates that it was Roberto Girón and not he himself who was carrying the machete; also [...], he stated that it was the first time that he had committed a crime and also accepted that he could not remember whose idea it had been to commit the crime under investigation and, in particular, to act in that way, because he accepts facts that prejudice him.³⁸

49. That court concluded that "ROBERTO GIRON, only one last name, and PEDRO CASTILLO MENDOZA, are responsible for the crime of AGGRAVATED RAPE, revealed by their preliminary statements where they accept the facts that prejudice them." Regarding the punishment, the Court indicated that "our criminal procedural law stipulates that the person who rapes and subsequently kills a person under ten years of age shall be punished with the DEATH PENALTY" and that "the only punishment [for the crime committed] is the penalty indicated in the Criminal Code"³⁹ (capitalized in the original).

50. On being served notice of the judgment, the alleged victims and their representatives filed oral appeals against it. On December 1, 1993, the Twelfth Chamber of the Appellate Court (hereinafter also "the Chamber") rejected the appeals, agreeing with the opinion of the trial judge as regards the participation of the alleged victims as perpetrators and considering that all the elements that constituted the crime of aggravated rape were present. Furthermore, with regard to the evidence that existed, the Chamber granted this the same evidentiary value, replicating the first instance judgment and substituting it in relation to civil responsibility.⁴⁰

51. The alleged victims filed cassation appeals against that decision before the Supreme Court of Justice. Pedro Castillo Mendoza's defense counsel argued that: (i) the Chamber had failed to take into account the attenuating circumstances in favor of the defendant such as his confession in his preliminary statement and the fact that he had no prior criminal record; (ii) the child died due to injuries to the neck and not due to the rape, and his client was not carrying the machete and had not been seen with it, from which it could be construed that it was not his client who killed the victim and that his client only participated in the rape.⁴¹ Roberto Girón's defense counsel argued that the Chamber erred in imposing the death penalty because it did not compare each piece of evidence with all the other evidence and there was no mention of the reasons it might have had to admit or to dismiss the probative elements and to reach conclusions with legal certainty.⁴²

52. On September 27, 1994, the Supreme Court of Justice (hereinafter also "the Supreme Court") rejected the cassation appeals. The grounds indicated by the Supreme Court were that the appellants had failed to comply with the requirements of the remedy of cassation. The Supreme Court indicated that no hypothesis had been presented, nor had the appeal cited articles of law that might have been infringed in the second instance judgment. Regarding legal error in the assessment of the evidence, it indicated that the appeal had not cited articles of law covering the rules for the assessment of evidence that had been violated in relation to

³⁸ Judgment of the First Criminal Trial Court of Escuintla of October 4, 1993 (evidence file, annexes to the Merits Report, annex 9, fs. 45 to 57).

³⁹ Judgment of the First Criminal Trial Court of Escuintla, *supra*.

⁴⁰ Cf. Judgment of the Twelfth Chamber of the Appellate Court of Guatemala rejecting the appeal on December 1, 1993 (evidence file, annexes to the answering brief, fs. 2492 to 2500).

⁴¹ Cf. Brief of Edy Iván Bocanegra Conde indicating the grounds for the cassation appeal filed on March 17, 1994 (evidence file, annexes to the Merits Report, annex 10, fs. 59 to 63).

⁴² Cf. Brief of LCC indicating the grounds for the cassation appeal filed on February 25, 1994 (evidence file, annexes to the Merits Report, annex 11, fs. 65 to 74).

the evidence whose assessment was contested.⁴³ It is an undisputed fact that Messrs. Girón and Castillo filed an application for amparo before the Constitutional Court and, on November 7, 1995, this was declared inadmissible.

53. On July 12, 1996, Pedro Castillo Mendoza and Roberto Girón filed an appeal for clemency before the President of the Republic, in which they argued that the different courts involved in the proceedings had failed to make a thorough analysis of the evidence that had been provided or of the violations of the law, and that the judgments handed down had been more political than legal; therefore, they asked that the death penalty be commuted to the maximum prison sentence.⁴⁴ This appeal was rejected on July 17, 1996, as follows:

That, the Executive Branch must act respecting the constitutional mandate that there is no subordination among the branches of the State. That, with regard to the administration of justice, this is a function and power that falls exclusively to the courts empowered to adjudicate and to ensure execution of the sentence, and the exercise of the said function and power must be respected by the other branches of the State, complying with the rulings of the courts, especially if the constitutional guarantees of due process have been respected and the right of defense has been exercised.⁴⁵

54. On July 20, 1996, the alleged victims filed an application for amparo against the President's decision before the Constitutional Court. On August 9, 1996, this was rejected.

55. On August 23, 1996, the alleged victims filed an appeal for review, through their lawyers, JSR and ASS. On August 29, 1996, the Criminal Chamber of the Supreme Court of Justice dismissed the application outright based on "article 547 of the Code of Criminal Procedure (Decree 51-92 of the Congress of the Republic), in force, [which established] that the rules of the abrogated Code of Criminal Procedure (Decree [...] 52-73 of the Congress of the Republic) will be applied to all those cases in which the order to go to trial had already been issued, as in the current proceedings, in which this was issued on May 12, 1993, at which time the abrogated code was in force."⁴⁶

56. On July 20, 1996, the lawyers CPL and VRC filed an application for amparo before the Constitutional Court against the first judge for execution of sentence, because he had notified the execution of the alleged victims on July 23, 1996, at 8 a.m. in the Canada Model Rehabilitation Center, of the Department of Escuintla. The Constitutional Court admitted the application for processing, ordered provisional protection and forwarded the case file to the Fourth Chamber of the Appellate Court which was the competent body. On August 11, 1996, the Fourth Chamber of the Appellate Court confirmed the provisional protection in favor of the accused, suspending the execution of the death penalty. On August 20, 1996, the Fourth Chamber of the Appellate Court decided, among other matters, to deny the application for amparo on the grounds that it was exceedingly inappropriate and to revoke the provisional protection granted on August 11, 1996.⁴⁷

⁴³ Cf. Judgment of the Supreme Court of Justice on the cassation appeals dated September 27, 1994 (evidence file, helpful evidence provided by the representatives, annex A.2, fs. 3123 to 3128).

⁴⁴ Cf. Appeal for clemency filed by Pedro Castillo Mendoza and Roberto Girón before the President of the Republic on July 12, 1996 (evidence file, annexes to the Merits Report, annex 12, fs. 76 to 82).

⁴⁵ Decision of the President of the Republic rejecting the appeal for clemency on July 17, 1996 (evidence file, annexes to the Merits Report, annex 13, f. 84).

⁴⁶ Report of the Government of Guatemala to the Inter-American Commission on Human Rights in Case No. 11,686 Roberto Girón and Pedro Castillo Mendoza dated December 27, 1996 (evidence file, annexes to the pleadings and motions brief, annex VI. G., fs. 1322 to 1326).

⁴⁷ The presentation of the application for amparo, the admission of a provisional amparo, and the suspension of the execution are undisputed facts. Cf. Report of the Government of Guatemala to the Inter-American Commission on Human Rights in Case No. 11,686, *supra*.

57. On September 13, 1996, Roberto Girón and Pedro Castillo Mendoza were executed by firing squad. The execution was televised.

VIII MERITS

58. The instant case relates to the State's alleged international responsibility for the imposition of the death penalty and the televised execution by firing squad of Roberto Girón and Pedro Castillo Mendoza based on a crime that established a mandatory death penalty in cases of aggravated rape, and also for the alleged violations of the minimum guarantees of due process during the criminal proceedings conducted against them. The Court will now consider and decide the merits of the dispute. To this end, it will examine: (1) the mandatory imposition of the death penalty on Roberto Girón and Pedro Castillo Mendoza; (2) the alleged violation of the personal integrity of Messrs. Girón and Castillo, and (3) the alleged violation of judicial guarantees.

59. This Court notes that although, in this case, the reprehensible conduct of the alleged victims resulted in criminal responsibility for the perpetration of the crimes described above (*supra* para. 1), it must be emphasized that the recognition of human rights and the duty to guarantee them, which is an obligation of the State, encompass all cases involving any individual and, consequently, the State must ensure their rights. Therefore, this Court reaffirms the State obligation to respect and ensure the rights of every person subject to their jurisdiction without any discrimination.⁴⁸

VIII-1 RIGHT TO LIFE⁴⁹

A. Arguments of the Commission and of the parties

60. The **Commission** concluded that the imposition and execution of the death penalty to the detriment of Roberto Girón and Pedro Castillo constituted arbitrary deprivation of life; consequently, Guatemala violated Article 4(1) and 4(2) of the Convention, in relation to the obligations contained in Articles 1(1) and 2 of this instrument, because it resulted from criminal proceedings conducted without strict compliance with judicial guarantees.

61. The **representatives** argued that, owing to disregard for the minimum guarantees of due process of Roberto Girón and Pedro Castillo Mendoza, they were arbitrarily deprived of life. They also indicated that, on October 4, 1993, the Criminal Trial Court of Escuintla decided to impose the mandatory death penalty for the crime of aggravated rape established in article 175 of the Criminal Code without taking into consideration the personal circumstances of either of the two defendants, which could have determined attenuating or aggravating circumstances in their regard. Consequently, they asked the Court to declare the State responsible for the violation of Article 4(1) and 4(2) of the American Convention because it had arbitrarily deprived Roberto Girón and Pedro Castillo Mendoza of their life, failing to comply with the provisions of Articles 1(1) and 2 of this instrument.

62. The **State** argued that the fact that the judgment was adverse to the defendants, and also the appeals that were filed on their behalf, including the request for clemency, did not allow it to be argued that the State acted "arbitrarily" and that, as a result, Roberto Girón and Pedro Castillo Mendoza were executed by firing squad. It also argued that it had respect due

⁴⁸ Article 1(1) of the American Convention.

⁴⁹ Article 4 of the American Convention.

process and that, in practice, the essential aspects of the proceedings had been subject to intense scrutiny by the media; a situation that was very different from the one reflected by the considerations of the Commission and the representatives.

B. Considerations of the Court

63. For the purposes of the examination of the alleged violation of the right to life of Roberto Girón and Pedro Castillo, it should be recalled that, in the recent case of *Martínez Coronado v. Guatemala*,⁵⁰ the Court underlined that in the exceptional cases in which States are permitted to impose the death penalty, this possibility is subject to a series of rigorous constraints. On the one hand, the Convention establishes that the death penalty may only be imposed for the most serious crimes (Article 4(2)) and, on the other, its application is absolutely excluded for political crimes or related common crimes (Article 4(4)). The fact that the American Convention reduces the possible sphere of application of the death penalty to the most serious crimes and not for political crimes or related common crimes reveals the intention that this punishment be considered applicable only in exceptional circumstances.

64. This Court also stresses the obligation of States to protect everyone by preventing crime, punishing those responsible, and maintaining public order, particularly in the case of acts such as those that resulted in the criminal proceedings conducted against Messrs. Girón and Castillo Mendoza; however, the States fight against crime must be conducted within limits and in keeping with procedures that permit the preservation of both public safety and full respect for human rights.⁵¹

65. That said, the Commission and the representatives argued the arbitrary violation of the right to life owing to the mandatory imposition of the death penalty established in article 175 of the Criminal Code. Based on the arguments of the parties, the Court considers that it must examine the alleged violation of Article 4(1) and 4(2) of the American Convention owing to the mandatory imposition of the death penalty established in article 175 of the Criminal Code.

B.1. Mandatory imposition of the death penalty established in article 175 (Decree 17-73) of the Criminal Code of the Republic of Guatemala

66. The representatives argued that Messrs. Girón and Castillo were arbitrarily deprived of their life owing to the death sentence established in article 175 of the Criminal Code, which indicated that this punishment was mandatory, without taking into account the personal circumstances of the perpetrators or the particular circumstances of the crime, as established in article 65 of the Criminal Code.⁵²

67. Accordingly, the Court must determine whether the death sentence imposed on the alleged victims in application of the said article 175 of the Criminal Code in force at the date of the judgment, conforms to Article 4 of the American Convention.

⁵⁰ Cf. *Case of Martínez Coronado v. Guatemala*, *supra*, paras. 62 to 67.

⁵¹ *Mutatis mutandis*, Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, paras. 89 and 204, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 178.

⁵² Article 65 established that: "In the judgment, the judge or court shall determine the corresponding punishment, within the maximum and the minimum indicated by law for each crime, taking into account the greater or lesser dangerousness of the perpetrator, the personal history of the latter and of the victim, the motive for the crime, the extent and intensity of the harm caused, and the attenuating or aggravating circumstances present in the act evaluated on the basis of their number and also on their essence or importance. The judge or court shall expressly record the elements mentioned in the preceding paragraph that it has considered determinant for regulating the punishment."

68. Article 175 of the Criminal Code in force in 1993 defined the crime of aggravated rape (*supra* para. 29), although this article was amended in May 1996 (*supra* para. 30) and subsequently abrogated (*supra* para. 35) by the time the judgment convicting the alleged victims was delivered.

69. In the judgment of October 4, 1993, the Criminal Trial Court of Escuintla (*supra* para. 48), established the following:

[...] As has been proven in these proceedings, the defendants, ROBERTO GIRON, only one last name, and PEDRO CASTILLO MENDOZA, are responsible for the crime of which they are accused of AGGRAVATED RAPE, pursuant to article 175 of the Criminal Code in force [...]. As the criminal responsibility of the defendants, ROBERTO GIRON, only one last name, and PEDRO CASTILLO MENDOZA has been established in these proceedings, pursuant to the law, the court must sentence them to the DEATH PENALTY. In current legal doctrine concerning this punishment, some are in disagreement with its application and even though the court advocates the non-application of this punishment, without entering into details, it must and has to respect the law to which it is subject and, for that reason, the aforementioned defendants are sentenced to the indicated death penalty [...].

THEREFORE: This court [...] DECLARES that: (I) the defendants ROBERTO GIRON, only one last name, and PEDRO CASTILLO MENDOZA, are responsible for the crime of AGGRAVATED RAPE, and based on this crime, criminal law imposes the DEATH PENALTY on each of them.

70. This Court notes that, in the Trial Court's judgment, the court imposed the death penalty because it was the mandatory punishment established in article 175 of the Criminal Code without taking into consideration any attenuating or aggravating circumstances. The Court recalls its considerations in the case of *Raxcacó Reyes v. Guatemala*,⁵³ referring to the United Nations Human Rights Committee, which considered "that the mandatory nature of the capital punishment under which the author was deprived of his right to life, prevented considering whether, in the specific circumstances of the case, this exceptional form of punishment was compatible with the provisions of the International Covenant on Civil and Political Rights," and also the Court's considerations in the case of *Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago*⁵⁴ regarding how the defendants were treated in application of the mandatory death penalty.

71. Article 175 of the Criminal Code, as it was drafted (*supra* para. 29), did not establish the application of any punishment other than the death penalty for the perpetration of the crime of aggravated rape in cases in which the victim was under ten years of age. The said article does not permit an assessment of the specific characteristics of the crime, nor the level of participation and culpability of the accused, circumstances that could attenuate the sentence imposed. The regulation of this crime automatically ordered the application of the death penalty to the perpetrators.

72. In view of the fact that the death penalty to which Roberto Girón and Pedro Castillo Mendoza were sentenced was based on the application of the punishment imposed by article 175 of the Criminal Code, in force at the time of the judgment, the Court considers that the State violated the prohibition of the arbitrary deprivation of life established in Article 4(1) and 4(2) of the American Convention, in relation to Articles 1(1) and 2 of the Convention, to the detriment of Messrs. Girón and Castillo.

73. Furthermore, the representatives argued that Roberto Girón and Pedro Castillo Mendoza presented a request for clemency on July 12, 1996, based on article 78 of the

⁵³ Cf. *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs, supra*, para. 79.

⁵⁴ 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. 103 to 109.*

Guatemalan Constitution in force⁵⁵ and indicated that the President of the Republic, in Decision No. 281-96122 of July 17, 1996, rejected this without due reasoning. They indicated that an application for amparo was filed against this decision before the Constitutional Court, in its capacity as Special Amparo Chamber, and this was decided on August 9, 1996; but, according to the representatives, "neither did this have the necessary conditions to be effective." According to the representatives, it appears that the system of appeals available under domestic law to achieve the commutation of a death sentence did not have the effectiveness required in the international sphere. In this regard, the decision of July 12, 1996, reveals that Guatemala processed and decided the request for clemency (*supra* para. 53) in compliance with the obligation derived from Article 4(6) and in observance of its international obligations. Consequently, the Court considers that, in the instant case, it did not violate Article 4(6) of the Convention.

C. Conclusion

74. Based on the foregoing, taking into consideration that the death sentence imposed on Roberto Girón and Pedro Castillo Mendoza and their subsequent execution by firing squad resulted from the mandatory imposition of the death penalty pursuant to article 175 of the Criminal Code, this Court concludes that, in the instant case, the State is responsible for the arbitrary deprivation of life in violation of Article 4(1) and 4(2) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Roberto Girón and Pedro Castillo Mendoza, without prejudice to the violations determined in the chapter on judicial guarantees (*infra* para. 123). In addition, the Court considers that Guatemala did not violate Article 4(6) of the Convention, in relation to Article 1(1) thereof.

VIII-2 PERSONAL INTEGRITY⁵⁶

A. Arguments of the Commission and of the parties

75. The **Commission** argued that the execution of the alleged victims transmitted by television constituted an act of humiliation and that one of them had to be given a coup de grâce because he had not died from the bullets fired by the firing squad. The Commission also argued that there were alternatives to execution by firing squad which caused less suffering. It added that the method of execution by firing squad constituted an act of torture to the detriment of Messrs. Girón and Castillo and concluded that the State had violated Article 5(1) and 5(2) of the American Convention, in relation to the obligations of Articles 1(1) and 2 of this instrument and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture (ICPPT).

76. The **representatives** argued that the death penalty and the time spent awaiting the execution caused Messrs. Girón and Castillo to endure an emotional situation of permanent anguish, and added that this emotional situation is usually aggravated if prison conditions are deficient. On this point, they specified that the alleged victims were imprisoned in "windowless cells" and in isolation within the Canada Model Prison. In addition, they argued that the method used to execute the death penalty by firing squad on September 13, 1996, was not the one that caused the least suffering because it produced prolonged agony and pain for the alleged victims, revealed by the case of Pedro Castillo Mendoza, who did not die from the bullets fired by the squad, but had to receive a "coup de grâce." In addition to this, they stressed that the execution of the death penalty was publicized because it was transmitted by national

⁵⁵ Constitution of the Republic of Guatemala, *supra*.

⁵⁶ Article 5 of the American Convention.

television. They added that the method of execution by firing squad constituted torture and concluded that the State had violated the right to personal integrity of Messrs. Girón and Castillo under Article 5(1) and 5(2) of the American Convention, in relation to Articles 1(1) and 2 of this instrument and Articles 1 and 6 of the ICPPT.

77. Regarding Article 5(1) and 5(2) of the American Convention, the **State** indicated that it was undeniable that capital punishment, whatsoever the method used to execute it, tends to affect the person who must be subjected to this punishment mentally and physically. It also indicated that neither the Commission nor the public defenders had specified the circumstances that proved that Roberto Girón and Pedro Castillo Mendoza were direct victims of torture or of degrading acts that endangered their physical integrity or life, a situation that the defense did not argue during the criminal proceedings against them. With regard to the alleged violation of Articles 1 and 6 of the ICPPT, it asked the Court to declare this claim inadmissible.

B. Considerations of the Court

78. It should be recalled that the Court has indicated that Article 5(1) of the Convention recognizes, in general terms, the right to personal integrity, both physical and mental and also moral. Meanwhile, Article 5(2) establishes, specifically, the absolute prohibition to subject someone to torture or to cruel, inhuman or degrading treatment or punishment. The Court understands that any violation of Article 5(2) of the American Convention necessarily involves the violation of Article 5(1) thereof.⁵⁷ The violation of the right to physical and mental integrity has diverse manifestations that range from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity based on endogenous and exogenous factors (duration of the treatment, age, sex, health, context and vulnerability, among others), which must be analyzed in each specific situation.⁵⁸

79. This Court has had the occasion to rule on the so-called “death row phenomenon” in the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* and in the case of *Raxcacó Reyes v. Guatemala*. The Court notes that, in both the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* and that of *Raxcacó Reyes v. Guatemala*, it assessed the expert opinions provided concerning the specific and intrinsic detention conditions of those condemned to death and victims in these cases, as well as concerning the concrete impact on them, which resulted in a violation of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument.⁵⁹ In addition, the European Court of

⁵⁷ Cf. *Case of Yvon Neptune v. Haiti, Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 177.

⁵⁸ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 177.

⁵⁹ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, supra*, paras. 167 to 172, and *Case of Raxcacó Reyes v. Guatemala supra*, paras. 97 to 102.

Human Rights,⁶⁰ the universal system of human rights,⁶¹ and several domestic courts⁶² have noted that the so-called “death row” violates the right to personal integrity owing to the anguish endured by those who have been condemned to death, a situation that gives rise to psychological traumas owing to the ever present and mounting anguish of awaiting execution of the death penalty;⁶³ consequently, it is considered cruel, inhuman and degrading treatment. Therefore, in order to determine the existence of a violation of personal integrity derived from imprisonment on death row, it is necessary to examine the personal circumstances of the individuals convicted and the particularities of the case in order to assess whether their stay on death row reaches the minimum level of severity to be categorized as cruel, inhuman or degrading treatment.⁶⁴

80. Furthermore, regarding the method used for the execution of the death penalty, the Court notes that diverse specialized bodies,⁶⁵ as well as opinions of the universal system⁶⁶ and other regional systems⁶⁷ for the protection of human rights expressly prohibit the methods of executing capital punishment that cause the greatest pain and suffering. In this regard, it is important to note that all methods of execution can inflict “inordinate pain and suffering”⁶⁸ and, therefore, if a State executes the death penalty, “it shall be carried out so as to inflict the minimum possible suffering,”⁶⁹ because “whatever the method of execution, the extinction of life involves some physical pain.”⁷⁰

⁶⁰ Cf. ECHR. *Öcalan v. Turkey* [GS], no. 46221/99, Judgment of May 12, 2005, paras. 166 to 169, and *Bader and Kanbor v. Sweden*, no. 13284/04, Judgment of November 8, 2005, paras. 42 to 48.

⁶¹ Cf. United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279 (2012), para. 42. The death row phenomenon is defined as follows: “It consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death. Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.” See also, Human Rights Committee, *Larrañaga v. Philippines*, CCPR/C/87/D/1421/2005 (2006), para. 7.11, and *Mwamba v. Zambia*, CCPR/C/98/D/1520/2006 (2010), para. 6.8.

⁶² Cf. Judgment of the Supreme Court of Zimbabwe of June 24, 1993, in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS); Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009, and Court of Appeal of Kenya, *Godfrey Mutiso v. Republic* (2010). See also, Supreme Court of Canada, *United States v. Burns*, 2001 SCC 7, paras. 118 to 123.

⁶³ Cf. ECHR. *Soering v. The United Kingdom*, no. 14038/88, Judgment of July 7, 1989, paras. 56, 81 and 111.

⁶⁴ Cf. ECHR. *Case of Ireland v. the United Kingdom*, no. 5310/71, Judgment of January 18, 1978, para. 162; *Case of Jalloh v. Germany* [GS], no. 54810/00, Judgment of July 11, 2006, para. 67 and *Case of Bouyid v. Belgium* [GS], no. 23380/09/03, Judgment of September 28, 2015, para. 86.

⁶⁵ Cf. Human Rights Committee, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 44; Economic and Social Council, Safeguards guaranteeing the protection of the rights of those facing the death penalty, Resolution 1984/50 of May 25, 1984, and EU Guidelines on Death Penalty, No. 8372/13 of April 12, 2013.

⁶⁶ Cf. Human Rights Committee, *Ng vs. Canada*, Views. Communication no. 469/1991 of November 5, 1993, paras. 16.2 and 16.4; Commission on Human Rights, The question of the death penalty, Human Rights Resolution 2005/59 (2005); Human Rights Committee, General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Article 7) (1992), para. 6; Human Rights Council, Question of the death penalty, A/HRC/24/18 (2013), paras. 59 to 61; Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, A/HRC/30/18 (2015), paras. 30 to 32; Human Rights Council, Question of the death penalty, A/HRC/39/19 (2018), para. 38.

⁶⁷ Cf. ECHR. *Al-Saadon and Mufdhi v. The United Kingdom* no. 61498/08, Judgment of March 2, 2010, para. 115; *Bader and Knabor v. Sweden*, no. 13284/04, Judgment of November 8, 2005, para. 42.

⁶⁸ Human Rights Council, A/HRC/30/18 (2015), *supra*, para. 32.

⁶⁹ Cf. Economic and Social Council, Safeguards guaranteeing the protection of the rights of those facing the death penalty, Resolution 1984/50 (1984), para. 9.

⁷⁰ Cf. ECHR. *Al-Saadon and Mufdhi v. The United Kingdom*, no. 61498/08, *supra*, para. 115.

81. In addition, various international bodies have indicated that methods of executions such as stoning,⁷¹ gas asphyxiation,⁷² "injection of untested lethal drugs, [...] burning and burying alive[,] public executions [...] and] other painful and humiliating methods of execution"⁷³ constitute cruel, inhuman and degrading treatment that violates the right to personal integrity.

82. Furthermore, the Special Rapporteur on extrajudicial executions has indicated that public executions constitute failure to comply with the prohibition of cruel, inhuman or degrading treatment or punishment.⁷⁴ Also, the Commission on Human Rights has indicated that the execution of capital punishment "shall not be carried out in public or in any other degrading manner."⁷⁵ In this sense, the Human Rights Council has urged States to refrain from conducting public executions because: "public executions are [...] incompatible with human dignity."⁷⁶

83. That said, in the instant case, it has been proved that Messrs. Girón and Castillo were sentenced to death and, subsequently, executed by firing squad (Decree No. 234)⁷⁷ for the perpetration of a crime established in article 175 of the Criminal Code. It has also been proved that the execution of the death sentence of Messrs. Girón and Castillo was suspended on two occasions⁷⁸ and that the execution of the alleged victims was transmitted by television.

84. In their opinion provided by affidavit, expert witnesses Edward Fitzgerald and Parvais Jabbar stated that "the death row phenomenon begins from the moment [...] that sentence is handed down and the convicted man has to contemplate the perspective of his execution."⁷⁹ On this point, the Court has indicated that the waiting time between the moment at which the death sentence is handed down and its execution produces mental anguish, extreme tension,

⁷¹ Cf. Commission on Human Rights, The question of the death penalty, Resolution 2005/59 (2005), para. 7.i; Human Rights Committee, Consideration of reports presented by States Parties under Article 40 of the Covenant: Sudan, CCPR/C/79/Add.85 (1997), para. 9; Human Rights Committee, Consideration of reports presented by States Parties under Article 40 of the Covenant: Yemen, CCPR/CO/84/YEM (2005), para. 15; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nigeria A/HRC/7/3/Add.4 (2007), summary, p. 2, and para. 56; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3 (2008), para. 40; ECHR. *Jabari v. Turkey* no. 40035/98, Judgment of July 11, 2000, paras. 41 and 42.

⁷² Cf. Human Rights Committee, *Chitat Ng vs. Canada*, CCPR/C/49/D/469/1991 (1994), para. 16.3.

⁷³ Human Rights Committee, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, *supra*, para. 40.

⁷⁴ Cf. Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, E/CN.4/2006/53/Add.3 (2006), para. 43.

⁷⁵ Cf. Commission on Human Rights, The question of the death penalty, Resolution 2005/59 (2005), para. 7.i.

⁷⁶ Human Rights Council, Question of the death penalty, A/HRC/39/19 (2018), para. 38. See also, Human Rights Committee, Consideration of reports presented by States Parties under Article 40 of the Covenant: Nigeria, CCPR/C/79/Add.65 (1996), para. 16; Human Rights Committee, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, *supra*, para. 44; Human Rights Committee, General Comment No. 20 (1992), *supra*, para. 6; Human Rights Council, Question of the death penalty, A/HRC/24/18 (2013), paras. 59 to 61, and Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, A/HRC/30/18 (2015), paras. 30 to 32.

⁷⁷ Article 7 of Decree No. 234 established that: "Following the reading of the decision, the prisoner shall be blindfolded; the head guard shall then place the squad responsible for the execution at a distance of six meters from the prisoner, in two separate rows, and shall give the order to fire to the first row. If necessary, the second row will repeat the shots. The forensic physician or the Health Unit that, by court order, must be present at executions, shall examine the person executed and decide whether a coup de grâce is required. When the execution has concluded, the order will be given to bury the corpse or it will be delivered to the next of kin who have requested this." *Diario de Centro América*, Volume XLVI, Decree Number 234.

⁷⁸ The first suspension was granted by an order of the First Court for execution of sentence of Guatemala on July 15, 1996, owing to the presentation of the request for clemency to the President of the Republic. The second suspension was granted by means of a provisional amparo, owing to an application for amparo contesting the President's decision to deny the request for clemency.

⁷⁹ Expert opinion of Edward Fitzgerald and Parvais Jabbar provided to the Court by affidavit (evidence file, affidavits and expert opinions, fs. 3061 to 3087).

and psychological trauma caused by the circumstances to which prisoners are exposed, which include the way in which the sentence was imposed, the disproportion between the crime committed and the punishment, and the failure to consider the personal characteristics of the accused, which, in sum, constitute cruel, inhuman and degrading treatment.⁸⁰

85. The Court notes that, for two years and 11 months, Messrs. Girón and Castillo remained under the constant threat that they could be executed at any time. As a result of the sentence they received, Messrs. Girón and Castillo had to contemplate the perspective of the extinction of their lives during this time. The Court also underlines that the way in which a death sentence is imposed may constitute a factor that determines its incompatibility with the provisions of Article 5 of the American Convention.⁸¹ The Court notes that Messrs. Girón and Castillo were sentenced to death as a result of criminal proceedings in which Article 4(1) and 4(2) of the Convention were violated, in addition to several principles relating to due process (*infra* para. 123).

86. The Court also notes that Decree No. 234 established the "firing squad" as a method of executing the death penalty and that this was subsequently substituted by "lethal injection" based on Decree No. 100-1996 of November 1996. The third considering paragraph of that decree reveals that the State recognized that, with the lethal injection procedure, there is a guarantee that it is effective within a very short time and involves minimum suffering for the persons concerned;⁸² therefore, it substituted the firing squad as the method of executing capital punishment. In this regard, the Court understands that the State changed the method of execution because it considered that the new method caused less suffering. However, it made this change after the execution of the alleged victims who were shot.

87. Furthermore, the Court notes that the television coverage of the execution of Messrs. Girón and Castillo was incompatible with human dignity. It constituted degrading treatment because the alleged victims in this case were treated as objects to illustrate that certain conducts were repudiated by society in Guatemala.

88. Consequently, the Court concludes that Messrs. Girón and Castillo endured severe mental suffering as a result of the anguish of knowing that they were on death row following proceedings that suffered from numerous flaws, as well as due to the coverage of the execution, which violated their right to physical, mental and moral integrity contained in Article 5(1) of the American Convention and constituted cruel, inhuman and degrading treatment contrary to Article 5(2) thereof, all in relation to Article 1(1) of this instrument.

89. Lastly, the Commission and the representatives argued that the method of executing the death penalty by firing squad constituted an act of torture. Based on the violations that the Court has already declared in this case, it considers that it is not necessary to rule in this regard.

C. Conclusion

⁸⁰ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 167.

⁸¹ Cf. ECHR, *Soering v. The United Kingdom*, no. 14038/88, *supra*, para. 106, and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, Judgment of April 12, 2005, para. 333.

⁸² The third considering paragraph of the law establishing the procedure for executing the death penalty, Decree No. 100-1996 of November 28, 1996, established that:

[...] Modern trends in forensic medicine recommend the use of the procedure of lethal injection for the execution of capital punishment; it combines the guarantee of its effectiveness in a very short time, with the minimum suffering for the person involved and, for this reason, it is desirable to adopt this method in the system for implementing Guatemalan criminal procedure and, therefore, the corresponding rules for its regulation must be issued.

90. This Court concludes that the State is responsible for the violation of the right not to be subjected to cruel, inhuman and degrading treatment established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Roberto Girón and Pedro Castillo.

VIII-3 RIGHT TO JUDICIAL GUARANTEES⁸³

A. Arguments of the Commission and of the parties

91. The **Commission** argued that Roberto Girón and Pedro Castillo Mendoza did not have defense counsel at least during the following procedures: (a) when providing their preliminary statements on April 19, 1993; (b) during the "confrontation" procedure between the defendants before the Second Trial Judge on May 5, 1993, and (c) on April 22, 1993, in the procedure at which their pre-trial detention was ordered. In addition, during the criminal proceedings against them for the crime of aggravated rape, law students were appointed to be their public defenders and, therefore, the State failed to guarantee a suitable professional defense during those proceedings. The Commission added that none of the numerous legal remedies filed conducted a control of the proceedings in relation to the violations of due process and as a result Messrs. Girón and Castillo were left in a situation of defenselessness.⁸⁴ Consequently, it concluded that the State had violated Article 8(2)(c) and 8(2)(e), in relation to Articles 1(1) and 2, of the American Convention, to the detriment of the two alleged victims.

92. The **representatives** reiterated the Commission's arguments and indicated that, the alleged victims had not had a professional defense during several procedures and, in others, the alleged lack of experience of the law students who represented them could be noted. Consequently, they argued that the State had violated: (a) Article 8(2)(d) at the time of their preliminary statement after they had been charged with the crime of aggravated rape, because Messrs. Girón and Castillo were not assisted by a lawyer at that time or during other procedural stages; (b) in relation to the previous paragraph, Article 8(2)(e), which establishes the minimum guarantee of being assisted by counsel provided by the State, because they were represented by law students rather than by a lawyer; (c) Article 8(2)(g), in relation to Article 8(3) of the Convention, because they were obliged to testify against themselves and were urged to tell the "truth"; in addition, Mr. Castillo was uneducated, and thus more easily influenced by the judge during his questioning, and neither his possible state of inebriation nor his not remembering anything about what happened was taken into consideration; (d) Article 8(2)(c), in relation to the time given to prepare the defense during the ordinary criminal proceedings, because the public defenders were not guaranteed adequate time and means to prepare their strategy and evidence; (e) Article 8(2)(f), because the defense counsel were unable to question the witnesses identified during the trial; (f) Articles 8(2)(h) and 25(1), because although the alleged victims "had access to the ordinary remedies of appeal that were available [...] these were not effective," and Article 8(5) because oral, public adversarial proceedings were not conducted, since procedural law in force at that time did not establish this procedure. Consequently, they asked the Court to declare that the State had violated the right to judicial guarantees and to judicial protection, pursuant to Article 8 as indicated above and Article 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument.

⁸³ Article 8 of the American Convention.

⁸⁴ For example, it indicated that the court decided to receive the statements of three witnesses; however, this procedure could not be conducted because Roberto Girón's defense counsel failed to comply with the legal formality to submit the list of question he would ask the witnesses to the judge.

93. The **State** argued that, all the actions in the criminal proceedings against Messrs. Girón and Castillo had been conducted with respect for the constitutional principle of the presumption of innocence, the criminal principle of temporality and in conformity with the criminal laws in force at that time. It also argued that the mechanism of non-professional defense counsel was established in the Code of Criminal Procedure; and such persons must “be of age, honorable, suitable, and in exercise of their civil rights.” According to the State, this provided “valuable practice for non-graduates; however, it had been discarded.” Based on these considerations, the State asked the Court not to declare its responsibility for the violation of Article 8(2), 8(2)(d), 8(2)(c) and 8(2)(e) of the Convention.

B. Considerations of the Court

94. First, it should be noted that the representatives alleged the violation of rights that had not been cited by the Commission. In this regard, it has been this Court’s consistent case law that the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided these relate to the facts contained in that document.⁸⁵

95. The Court has indicated that the right to due process refers to the series of requirements that must be observed during proceedings to ensure that individuals are able to defend their rights satisfactorily in relation to any act of the State, carried out by any public authority whether administrative, legislative or judicial, that could affect those rights.⁸⁶

96. In accordance with the American Convention, due process translates, above all, into the “judicial guarantees” recognized in its Article 8. This article contains a series of guarantees that condition the exercise of the State’s *ius puniendi* and that seek to ensure that the accused or the defendant is not subject to arbitrary decisions, because “the due guarantees” must be observed to ensure the right to due process of law whatsoever the procedure involved.⁸⁷ The maximum procedural guarantees must be respected starting with the first measures taken in legal proceedings in order to safeguard the defendant’s right of defense.⁸⁸ Furthermore, it is necessary to ensure the existence of the elements required for the greatest balance between the parties in order to guarantee the due defense of their interests and rights and this means, among other matters, that the adversarial principle applies.⁸⁹

97. The right of defense has two aspects during criminal proceedings: on the one hand, the actions of the defendant, the principal example of this being the possibility of providing a free statement concerning the facts attributed to him and, on the other, the technical defense

⁸⁵ Cf. *Case of the Five Pensioners v. Peru*, Merits, reparations and costs. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*. Merits, reparations and costs. Judgment of August 22, 2018. Series C No. 356, para. 133.

⁸⁶ Cf. *Case of the Constitutional Court v. Peru*. Merits, reparations and costs. Judgment of January 31, 2001. Series C No. 71, para. 71, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary objections, merits, reparations and costs. Judgment of March 8, 2018. Series C No. 350, para. 217.

⁸⁷ Cf. *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights*, Advisory Opinion OC-11/90, August 10, 1990. Series A No. 11, para. 28, and *Case of Colindres Schonenberg v. El Salvador*. Merits, reparations and costs. Judgment of February 4, 2019. Series C No. 373, para. 64.

⁸⁸ Cf. *Case of Palamara Iribarne v. Chile*. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 135, paras. 174 and 175, and *Case of Herrera Espinoza et al. v. Ecuador*. Preliminary objections, merits, reparations and costs. Judgment of September 1, 2016. Series C No. 316, para. 174.

⁸⁹ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 132, and *Case of Ruano Torres et al. v. El Salvador*. Merits, reparations and costs. Judgment of October 5, 2015. Series C No. 303, para. 152.

exercised by a legal professional whose role is to counsel the defendant on his rights and obligations and to execute, *inter alia*, a critical and legal control of the production of evidence.⁹⁰

98. That said, based on the arguments presented by the Commission and the representatives, the Court will focus its analysis on the alleged violation of the right to an adequate technical defense, which could result in other violations of the minimum guarantees of due process pursuant to Article 8 of the American Convention. For this analysis, the Court will first refer to the absence of a technical defense during several procedures and to the designation of law students as defense counsel and, finally, to other guarantees of the right of defense.

B.1. The absence of a technical defense for the defendants

99. The Court has indicated that the right of defense means that this must be effective, opportune, and conducted by qualified professionals so that it safeguards the specific interests of the defendant and is not merely a means to comply with a formality in order to legitimize the proceedings. Consequently, any form of “apparent” defense would violate the American Convention. Thus, “[t]he bond of trust must be protected in every way possible within the public defense systems and [therefore] expeditious and prompt mechanisms must exist so that the defendant may request that the standard of his defense be evaluated. Moreover, no public defender may subordinate the interests of his client to other social or institutional interests or to the preservation of ‘justice.’”⁹¹

100. Public defense corresponds to a State function or public service; however, it is a function that must enjoy the necessary autonomy for the satisfactory exercise of its role of providing counsel based on the best professional judgment and the interests of the accused. The Court considers that the State cannot be deemed responsible for all the flaws in the public defense, taking into account the independence of the profession and the professional judgment of the defense counsel. Thus, the Court considers that, as part of the State’s duty to ensure a satisfactory public defense, it is necessary to put in place adequate procedures for the selection of public defenders, develop oversight mechanisms for their work, and provide them with regular training sessions.⁹²

101. The Court has considered that appointing a public defender merely in order to comply with a procedural formality would amount to the absence of a technical defense. Consequently, public defenders must act diligently in order to protect the procedural guarantees of the accused and thus avoid the violation of his rights⁹³ and the rupture of the bond of trust. To this end, the public defense institution – as the means by which the State ensures the essential right of everyone accused of a crime to be assisted by a defense lawyer – must be provided with sufficient guarantees to enable it to act effectively and on an equal footing with the prosecution. The Court has recognized that, to comply with this duty, the State must take all

⁹⁰ Cf. *Case of Barreto Leiva v. Venezuela, Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 61, and *Case of Argüelles et al. v. Argentina, Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 177.

⁹¹ Cf. *Case of Ruano Torres et al. v. El Salvador, Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 158, and *Case of Martínez Coronado v. Guatemala, supra*, para. 84.

⁹² Cf. *Case of Ruano Torres et al. v. El Salvador, supra*, para. 163.

⁹³ Cf. *Case of Cabrera García and Montiel Flores v. Mexico, Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 155, and *Case of Martínez Coronado v. Guatemala, supra*, para. 83.

appropriate measures;⁹⁴ including having suitable and qualified defenders who are able to act with functional autonomy.

102. The Court considers that legal assistance must be provided by a legal professional in order to meet the requirements of a technical defense in which those subject to legal proceedings are counselled, *inter alia*, on the possibility of filing remedies against acts that infringe their rights.⁹⁵ Therefore, the Court confirms that, in the case of criminal proceedings, the defense must be conducted by a legal professional⁹⁶ because this signifies a guarantee of due process. Furthermore, the defendant must be advised of his rights and obligations and that due process will be respected. In addition, a lawyer is able, among other matters, to carry out a critical and legal control of the production of evidence and can adequately compensate the situation of vulnerability of individuals deprived of their liberty in relation to effective access to justice under equal terms.

103. Roberto Girón and Pedro Castillo were accused of the crime of aggravated rape on April 18, 1993, and the corresponding proceedings culminated in the death sentence. In the instant case, the legal debate is focused on the analysis of whether the right of defense was respected in the criminal proceedings involving the alleged victims and, in particular, whether the State provided them with an adequate technical defense because, according to the Commission and the representatives, they had no legal counsel during at least three procedures and, subsequently, the designated public defenders were law students, which had a negative impact on the result of the proceedings that prejudiced them.

104. It is argued, first, that the alleged victims had no legal counsel during at least three procedures: (a) during the preliminary statements provided by Roberto Girón and Pedro Castillo on April 19, 1993;⁹⁷ (b) during the confrontation between the two accused on May 5, 1993, and (c) when pre-trial detention was ordered on April 22, 1993.⁹⁸ Second, that the public defense designated law students to conduct the technical defense of the alleged victims.

105. Regarding these three procedures, the Court notes that: (a) in the case of the preliminary statements, according to the record for each statement, at that procedural stage the judge merely informed Roberto Girón and Pedro Castillo that “no one is obliged to testify against himself,” but he did not ask them whether they wished to make a statement or to keep silent, because there is no record that the deponents expressly accepted to continue the procedure. Nevertheless, they were then questioned and made their statements. In addition, the Court notes that the questions that the judge posed to the two deponents contained an affirmation of criminal responsibility for the facts, even when initially they had not accepted such responsibility; prompting, and leading or catch questions can also be observed; (b) the order of the Second Trial Court of April 22, 1993, requiring pre-trial detention contains no arguments in relation to the situation of Messrs. Girón and Castillo, and there is no record of

⁹⁴ 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. 159, and *Case of Martínez Coronado v. Guatemala, supra*, para. 83.

⁹⁵ *Case of Vélez Loor v. Panamá. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 132, and *Case of Argüelles et al. v. Argentina, supra*, para. 176.

⁹⁶ Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 61.

⁹⁷ Records with the preliminary statements of April 19, 1993, before the first trial judge which reveal that, when providing these, they were advised that they could “propose their own defense lawyer who could be present during this procedure and that they had five days to appoint their defense lawyer; to the contrary, the court would designate defense counsel, *ex officio*, indicating that this would be done later. Thereupon, they were questioned.”

⁹⁸ Order of the Second Trial Court of April 22, 1993, requiring pre-trial detention, so that Messrs. Girón and Castillo continued to be detained. In addition, in section X, paragraph 6, of the order, the court indicates that: “within the same period, the common intervenor that they appoint or that the court designates, *ex officio*, must indicate his domicile for notifications.” And, it was only on April 27, 1993, that the law student, LCC, was designated as Mr. Girón’s defender, and the law student, Edy Iván Bocanegra Conde, was designated as Mr. Castillo’s defender.

any intervention by a defense counsel, and (c) the record of the confrontation between the accused on May 5, 1993, indicates that “during the [...] procedure, only the two said accused [were] present, and not their corresponding defense counsel.”

106. Furthermore, it can be noted that the designation of law students as defenders occurred prior to the opening of the case to trial, at the procedural stage corresponding to the arguments of the oral hearing for sentencing; in other words, during the final arguments. At that stage, the alleged victims had already provided their preliminary statements and other evidentiary procedures had been conducted. The Court considers that it was necessary to have defense counsel from the start of the said procedural measures, due to their significance, their probative value, and their impact on the final decision.

107. Consequently, the Court concludes that Roberto Girón and Pedro Castillo were not assisted by defense counsel at the start of the proceedings, the stage at which measures of essential importance were conducted such as the provision of their preliminary statements, the order of pre-trial detention, and the confrontation arranged by the trial judge, even though at the time of this last procedure the corresponding defenders had already been designated, on April 27, 1993, all of which resulted in a violation of Article 8(2)(d) of the Convention.

108. In addition, it is undisputed that the public defense system designated two law students to conduct the alleged victims’ defense. The Court underlines that on April 27, 1993, the State made this designation and appointed LCC, as defense counsel for Mr. Girón, and Edy Iván Bocanegra Conde, as defense counsel for Mr. Castillo (*supra* para. 44). The State itself indicated that the Code of Criminal Procedure in force at the time permitted the appointment of law students to conduct the defense in criminal cases. It is also worth mentioning that, in the affidavit he provided to this Court, Pedro Castillo Mendoza’s public defense counsel stated that he had exercised this function without having any experience in criminal matters and, especially, in matters involving the death penalty.⁹⁹ This reveals that the defenders assigned to the alleged victims did not have adequate qualifications or experience in cases involving capital punishment. In the instant case, this situation is revealed by the fact that when the court ordered the reception of the statements of three witnesses offered by Mr. Girón’s defense, this procedure was not executed because the defense failed to comply with the legal formality of submitting the list of the questions he would ask the witnesses to the judge (*supra* para. 47).

109. It should be emphasized that according to the laws in force when the public defenders were appointed, the Guatemalan Code of Criminal Procedure established the possibility of individuals subject to criminal proceedings being defended by “articled law clerks” who had not yet graduated. This was established in article 154 of the said code which stipulated that “[t]he judge may also appoint as defenders articled law clerks from the country’s universities and law firms and, to this end, those entities shall send lists to the president of the judicial body. The lists shall be updated each year”; this article was later derogated.¹⁰⁰ However, as

⁹⁹ Cf. Affidavit provided to the Court by Edy Iván Bocanegra Conde dated February 26, 2019 (file of affidavits and expert opinions, fs. 2925 to 2935).

¹⁰⁰ Code of Criminal Procedure of the Republic of Guatemala, article 154, *supra*. It should be underlined that the State has amended this article in the Code of Criminal Procedure currently in force, promulgated by Decree No. 51-92, published on December 14, 1992, which entered into force following its publication in the Official Gazette, pursuant to its article 555 in Title IV on Derogation and Final Provisions. Also, article 93 establishes that “[o]nly active registered lawyers can be defense counsel. Judges shall not allow this provision to be violated by mandate,” and article 533 of the code stipulates as a requirement to occupy this function “[o]ne year of exercise of the profession or in judicial functions or in the prosecutorial function, which requires a law degree,” and “[p]roof of experience in criminal matters.” Meanwhile, regarding the legal aid clinics operated by law faculties as part of the Criminal Defense Public Service, article 544 establishes that “[s]tudents may not assume, autonomously, the task of defense counsel; they may only fulfill auxiliary collaborating functions, and may not substitute for the lawyers they assist in the acts inherent

this Court's case law has indicated repeatedly, respect for the guarantees of due process is more rigorous and strict in case involving the death penalty as a punishment, because "this punishment entails the deprivation of the most fundamental of rights, the right to life, with the consequent impossibility of reversing the punishment once it has been carried out."¹⁰¹ Therefore, in criminal cases in which the State exercises its *ius puniendi*, and in which the imposition of the punishment, such as capital punishment or the deprivation of liberty, has an irreversible effect on the rights to life and to personal liberty, this Court considers that the provision that the defense can be conducted by law students also constitutes a violation of Article 2 of the Convention.

110. Consequently, the Court considers that the persons designated as defenders in this case did not meet the requirement of being legal professionals because they were students who did not have the experience, competence and qualifications to conduct the defense of the defendants and, in this specific case, this had an evident impact on the defense of at least one of the accused because, due to the defender's inexperience, the evidence he had requested could not be provided.¹⁰² Therefore, Article 8(2)(e) of the Convention was violated.

111. Based on the foregoing, taking into account that the alleged victims were not appointed defense counsel from the start of the proceedings and that the aforementioned provisions did not allow them to have a suitable, qualified and effective defense to face criminal proceedings that could culminate with the imposition of the death penalty, as occurred in this case, because their defense fell to law students rather than to a law professional, this Court considers that the State was responsible for the violation of the rights established in Article 8(2)(e) and 8(2)(d) of the American Convention, in relation to Article 4(1) of the Convention, and to the obligations established in Articles 1(1) and 2 of the Convention, to the detriment of Roberto Girón and Pedro Castillo Mendoza.

112. The representatives also alleged the violation of Article 8(2)(f) of the Convention, because the judge suspended the procedure of receiving the testimonial evidence proposed by Mr. Girón's defender and, without grounds, rejected the list of questions that was submitted due to failure to comply with a formal requirement. They also alleged the violation of Article 8(2)(c) because the defense counsel did not have time to prepare the defense. Furthermore, they argued that the alleged victims were obliged to testify against themselves because, during their preliminary statements, they were "told not only to promise to tell the truth, but also that this statement would help their legal situation to be decided with justice," in violation of Article 8(2)(g), in relation to Article 8(3) of the Convention. This Court does not find it necessary to examine the said guarantees because it considers that the State's failure to provide an appropriate and professional defense opportunely had an impact on the other guarantees of Article 8(2) of the Convention alleged by the representatives.

B.2. Right to appeal the alleged victims' conviction

113. In its consistent case law, the Court has referred to the content and scope of Article 8(2)(h) of the Convention, as well as to the standards that must be observed to guarantee

in the latter's functions. Student are allowed to accompany lawyers during proceedings and debates, but may not intervene in these." Available at: https://www.congreso.gob.gt/detalle_pdf/Decrees/1220).

¹⁰¹ *Case of DaCosta Cadogan v. Barbados. Preliminary objections, merits, reparations and costs.* Judgment of September 24, 2009. Series C No. 204, para. 85.

¹⁰² According to the expert opinion of the lawyer, Luis Arroyo Zapatero, it is now possible to identify the "elements that constitute an effective legal defense in a case involving the death penalty and, it is very evident that a legal defender who is neither a lawyer nor a person with experience in intervening effectively in criminal proceedings in which the life of the accused is at stake cannot be considered an effective legal defender of someone sentenced to death; and someone who was not even a lawyer because they were both articulated law clerks" (file with evidence, affidavits and expert opinions, fs. 2979 to 2999).

the right to appeal the judgment before a higher judge or court. The Court has understood that this right consists in an essential minimum guarantee that “must be respected under due process of law in order to permit a sentence to be reviewed by a different and higher judge or court [...]”.¹⁰³ Bearing in mind that the judicial guarantees seek to ensure that the defendant in proceedings is not subject to arbitrary decisions, the Court has interpreted that the right to appeal the judgment cannot be effective if the State does not guarantee respect for everyone who has been convicted,¹⁰⁴ because a conviction is the manifestation of the State’s punitive power.¹⁰⁵ The Court has considered the right to appeal the judgment as one of the minimum guarantees of anyone who is subject to a criminal investigation and proceedings.¹⁰⁶

114. The Court has also indicated that Article 8(2)(h) of the Convention refers to an ordinary, accessible and effective remedy; in other words, it should not require great complexity that would render this right illusory. Therefore, minimum formalities should be required for the remedy to be admitted and these should not constitute an obstacle for it to fulfill its purpose of examining and deciding the grievances argued by the appellant; that is, it should obtain results that respond to the purpose for which it was conceived. It should be understood that, irrespective of the appeal regime or system adopted by the States Parties and the name given to the means for appealing against a conviction, for this to be effective it must constitute an appropriate means to obtain the rectification of an erroneous conviction. To this end, it must be able to examine the factual, evidentiary and legal questions on which the contested judgment was based because, in the jurisdictional activity, there is interdependence between the factual determinations and the application of the law, so that an erroneous determination of the facts entails an erroneous or undue application of the law. Consequently, the grounds for the admission of the remedy should make it possible to undertake a wide-ranging control of the contested aspects of the judgment.¹⁰⁷ The right to appeal the judgment before a higher judge or court may be conceived as the expression of the right to an effective judicial remedy pursuant to Article 25(1) of the Convention.

115. This Court recalls that Roberto Girón and Pedro Castillo Mendoza were sentenced to death by the judge of the First Criminal Trial Court of Escuintla on October 4, 1993. At the time the judgment was notified to Roberto Girón and Pedro Castillo Mendoza and to their lawyers, they filed an appeal against the said first instance judgment,¹⁰⁸ and this was heard by the Twelfth Chamber of the Appellate Court. The latter issued its ruling confirming the judgment on December 1, 1993, after assuming jurisdiction and conducting an analysis of the contested judgment pursuant to article 730 of the Code of Criminal Procedure,¹⁰⁹ and after reviewing the body of evidence incorporated into the proceedings and agreeing with the

¹⁰³ *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 158, and *Case of Gorioitía v. Argentina, supra*, para. 47.

¹⁰⁴ *Cf. Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 23, 2012. Series C No. 255, paras. 92 and 93, and *Case of Gorioitía v. Argentina, supra*, para. 47.

¹⁰⁵ *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 107, and *Case of Gorioitía v. Argentina, supra*, para. 47.

¹⁰⁶ *Cf. Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C No. 276, para. 85, and *Case of Gorioitía v. Argentina, supra*, para. 47.

¹⁰⁷ *Cf. Case of Herrera Ulloa v. Costa Rica, supra*, paras. 161, 164 and 165, and *Case of Gorioitía v. Argentina, supra*, para. 48.

¹⁰⁸ Indeed, it can be seen from the records of the notification of the judgment dated October 4, 1993, that both the convicted men, Roberto Girón and Pedro Castillo Mendoza, and their representatives, LCC and Edy Iván Bocanegra Conde, noted “I appeal” next to their signature (file of procedure before the Commission, fs. 663 to 665). This is corroborated by the decision of the First Criminal Trial Court of Escuintla, of October 12, 1993, admitting the “Remedy of appeal filed in the notifications of the judgment of October 4 this year, by the defendants, ROBERTO GIRÓN, a single last name, and PEDRO CASTILLO MENDOZA, and by the defense counsel [LCC] and Edy Iván Bocanegra Conde, [...]” (file of helpful evidence submitted by the representatives, f. 3121).

¹⁰⁹ “Article 730. As a result of an appeal or consultation, the second instance court shall make a comprehensive analysis of the first instance judgment, whether it favors or prejudices the person who has filed the remedy or the other procedural subjects.” Code of Criminal Procedure, August 1973, *supra*.

assessment of the evidence made by the trial judge, and his classification of the crime and the participation of the defendants in the unlawful act, merely amending the reference to civil responsibility in order to sentence the accused to pay a sum of money to the child's legal heirs.

116. That said, to rule on the effectiveness of the special remedy of appeal filed by the defendants in the criminal proceedings, the Court must analyze whether, as the representatives argue, according to the brief contesting the judgment, "the judges in all the instances failed to conduct a comprehensive examination of the contested decisions, because they did not observe the existence of violations of human rights and, especially, of several guarantees of due process [...]." However, it should be noted that the fact that a decision issued by an appellate court does not favor the interests of the appellant or validates the decision of the lower court does not necessarily mean that it has failed to analyze certain violations due to a formal element of the remedy of appeal that detracts from its effectiveness.

117. Consequently, the Court must examine the content of both the appeal filed and the ruling handed down in order to have the elements that will provide certainty that, in this specific case, there was a violation of the right to appeal the judgment. Nevertheless, in the instant case, it takes note that the procedure followed by the appellate court consisted in making an analysis of the judgment, taking into consideration the assessment of the evidence and the law made by the trial judge. Added to this, over and above the indication included on the notification of the judgments in which the alleged victims and their representatives expressed their intention of making an oral appeal, the body of evidence does not include any brief or record that describes the violations that have been alleged by the parties in this international litigation based on which the Court could determine whether the Twelfth Chamber failed to rule on any of the claims made in the appeals against the judgment. Therefore, due either to the particularity of the oral appeal that was filed or to the absence of briefs that would allow this Court to compare the matters appeals with what was decided, the Court lacks elements to rule on the alleged violation of the right to appeal the judgment before a higher judge or court established in Article 8(2)(h) of the American Convention.

B.3. Public nature of the criminal proceedings

118. Lastly, the **representatives** asked the Court to declare that the State was responsible for the violation of the right to public proceedings recognized in Article 8(5) of the American Convention, because the alleged victims had been tried and punished in written proceedings that violated the principles of the oral and public nature of the trial, as well as Article 8(1) of the Convention, regarding the right to be heard, in relation to Articles 1(1) and 2 of the Convention. They argued that "the criminal proceedings against Roberto Girón and Pedro Castillo Mendoza [...] were conducted without an oral, public and adversarial trial, because the procedural law in force at the time of their trial did not establish this procedure, but exclusively the possibility of presenting briefs with final arguments, or the same but with the request that the proceedings be opened to evidence, pursuant to article 621¹¹⁰ of the Code of Criminal Procedure (Decree 52-73), which did not establish the possibility for Messrs. Girón and Castillo, in their capacity as defendants, to have the opportunity to provide statements in the presence of the judge who would sentence them." The **Commission** did not allege these violations.

¹¹⁰ The said article 621 established: "In the order to open the case to trial, the judge shall require that the case file be made available to the procedural subjects for five ordinary days, so that they may be aware of the actions taken and can provide final arguments or request that the proceedings be opened to evidence. If they provide final arguments and do not expressly request that a day and time for a hearing be established, or if the five days pass without them doing so, the judge shall schedule a hearing and shall deliver judgement. Cf. Code of Criminal Procedure, *supra*."

119. The **State** argued that “[i]n 1993, the Code of Criminal Procedure adopted by Legislative Decree No. 52-73, of July 5, 1993, was in force, sanctioned by the Executive Branch on July 27 that year; [...] it was structured on the principles of a mixed model or a mixed adversarial model, divided into two stages; the first, a pre-trial stage conducted by a first instance judge or investigating magistrate,¹¹¹ and the second, the trial or plenary stage conducted by the sentencing judge.¹¹² The position of the procedural subjects sought for [the procedure] to be different at the two stages of the proceedings. [...] However, in forensic practice, the proceedings were always wholly inquisitorial, because the entire proceedings were based on a significant burden of proof as part of the investigation or pre-trial stage conducted by a judge as he considered appropriate.”

120. Article 8(5) of the American Convention establishes that “[c]riminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.” This Court has indicated that one of the principal characteristics that the substantiation of criminal proceedings should respect is their public nature, which is an essential element of the adversarial criminal procedural systems of a democratic State. This is guaranteed by holding an oral stage during which the defendant may have direct contact with the judge and the evidence and which facilitates access to the public. The right to public proceedings is protected by various international instruments as an essential element of the judicial guarantees.¹¹³ The purpose of the public nature of proceedings is to proscribe the secret administration of justice, subjecting it to the scrutiny of the parties and the public, and it relates to the need for the transparency and impartiality of the decisions taken. It is also a means for promoting confidence in the courts of justice. This public nature refers specifically to access to information on the proceedings for the parties and even for third parties.¹¹⁴

121. The Court notes that the laws in force at the time of the facts reveal that the proceedings were public, with the exception of those procedures that, due to their nature, could be confidential and secret during the investigation or the preliminary inquiries and up until the order to open the case to trial, according to article 14 of the Code of Criminal Procedure.¹¹⁵ Moreover, the possibility of conducting oral procedures was established during the pre-trial investigation and adjudication stages in criminal proceedings. In this case, various oral procedures were conducted during the pre-trial investigation stage. However, at the adjudication stage, despite the possibility of the reception of oral evidence, such evidence was rejected due to formal errors in the presentation of the list of questions for the witnesses.

122. Although this Court has indicated that an oral stage – during which the defendant may have direct contact with the judge and the evidence and which facilitates access to the public – is one of the guarantees associated with the principle of the public nature of proceedings, the public nature of proceedings is not the same as their oral nature. In this case, the alleged victims and their defense counsel had access to the case file and the evidence gathered against the former, so that the judicial actions conducted were not confidential or secret. Therefore,

¹¹¹ During the pre-trial or investigation stage, it is the judge who conducts the investigation while the parties may only propose the probative elements that the judge should obtain, if he considers these pertinent and useful.

¹¹² During the trial or plenary stage, the Code established a public, continuous and contradictory debate through procedural immediacy.

¹¹³ Cf. *Case of Palamara Iribarne v. Chile*, *supra*, para. 166.

¹¹⁴ Cf. *Case of Palamara Iribarne v. Chile*, *supra*, para. 168, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 217.

¹¹⁵ The said article 14 establishes:

The investigation stage, up until the order to open the case to trial, is confidential and secret as indicated in this code. The actions of the public prosecution are public, and interested parties may obtain any reports, attestations, copies or certifications they request, unless these refer to diplomatic or military matters, information provided by private individuals under a guarantee of confidentiality, or procedures that owing to their inherent and special nature require confidentiality. The judge shall rule on these matters under his own responsibility. Cf. Code of Criminal Procedure, *supra*.

the Court finds that there was no violation of the principle of the public nature of the proceedings established in Article 8(5) of the American Convention.

C. Conclusion

123. Based on the foregoing and taking into account that Messrs. Girón and Castillo did not have an opportune defense and, particularly, that they were not guaranteed the right to a professional defense in proceedings involving the death penalty, which resulted in the arbitrary deprivation of life of the alleged victims, the Court finds that the State is responsible for the violation of the rights recognized in Article 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 4(1) of the Convention, and Article 1(1) and 2 of the Convention, to the detriment of Roberto Girón and Pedro Castillo Mendoza. Finally, the Court considers that the State did not violate Article 8(5) of the American Convention to the detriment of Roberto Girón and Pedro Castillo Mendoza.

IX REPARATIONS

124. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused 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 international law on State responsibility.¹¹⁶

125. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation.¹¹⁷ If this is not possible, as in most cases of human rights violations, this Court will determine measures to guarantee the rights that have been violated and to redress the consequences of such violations.¹¹⁸ Therefore, the Court has found it necessary to grant diverse measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition, have special relevance for the harm caused.¹¹⁹

126. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Consequently, the Court must observe this concurrence in order to rule appropriately and in keeping with law.¹²⁰

127. Bearing in mind the violations declared in the previous chapters, the Court will proceed to examine the claims presented by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in its case law concerning the

¹¹⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Gorioitía v. Argentina, supra*, para. 59.

¹¹⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of Gorioitía v. Argentina, supra*, para. 60.

¹¹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of Gorioitía v. Argentina, supra*, para. 60.

¹¹⁹ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Gorioitía v. Argentina, supra*, para. 60.

¹²⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Gorioitía v. Argentina, supra*, para. 61.

nature and scope of the obligation to make reparation, in order to establish measures addressed at redressing the harm caused to the victims.¹²¹

128. International case law and in particular that of the Court has repeatedly established that the judgment constitutes, *per se*, a form of reparation.¹²² Nevertheless, considering the circumstances of this case and the violations committed against the victims, the Court finds it pertinent to establish other measures.

A. Injured party

129. The Court reiterates that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any right recognized therein, is considered an injured party. Therefore, the Court considers that Roberto Girón and Pedro Castillo Mendoza are the "injured party."¹²³

B. Measures of satisfaction

130. The **representatives** requested, as measures of satisfaction, that the Court order the State to publish the official summary and operative paragraphs of the judgment, once, in a national newspaper, in Spanish.

131. The **State** did not make specific reference to this measure.

132. In this regard, the Court finds, as it has in other cases,¹²⁴ 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, in an appropriate and legible font; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation in an appropriate and legible font, and (c) this judgment, in its entirety, available for one year on an official website, in a way that is accessible to the public. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the ninth operative paragraph of this judgment.

C. Other measures requested

133. The **representatives** also asked the Court to order Guatemala to adopt the following measures:

- a) Measures of satisfaction: (i) a public act to acknowledge international responsibility in Aldea Pinula, municipality of Tiquisate, Department of Escuintla, Republic of Guatemala, with the participation of the family members of Pedro Castillo Mendoza, alleged direct victim deceased. This act should be organized within one year of notification of the judgment that will be delivered; (ii) a public act to acknowledge international responsibility in the place determined by the family members of Roberto Girón – unidentified to date – as only the names of his two sons are known and they

¹²¹ Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of Gorioitía v. Argentina, supra*, para. 62.

¹²² Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56. and *Case of Gorioitía v. Argentina, supra*, para. 63.

¹²³ On this basis, all the claims for reparation made by the representatives and the Commission that refer to other persons who are not the injured party will not be examined or ruled on.

¹²⁴ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 79, and *Case of Gorioitía v. Argentina, supra*, para. 68.

should take part in that act if the State locates them. This act should be held within ten years of notification of the judgment that will be delivered; (iii) broadcast of the official summary and operative paragraphs of the judgment in Spanish, once, by a radio station with broad coverage, and (iv) offer of a public apology to the family members of Roberto Girón and Pedro Castillo Mendoza for the direct and indirect violations suffered.

b) Measures of rehabilitation: (i) considering the non-pecuniary violations suffered by the family members of the alleged victims, it is necessary that, with their consent, they are granted medical and psychological treatment in specialized centers, free of charge and without additional expenses, and (ii) include Dora Alicia Castillo Mendoza, Pedro Castillo Mendoza's sister, in a State housing program and provide adequate housing, free of charge and without additional expenses so that she can live with dignity, and

c) Measures of non-repetition: (i) "align the Constitution, the Criminal Code and the Military Code with the case law of the Constitutional Court in relation to the unconstitutionality of the element of dangerousness to justify the imposition of the death penalty in that legislation; (ii) align domestic law with the case law of the Constitutional Court and, through Congress, proceed to abolish the death penalty; (iii) align domestic law with the minimum standards of the American Convention, by ordering that the Congress of the Republic of Guatemala align constitutional, criminal and military justice with the case law of its Constitutional Court, in case file 5986-2016 of October 24, 2017, and, consequently, abrogate the death penalty by law pursuant to article 18 of the Constitution, and by application of the relevant international human rights instruments; (iv) adapt its domestic law to the Convention in order to guarantee respect for and full exercise of the rights recognized therein, especially the rights to judicial guarantees and judicial protection, under the right to due process in the context of the exercise of an opportune and effective material and technical defense provided with the necessary means and tools, because even though the Institute of Criminal Public Defense has been created, this was subsequent to the facts described in the instant case; this institute must also be able to provide an adequate public defense service, and (v) amend article 175 of the Criminal Code, so that its interpretation is not contrary to Article 4 of the Convention.

134. For its part, the **State** asked the Court to declare inadmissible the claims for reparation proposed by the Commission in its Report on Admissibility and Merits, and by the public defenders in their pleadings and motions brief.

135. With regard to the aforementioned measures of reparation, the Court notes that some of these do not have a causal nexus with the violations declared in this judgment – for example, the measures of rehabilitation requested – because they are unrelated to the direct victims in this case. It therefore considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order additional measures.

136. Regarding the representatives' mention of the unconstitutionality of the element of dangerousness,¹²⁵ although the Court has not examined this issue in the instant case, in its order of February 6, 2019, on monitoring compliance with judgment in the case of *Fermín Ramírez v. Guatemala*, it determined that the Constitutional Court of Guatemala had declared

¹²⁵ The representatives asked the Inter-American Court, as a guarantee of non-repetition, to determine the alignment of the Constitution, the Criminal Code and the Military Code with the case law of the Constitutional Court in relation to the unconstitutionality of the element of dangerousness to justify the imposition of the death penalty in that legislation.

that the penultimate part of article 132 of the Criminal Code was unconstitutional, and that as a result of this ruling, the dangerousness of the agent as a criterion to apply the death penalty had ceased to have effect on the day following the publication of the judgment of constitutional control. Therefore, the Inter-American Court concluded that the State had complied fully with the reparation “to refrain from applying the part of article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and to amend this provision within a reasonable time, aligning it with the American Convention, pursuant to its Article 2, in order to guarantee respect for the principle of legality established in Article 9 of this international instrument,” ordered in the eighth operative paragraph of that judgment.¹²⁶

137. Also, in the said order of February 6, 2019, the Court indicated that currently there were no prisoners sentenced to death, and that capital punishment had not been applied since 2002. In addition, it took note of the general suspension of the application of this punishment linked to compliance with the measure of reparation related to the obligation to regulate commutations of sentence in the Guatemalan jurisdiction.¹²⁷

138. In addition, regarding the representatives’ request for the amendment of article 175 of the Criminal Code in one of the measures of non-repetition requested, it should be noted that the said article was derogated by Decree No. 09-2009 (*supra* para. 35) on the Law against sexual violence and exploitation and trafficking of persons.

139. In this regard, it is not appropriate to reiterate to Guatemala measures of reparation on the alignment of the provisions of its domestic laws with the American Convention, because amendments have already been introduced in relation to the dangerousness of the agent in article 132 of the Guatemalan Criminal Code and with the derogation of article 175 of the Criminal Code.

D. Compensation

140. In relation to pecuniary compensation, the **representatives** indicated that the expenses related to the time spent in prison by Roberto Girón and Pedro Castillo Mendoza, together with their funeral expenses, fell under the heading of consequential damage and they asked that the Court establish, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars), to be shared equally among the surviving siblings of Pedro Castillo Mendoza, as he had neither wife nor children, as follows: for Berta Lidia Mendoza and Dora Alicia Castillo Mendoza, and the heirs of Blanca Delia Castillo Mendoza, the sum of US\$6,000.00 (six thousand United States dollars), and for Oscar Castillo Mendoza, the sum of US\$2,000.00 (two thousand), and an equal sum shared equally between the two sons of Roberto Girón and, if it is not possible to identify them, this should be received by his heirs, or if they are all deceased, the Court should deposit the sum as a donation to the Victims’ Legal Assistance Fund.

141. Regarding loss of earnings, the representatives made a calculation as of April 1993, because Roberto Girón and Pedro Castillo Mendoza worked as day laborers, earning 84 quetzals bi-monthly, as they mentioned in their preliminary statements, and they both did the same kind of work. It should be mentioned that this was not a steady job, rather the work was temporary and sporadic; however, it allowed them to support themselves. Therefore, the amount should be established, in equity, based on the minimum wage recognized in

¹²⁶ Cf. *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment, supra, considering paragraph 14*, and *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs, supra, eighth operative paragraph*.

¹²⁷ Cf. *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment, supra, considering paragraph 8*.

Guatemala at December 28, 2017, which was Q2,992.36 (two thousand nine hundred and ninety-two quetzals with 36/100). On this basis, the representatives asked the Court to determine, in equity, the sum of US\$30,000.00 (thirty thousand United States dollars), shared equally among each of the surviving siblings of Pedro Castillo Mendoza, as he had neither wife nor children, namely: Berta Lidia Mendoza, Dora Alicia Castillo Mendoza and Oscar Castillo Mendoza, and also the heirs of Blanca Delia Castillo Mendoza, and the same sum shared equally between the sons of Roberto Girón and if, at the date of delivery all of them are deceased, the Court should determine that it is received by their heirs, or if they are all deceased, the Court should deposit the sum as a donation to the Victims' Legal Assistance Fund.

142. Regarding non-pecuniary damage, the representatives indicated that, as compensation and to provide integral reparation, the sum of US\$500,000.00 (five hundred United States dollars) corresponded to Pedro Castillo Mendoza, to be shared equally between each of his surviving siblings, because he had neither wife nor children, namely: Berta Lidia Mendoza, Dora Alicia Castillo Mendoza and Oscar Castillo Mendoza, as well as the heirs of Blanca Delia Castillo Mendoza, and the sum of US\$500,000.00 (five hundred thousand United States dollars) in favor of Roberto Girón, to be shared equally between his two sons and, if they do not come forward, determine that this sum be received by his heirs. If all of them are deceased, the Court should deposit the sum as a donation to the Victims' Legal Assistance Fund.

143. The **State** asked the Court to declare that, from every point of view, the requests for reparation were inadmissible (*supra* para. 134).

D.1 Non-pecuniary damage

144. In consideration of the particularities of the instant case and the causal nexus of the violations declared, the Court will only rule on non-pecuniary damage.

145. This Court has determined that this concept "may include both the suffering and the afflictions caused to the direct victim and his close family, the impairment of values of great significance to the individual, and the changes of a non-pecuniary nature in the living conditions of the victims or their families."¹²⁸

146. In other cases in which the Court determined State responsibility for imposition of the death penalty¹²⁹ it did not consider compensation because the victims were not executed. Whereas, in the instant case, they were executed and the Court has declared the violation of Articles 4(1) and 4(2), 5(1) and 5(2), 8(2)(d) and 8(2)(e) of the American Convention. Therefore, given the particularities of this case, the Court finds it appropriate to establish compensation, in equity, of US\$10,000.00 (ten thousand United States dollars) in favor of each of the victims: Pedro Castillo Mendoza and Roberto Girón.

147. Based on the information provided by the representatives concerning the next of kin of Pedro Castillo Mendoza, the Court considers that the amount corresponding to the victim should be distributed in equal parts among his family members who were identified and who

¹²⁸ 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 Martínez Coronado v. Guatemala*, para. 113.

¹²⁹ *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs, supra*; *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs, supra*; *Case of Boyce et al. v. Barbados. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 169, and *Case of DaCosta Cadogan v. Barbados, supra*.

survived him,¹³⁰ namely: Dora Alicia Castillo Mendoza, Berta Lidia Mendoza and Oscar Castillo Mendoza, sisters and brother, respectively.

148. Based on the information provided by the representatives concerning the next of kin of Roberto Girón, the Court finds that the amount corresponding to the victim should be distributed in equal parts between his two sons.¹³¹ In their pleadings and motions brief, the representatives indicated that his sons were called Roberto Estuardo and Nolvía Concepción. Therefore, the Court establishes that, within one year of notification of this judgment, they must come forward and provide the necessary official information for their identification and proof of relationship to the State's competent authorities.

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

149. In the instant case, the necessary financial assistance from the Fund was granted to cover the costs of the affidavits prepared by Dora Alicia Castillo Mendoza de Luna and Berta Lidia Mendoza, as well as the testimonial statement of Edy Iván Bocanegra Conde; the expenses of the expert opinions of Luis Arroyo Zapatero, Enrique Oscar Stola, Alejandro Rodríguez Barillas and María Fernanda López Puleilo presented by affidavit. Also, for the other reasonable and necessary expenses incurred by the defenders in this case who needed to have personal contact with the members of Pedro Castillo Mendoza's family, travel, transfers, accommodation and per diem expenses for one inter-American defender were included.

150. In a note of the Court's Secretariat of August 23, 2019, a report was forwarded to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case which amounted to US\$1,271.54 (one thousand two hundred and seventy-one United States dollars and fifty-four cents) and, as stipulated in Article 5 of the Court's Rules for the Operation of the Fund, Guatemala was granted a time frame for presenting any observations it deemed pertinent. The State presented its observations on September 2, 2019, contesting the payment of the expenses for the preparation of the affidavits of the members of Mr. Castillo Mendoza's family because: (a) "it can be inferred that the State obtains no benefit from presenting observations, because the expenses for preparing the affidavits corresponding to [three deponents] were already paid by the Court [...] under the Victims' Legal Assistance Fund, which signifies *contradictorium situ*," and (b) it considered that "the honoraria charged by the notary for the affidavits is two-thirds greater than the average charged for similar acts by Guatemalan notaries," and (c) regarding "the expenses for preparing and sending the [two expert opinions] [...], the vouchers for those expense were not presented opportunely [...] and] their content did not provide any information that the Court did not already have."

151. In light of Article 5 of the Rules for the Operation of the Fund, owing to the violations declared in this judgment and that the requirements for access to the Fund were met, the Court orders the State to reimburse the said Fund the sum of US\$1,271.54 (one thousand two hundred and seventy-one United States dollars and fifty-four cents) for the necessary disbursements made. This sum must be reimbursed within six months of notification of this judgment.

¹³⁰ The representatives indicated that the said members of Pedro Castillo Mendoza's family who survive him are, his sisters, Dora Alicia and Berta Lidia, and brother, Oscar Castillo Mendoza; it was possible to locate them and they closely supported the victim during his trial and execution. At this time, his father, Emilio Castillo Gómez and his sister, Blanca Delia Castillo Mendoza, are deceased.

¹³¹ The representatives indicated that, in the case of Roberto Girón, it had not been possible to locate any member of his family at the date the pleadings and motions brief was submitted. However, the representatives also stated that a report prepared by a social worker indicated that Roberto Girón had two sons, Roberto Estuardo and Nolvía Concepción, with no further information. The representatives asked that they should also be provided with reparation as heirs of the direct victim.

F. Method for complying with the payments ordered

152. The State shall make the payment of the non-pecuniary compensation established in this judgment to the members of Pedro Castillo Mendoza's family within one year of notification of this judgment. Payment of the non-pecuniary compensation established in this judgment to Roberto Girón's two sons must be made within one year of their identification and accreditation before the corresponding authorities.

153. If any of the beneficiaries is deceased or dies before the respective compensation is delivered to them, this shall be delivered directly to their heirs in keeping with the applicable domestic law.

154. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in quetzals, using the exchange rate in force on the New York Stock Exchange (United States of America) on the day preceding the payment to make the calculation.

155. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it were not possible to pay the amounts established within the indicated time frame, the State shall deposit those amounts in their favor in a deposit account or certificate in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed after ten years the amounts shall be returned to the State with the interest accrued. If Mr. Giron's family members are not identified and do not come forward (*supra* para. 148), the State shall not deposit the corresponding amount established as non-pecuniary compensation.

156. The amounts allocated in this judgment as compensation shall be delivered to the persons indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges. If the State should incur arrears, including in the reimbursement of expenses to the Victim's Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Guatemala

X OPERATIVE PARAGRAPHS

157. Therefore,

THE COURT,

DECLARES:

unanimously, that:

1. The State is responsible for the violation of the right to life established in Article 4(1) and 4(2) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2 of the Convention, to the detriment of Roberto Girón and Pedro Castillo, pursuant to paragraphs 63 to 72 and 74 of this judgment.

2. The State is responsible for the violation of the right to personal integrity established in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to the obligation established in Article 1(1) of the Convention, to the detriment of Roberto Girón and Pedro Castillo, pursuant to paragraphs 78 to 88 and 90 of this judgment.

3. The State is responsible for the violation of the right to judicial guarantees established in Article 8(2)(d) and 8(2)(e) of the American Convention on Human Rights, in relation to Article 4(1) of the American Convention on Human Rights and to the obligations established in Articles 1(1) and 2 of the Convention, to the detriment of Roberto Girón and Pedro Castillo Mendoza, pursuant to paragraphs 94 to 111 and 123 of this judgment.

4. The State is not responsible for the violation of the right to request an amnesty, pardon or the commutation of the death penalty, and the principle of the public nature of proceedings established in Articles 4(6) and 8(5), respectively, of the American Convention on Human Rights, pursuant to paragraphs 73 and 74, and 120 to 122 and 123 of this judgment.

AND ESTABLISHES:

Unanimously, that:

5. This judgment constitutes, *per se*, a form of reparation.

6. The State shall make the publications indicated in paragraph 132 of this judgment.

7. The State shall pay the sum established in paragraph 146 of this judgment as compensation for non-pecuniary damage, pursuant to paragraphs 147 and 148 of this judgment.

8. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 151 of this judgment.

9. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 132 of this judgment.

10. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

IACtHR. Case of *Girón et al. v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of October 15, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary