



Organización de los  
Estados Americanos



## Inter-American Commission on Human Rights

Application before the Inter-American Court of Human Rights  
in the case of  
Gregoria Herminia Contreras et al.  
(Case 12.517)  
Against the Republic of El Salvador

### DELEGATES:

Paulo Sergio Pinheiro, Commissioner  
Santiago A. Canton, Executive Secretary

### ADVISORS:

Elizabeth Abi-Mershed  
Isabel Madariaga  
Silvia Serrano Guzmán

June 28, 2010  
1889 F Street, N.W.  
Washington, D.C., 20006

## INDEX

Gregoria Herminia Contreras y otros .....	
I. INTRODUCTION .....	3
II. PURPOSE OF THE APPLICATION .....	3
III. REPRESENTATION .....	5
IV. COMPETENCE OF THE COURT .....	5
V. PROCEEDING BEFORE THE INTER-AMERICAN COMMISSION.....	6
A. REGARDING THE CASE 12.494 (GREGORIA HERMINIA, SERAPIO CRISTIÁN AND JULIA INÉS CONTRERAS) .....	7
D. DECISION TO JOIN THE CASES AND FURTHER PROCESSING .....	9
VI. CONSIDERATIONS OF FACT .....	11
1. Context .....	11
VII. CONSIDERATIONS OF LAW .....	29
2. Rights to personal liberty, humane treatment, life, and juridical personality (Articles 7, 5, 4, and 3 of the American Convention in connection with Article 1(1) thereof) .....	35
3. Right to protection of the family and special protection of the children (Articles 17(1), 19, and 1(1) of the American Convention) .....	41
4. Right to a name and rights of the child in favor of the children (Articles 18, 19 and 1(1) of the American Convention) .....	47
5. Right to humane treatment of the families of the victims (Articles 5(1) and 1(1) of the American Convention).....	49
6. Right to a fair trial and judicial protection (Articles 8(1), 25(1), and 1(1) of the American Convention) .....	50
VIII. REPARATIONS AND COSTS .....	56
1. Obligation to redress .....	56
2. Beneficiaries.....	57
3. Measures of reparation in the present case .....	57
4. Costs and expenses .....	59
IX. PETITION.....	60
X. EVIDENCE.....	61
1. Documentary evidence .....	61
2. Expert testimony.....	64
XI. INFORMATION ON THE REPRESENTATIVES OF THE VICTIMS.....	64

**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
AGAINST THE REPUBLIC OF EL SALVADOR  
CASE 12.517  
GREGORIA HERMINIA CONTRERAS AND OTHERS**

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter referred to as the "Inter-American Commission," "the Commission," or "the IACHR") files with the Inter-American Court of Human Rights (hereinafter referred to as "the Inter-American Court" or "the Court") the application in case 12.517 Gregoria Herminia Contreras and others, against the Republic of El Salvador (hereinafter referred to as "the State of El Salvador," "the Salvadoran State," "El Salvador" or "the State") for the forced disappearance of the girls and boys Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera between 1981 and 1983 at the hands of members of various military bodies who conducted "counterinsurgency operations" in the context of the armed conflict holding sway over the country during those years. To date, the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera continues to be unknown. Regarding Gregoria Herminia Contreras, her whereabouts was determined in 2006 and currently she is in the process of rebuilding her identity and relationship with her biological family. The circumstances surrounding the six disappearances have not as yet been clarified, those responsible have not been identified or punished and, in sum, after almost 30 years, the facts continue in state of impunity.

2. The Inter-American Commission requests the Court to establish international liability of the Salvadoran State, which has failed to fulfill its international obligations and has violated Article 3 (right to juridical personality), Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 17 (rights of the family), Article 18 (right to a name), Article 19 (rights of the child), and Articles 8 and 25 (rights to a fair trial and judicial protection), with respect to the obligations set forth in Article 1.1 of the American Convention on Human Rights (hereinafter referred to as "the American Convention" or "the Convention").

3. The present case has been processed in accordance with the provisions of the American Convention and is submitted to the Court in conformity with the transitory provision contained in Article 79(2) of the Court's Rules of Procedure. A copy of report 95/09 drafted in compliance with Article 50 of the Convention is attached to the present complaint as an annex.<sup>1</sup> After being granted two extensions, the Salvadoran State has not fulfilled the recommendations made by the Commission.

**II. PURPOSE OF THE APPLICATION**

4. The purpose of the present application consists of respectfully requesting the Court to conclude and declare that:

---

<sup>1</sup> IACHR, Report No. 95/09 (Merits), Cases 12.494, 12.517 and 12.518 Gregoria Herminia Contreras and others, September 8, 2009. Appendix 1.

- a) El Salvador is responsible for violating the rights to juridical personality, to humane treatment, of the family, to a name and of the child, as set forth in Articles 3, 5, 7, 17, 18, and 19 of the American Convention, with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of Gregoria Herminia Contreras;
- b) El Salvador is responsible for violating the rights to juridical personality, to life, to humane treatment, to personal liberty, of the family and of the child, as set forth in Articles 3, 4, 5, 7, 17 and 19 of the American Convention, with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Ramírez, and José Rubén Rivera.
- c) El Salvador is responsible for violating the rights to humane treatment, of the family, to a fair trial, and to judicial protection, as set forth in Articles 5, 17, 8 and 25 of the American Convention with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of the persons specified in the respective sections.

5. As a result of the above, the Inter-American Commission requests the Court to order the State of El Salvador:

- a) To conduct an impartial, diligent and effective investigation of the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera, and if they are found, to order the restitution of their right to a name and to make all efforts required to ensure reunification with their respective families.
- b) To conduct an impartial, diligent and effective investigation of the circumstances surrounding the forced disappearances of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera, in order to identify those responsible and to impose the corresponding sanctions.
- c) To undertake administrative, criminal or other investigations to determine the legal consequences for the deeds or omissions of the state officials who contributed to the cover-up, refusal to administer justice and impunity with respect to the incidents of the case.
- d) To pay for pecuniary and non-pecuniary damages caused by the alleged violations in the present complaint.
- e) Order measures of satisfaction that include, at least, public acknowledgment of international liability and publication of the relevant parts of the judgment that might eventually be issued by the Court.
- f) Provide measures of redress for the benefit of Gregoria Herminia Contreras, her next of kin, as well as the next of kin of the other victims who continue to be missing.
- g) To effectively establish a national commission aimed at looking for young people who disappeared when they were children during the armed conflict, creating a web page for this search, and creating a genetic information system, in line with what was ordered by the Court in the judgment issued in the case of the Serrano Cruz sisters.
- h) To pay costs and expenses incurred in processing the present case in the Inter-American Commission and Court.

### III. REPRESENTATION

6. In conformity with the provisions of Article 24 of the Court's Rules of Procedure, the Commission has designated Commissioner Paulo Sérgio Pinheiro and its Executive Secretary, Santiago A. Canton, as its delegates in this case. The Deputy Executive Secretary, Elizabeth Abi-Mershed, and the attorneys Isabel Madariaga and Silvia Serrano Guzmán, specialists of the Commission's Executive Secretariat, have been appointed to act as legal counsel.

### IV. COMPETENCE OF THE COURT

7. According to Article 62(3) of the American Convention, the Inter-American Court is competent to hear any case regarding the interpretation and application of the provisions of the Convention submitted to it, as long as the States Parties in the case have recognized or recognize the Court's competence.

8. The Salvadoran State ratified the American Convention on June 23, 1978 and accepted the Court's contentious jurisdiction on June 6, 1995. The Salvadoran State, when recognizing the competence of the Inter-American Court, included the following statement:

(...) its acceptance is for an indefinite period, under the condition of reciprocity and on condition that the cases where the competence is recognized include solely and exclusively those incidents or legal actions subsequent to or incidents or legal actions whose principle of execution are subsequent to the date of deposit of the present Declaration of Acceptance, reserving itself the right to cease the competence at the time it deems it is timely.

9. The Inter-American Commission and Court have consistently contended that the forced disappearance of persons constitutes a multiple and continuous violation. As for the multiple character of the violation, the Commission and the Court agree that forced disappearance constitutes a violation of various rights protected by the American Convention, namely, those rights enshrined in Articles 3, 4, 5, 7, 8 and 25. As for the continuous nature of the violation, both bodies have repeated that forced disappearance extends until the victim's fate or whereabouts has been determined. The definition of the Inter-American Convention on Forced Disappearance of Persons<sup>2</sup> expressly enshrines this principle already recognized over the years by decisions made by the bodies of the Inter-American System.

10. Likewise, over the past decade, the Commission has been consistent in asserting that the multiple and continuous character of forced disappearance has implications for the competence over time of the bodies of the Inter-American System. Thus, in cases where the forced disappearance started before the ratification of the American Convention and/or acceptance of the Court's competence, the Commission has insisted that both bodies are empowered to issue a ruling about all the elements constituting the forced disappearance, because, as a result of the very nature of this violation, it is not

---

<sup>2</sup> See Articles II and III of the Inter-American Convention on Forced Disappearance of Persons.

Although El Salvador is not a party to the Inter-American Convention on Forced Disappearance of Persons, the Commission deems it relevant to mention it under this item because this instrument enshrines the principles that support the definition of forced disappearance and reflects an international consensus on the topic. The Inter-American Court referred to this consensus in the judgment of the case of *Radilla Pacheco v. Mexico* of November 23, 2009. Paragraph 140.

possible to fragment these elements or to determine that some fall within the scope of competence because they are continuous, whereas others fall outside the scope of competence because they are of immediate execution.

11. In its recent judgment in the case of *Radilla Pacheco v. Mexico*, the Inter-American Court indicated that the forced disappearance of persons requires a systematic and comprehensive analysis, implying the need of a comprehensive perspective of the phenomenon in reason of the “plurality of behaviors, that joined together toward a single purpose, permanently violate juridical rights protected by the Convention.”<sup>3</sup> In the words of the Court, “the analysis of forced disappearance shall include the totality of the facts presented for the Tribunal’s consideration (...). Only then will the legal analysis of the forced disappearance be in accordance with the complex violations of human rights it entails,<sup>4</sup> with its continued or permanent nature, and with the need to consider the context in which the facts occurred, in order to analyze its prolonged effects in time and focus comprehensively on its consequences (...).”<sup>5</sup>

12. On the basis of the above, the Inter-American Court dismissed the preliminary objections filed by Mexico questioning the Court’s competence over time and ruled on the violation of the obligation to respect and guarantee the rights enshrined in Article 3, 4, 5, 7, 8 and 25 of the Inter-American Convention as a result of the forced disappearance of the victim, an incident that had initially been executed before the adherence of the State of Mexico to the American Convention.

13. As shall be developed in the section on “factual grounds,” in the present case the fate or whereabouts of five of the victims has not as yet been established, whereas the whereabouts of Gregoria Herminia Contreras were established in 2006, that is, 11 years after El Salvador’s acceptance of competence.

14. The Commission considers that, because of the very nature of the forced disappearance of persons as a multiple and continuous violation that is prolonged and renewed with the passing of time while the fate or whereabouts of the victim remain undetermined, the Inter-American Court is has jurisdiction *ratione temporis* to rule on the facts substantiating the present complaint.

## V. PROCEEDING BEFORE THE INTER-AMERICAN COMMISSION<sup>6</sup>

---

<sup>3</sup> Inter-American Court of Human Rights, *Case of Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209. Paragraph 138.

<sup>4</sup> Inter-American Court of Human Rights, *Case of Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209. Paragraph 146. Citing: Inter-American Court of Human Rights, *Case of Anzualdo Castro v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202. Paragraph 67; and Inter-American Court of Human Rights, *Case of Ticona Estrada and others v. Bolivia*. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 191. Paragraph 70.

<sup>5</sup> Inter-American Court of Human Rights, *Case of Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209. Paragraph 146. Citing: Inter-American Court of Human Rights, *Case of Goiburú and others*. Judgment of September 22, 2006. Series C No. 153. Paragraph 85; and Inter-American Court of Human Rights, *Case of Anzualdo Castro v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202. Paragraph 67.

<sup>6</sup> The actions mentioned in this section can be found in the case file of the proceedings of the case filed with the IACHR. Appendix 3.

15. On November 16, 2001, petitions were received with respect to Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera from the Association for the Search of Missing Children (Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos), referred to as the Search Association and the Center for Justice and International Law (CEJIL), which were assigned numbers 779-01 and 880-01, respectively. On September 4, 2003, the petition regarding Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, was received and assigned number 708-03. After processing the petitions as required by the Rules of Procedure, the Commission ruled on the admissibility of the three petitions, as specified below.

**A. REGARDING THE CASE 12.494 (GREGORIA HERMINIA, SERAPIO CRISTIÁN AND JULIA INÉS CONTRERAS)**

16. On February 23, 2005 the IACHR adopted Report No. 11/05, in which it declared that petition 708-03, in connection with Gregoria Herminia, Serapio Cristián and Julia Inés Contreras was admissible. Pursuant to Article 37(2) of its Rules of Procedure the Commission assigned the petition case number 12.494. The parties were informed of the decision in a note dated March 17 of that year, which initiated the two-month period for the petitioners to submit their observations on merits in the case. At the same time, the IACHR placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention.

17. The petitioners informed the IACHR on April 8, 2005, that Asociación Pro-Búsqueda did not rule out the possibility of initiating a friendly settlement procedure with the Salvadoran state. However, they made their participation conditional on the existence of real willingness to settle the case by that mechanism.

18. On May 19, 2005, the petitioners requested an extension of the deadline to submit their observations on merits, which was granted. The State presented its comments on May 19 of that year. The petitioners submitted their observations on July 5, 2005. The State submitted further comments on September 6, 2005.

19. On October 20, 2005, during its 123rd regular session, the IACHR held a hearing on the "Determination of the whereabouts of children who disappeared during the internal armed conflict in El Salvador," which was attended by the petitioners in the instant case and the Salvadoran state.

20. Initially a hearing on merits in the case had been granted at the 125th Regular Session of the IACHR; however, this hearing was suspended at the request of the petitioners. That hearing was held on October 24, 2006 during the 126th Regular Session of the IACHR, at which Mrs. Maria Mora Contreras submitted her testimony. In the course of that hearing the State expressed its willingness to begin a friendly settlement procedure. In follow-up to the foregoing, on December 11, 2006, the State proposed the possibility of initiating a procedure for reaching a friendly settlement of mutual convenience.

21. On December 14, 2006, the petitioners provided information about Gregoria Herminia Contreras' reunion with her biological family. The State submitted additional arguments on February 15, 2007 and April 13, 2007. The petitioners presented further observations on merits and declined the State's offer, saying that it was not consistent with the arguments advanced by the State in the case. The State offered additional comments on merits on August 8, 2007. The petitioners furnished additional information on October 31, 2007. Finally, the State presented additional observations on January 7, 2008, and the petitioners submitted their final comments on February 25, 2008, which were duly relayed.

**B. REGARDING THE CASE 12.517 (ANA JULIA AND CARMELINA MEJÍA RAMÍREZ)**

22. On October 12, 2005, the IACHR adopted Report No. 56/05, in which it declared admissible petition 779-01 in connection with Ana Julia and Carmelina Mejía Ramírez. The IACHR assigned the petition case number 12.517, in accordance with Article 37(2) of its Rules of Procedure.

23. On October 20, 2005, during its 123rd regular session, the IACHR held a hearing on the "Determination of the whereabouts of children who disappeared during the internal armed conflict in El Salvador," which was attended by the petitioners in the instant case and the Salvadoran state.

24. The Commission forwarded the report to the petitioners and the State in a communication dated November 1, 2005, and gave the petitioners two months to submit observations on merits. It also placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention.

25. On January 31, 2006, the petitioners submitted their observations on merits, which were duly forwarded to the State. For its part, the State presented its observations on merits on March 13, 2006. On July 19, 2006, in the course of the 125th Regular Session of the IACHR, a hearing on merits was held at which the State raise the possibility of initiating a friendly settlement procedure.

26. On September 18, 2006, the State reiterated the suggestion put forward at the aforesaid hearing with regard to the possibility of initiating a friendly settlement procedure.

27. On November 3 of the year, the petitioners said that they were favorably disposed to the possibility of initiating a friendly settlement procedure but that first they needed to examine a proposal from the State. The State, for its part, reiterated its disposition in that regard on December 7, saying that it was "important to find common ground with the petitioners in order to explore their needs, so as not to present a proposal *in abstracto* [...]."

28. On March 20, 2007, the petitioners, due to the fact that they had not received a concrete proposal from the State, requested that "the process continue, in order to avoid delays in processing the case." The State, for its part, noted in a communication dated June 25, 2007, that it had been unable to proceed to find common ground with the petitioners "[...] because it was still waiting for the petitioners to accept the proposal [...]."

On August 30, 2007, the petitioners informed the Commission that they did not believe a friendly settlement procedure was appropriate. On November 3, 2007, the State reiterated its willingness to continue with the friendly settlement procedure with a view to drawing up a proposal to put to the petitioners. The latter replied on January 14, 2008, that they believed that "a friendly settlement procedure [was] not viable in the case in reference." This communication was duly relayed to the State. The petitioners reiterated their position in a communication dated October 16, 2008.

**C. REGARDING CASE 12.518 (JOSÉ RUBÉN RIVERA)**

29. On October 12, 2005, the IACHR adopted Report No. 53/05 in which it declared admissible petition 880-01 in connection with José Rubén Rivera. The IACHR assigned the petition case number 12.518, in accordance with Article 37(2) of its Rules of Procedure.

30. On October 20, 2005, during its 123rd regular session, the IACHR held a hearing on the "Determination of the whereabouts of children who disappeared during the internal armed conflict in El Salvador," which was attended by the petitioners in the instant case and the Salvadoran state.

31. The Commission forwarded the report to the petitioners and the State in a communication dated November 1, 2005, and gave the petitioners two months to submit observations on merits. It also placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention. The parties offered no comments with respect to the possibility of a friendly settlement.

32. On December 21, 2005, the petitioners requested an extension of the time limit to submit observations on merits, which was granted. The petitioners presented their observations on merits on February 13 and March 17, 2006. Those communications were duly forwarded to the State.

33. The State sent a communication to the IACHR on March 3, 2006, with a query as to the authority of the Inter-institutional Tracing Commission to investigate cases being processed by the IACHR, and on June 5, 2006, it submitted its observations on merits. The IACHR answered the State's query on October 20 of that year at a hearing held during its 125th Regular Session.<sup>7</sup> and in a communication dated December 14 of the year<sup>8</sup>. On June 5, 2006, the State submitted its observations on merits, which were conveyed to the petitioners. The petitioners supplied further information on May 2, 2007, which was transmitted to the State. The State's response was received on July 12, 2007.

34. The IACHR held a hearing on merits at its 128th Regular Session, on which occasion the State submitted new information in writing, which was transmitted to the petitioners together with a questionnaire based on questions posed by the IACHR at the hearing. The IACHR also sent the State a set of questions. The State submitted its response on August 31, 2007. For their part, the petitioners sent their responses on October 9 and November 15, 2007. The communications were duly relayed. On December 21, the IACHR received further information from the State and transmitted it to the petitioners. The latter replied on February 22, 2008.

#### **D. DECISION TO JOIN THE CASES AND FURTHER PROCESSING**

35. On March 3, 2009, the IACHR decided, in accordance with Article 29(d) of its Rules of Procedure, to join Cases 12.494 and 12.518 to Case 12.517, and to address

---

<sup>7</sup> Hearing on merits in Case 12.517, Ana Julia and Carmelina Mejía Ramírez.

<sup>8</sup> The State asked the IACHR if the Inter-institutional Tracing Commission should refrain from investigating cases under examination by the IACHR. The IACHR replied to the State at a hearing held during its 125th Regular Session and later in a letter dated December 14, 2006, in which it said, "The IACHR has consistently held in its case law that it is the duty of the State to investigate all human rights violations that come to its attention. Therefore, any investigation to determine the whereabouts of José Rubén Rivera is in compliance with its international obligation. Cases under examination by the IACHR are no exception to that obligation. However, upon seeking testimony from victims or alleged victims, it is necessary that said procedure be carried out in the presence of their representatives, in this case, *Asociación Pro Búsqueda*."

them in a single report on that basis that the children all went missing during the same period of internal strife in El Salvador and were denounced by the petitioners as part of a pattern of child disappearances. Furthermore, the domestic remedies invoked and the measures adopted by the government bear a similarity that warrants their joint treatment.

36. In the context of its 136 extraordinary period of sessions, on September 8, 2009, the Commission approved the merits report no. 95/09, according to Article 50 of the Convention. At the end of the report, the Commission stated:

Based on the considerations contained in the instant report, the Inter-American Commission on Human Rights concludes that the State of El Salvador violated the rights recognized in Articles 3, 4, 5, 7, 8, 17, 18, 19 and 25 of the American Convention on Human Rights, in connection with the obligations set forth in Article 1(1) of said instrument<sup>9</sup>.

37. In the said report, the IACHR recommended the State of El Salvador to:

1. Conduct a complete, impartial, and effective investigation to determine the whereabouts of Serapio Cristián and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera and, should they be found, provide them with adequate reparation for the human rights violations established herein, which includes restoration of their right to an identity and all the necessary efforts to ensure reunification with their families. Should be determined that any of them is no longer alive, adopt the necessary measures to deliver their remains to their families.
2. Conduct a complete, impartial, and effective investigation to determine the responsibility of all the authors of the human rights violations committed to the detriment of the victims including the necessary investigations to established the responsibility and respective sanctions of those who participated in the obstruction and denial of justice.
3. Provide adequate reparation to the victims in the instant case, which should include both material and non pecuniary damages.
4. Conduct and acknowledgement of responsibility and public apology for the violations established in the report<sup>10</sup>.

38. The merits report 95/09 was forwarded to the State of Peru on September 28, 2009 requesting it to send information about the measures adopted in order to comply with the recommendations in a period of two months. The relevant parts of the report were sent to the petitioners on October 22, 2009.

39. On October 29, 2009, petitioners expressed their interest in the submission of the case to the Inter – American Court. They sent the list of the victims and relatives, the documents regarding representation, the witnesses and expert witnesses available and their claims concerning compensation.

40. On December 1, 2009, the State requested an extension of two months to inform about the compliance with the recommendations. The State mentioned that: “the

---

<sup>9</sup> IACHR, Report No. 95/09 (merits), Cases 12.494. 12.517 y 12.518, Gregoria Herminia Contreras *et al*, September 8, 2009, para. 278. Appendix 1.

<sup>10</sup> IACHR, Report No. 95/09 (merits), Cases 12.494. 12.517 y 12.518, Gregoria Herminia Contreras *et al*, September 8, 2009, para. 279. Appendix 1.

present request includes an express declaration of renunciation of the lapse established in article 51.1 of the American Convention on Human Rights and leave open to the Commission the exercise of the faculties established in the said article”.

41. By communication of December 18, 2009, the Commission informed the State that it had granted the requested extension. In the same note, it requested the State to present a report about the progress made on compliance with the recommendations on February 10, 2010.

42. On February 24, 2010, the Salvadorian State presented a new request for a four months extension. In its request, the State indicated that it pretends to progress on the process of dialogue about compliance of the recommendations that has been initiated with the petitioners. On February 26, 2010, the IACHR granted the extension and requested the State to present a preliminary report on April 26, 2010 and a final report on compliance on June 14, 2010.

43. The State did not present the reports required by the IACHR. Given the lack of information regarding compliance with the recommendations, the Commission decided to submit the case to the Court’s jurisdiction.

## **VI. CONSIDERATIONS OF FACT**

### **1. Context**

44. The Inter-American Court has already established that “[f]rom approximately 1980 to 1991, El Salvador was engaged in an internal armed conflict during which forced disappearances occurred. The consequences of the latter were examined and discussed by the Commission on the Truth for El Salvador sponsored by the United Nations, the Inter-American Commission on Human Rights, international organizations, State authorities and bodies, and other organizations”<sup>11</sup>.

45. Since its inception, the Commission has been particularly concerned by the human rights situation in El Salvador, especially during the years of civil war that blighted the country. In that regard, in 1984 it expressed its concern at “the violence in El Salvador, where unlawful executions and disappearances continued.” As the Commission had pointed out in earlier reports, most such acts were committed by security forces and by paramilitary groups acting with impunity and outside the law. The fact that these crimes were never properly investigated seemed to indicate that these groups were operating with the Government’s tacit consent. According to data supplied to the Commission by various reliable sources, more than 2000 Salvadorans died in the period covered by this report.<sup>12</sup>

46. For its part, the UN Working Group on Enforced or Involuntary Disappearances has said, “The majority of the 2,661<sup>13</sup> reported cases of disappearance occurred between 1980 and 1983, in the context of the armed conflict between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN). Many people disappeared following arrest by uniformed soldiers or police, or were abducted in death-squad style operations carried out by armed men in civilian clothing, reportedly linked

---

<sup>11</sup> I/A Court H.R., *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, par. 48.1.

<sup>12</sup> Annex 1. IACHR, *Annual Report 1982-1983*, OEA/Ser.L/V/II.61, Doc. 22 rev. 1, September 27, 1983, p. 11.

<sup>13</sup> The Working Group says that these figures continue to be reviewed for accuracy.

to the army or to the security forces. Abductions of this kind were, in some cases, subsequently recognized as detentions, thus giving rise to allegations of links with the security forces”<sup>14</sup>.

47. The Working Group added, “During the period under review, concern was expressed by non-governmental organizations about the alleged failure of the authorities to investigate disappearances that occurred during the internal conflict which took place between 1980 and 1991, to identify those responsible and bring them to justice, or to compensate families of victims. Allegedly, the Attorney-General’s Office had not acted on decisions of the Constitutional Division of the Supreme Court in relation to writs of habeas corpus filed by families of disappeared children. The Court had urged the Office to take the necessary measures, in line with its constitutional powers, to fully establish the condition and whereabouts of the person concerned with the aim of safeguarding his/her fundamental right to physical freedom.”<sup>15</sup>

48. At the domestic level and in the framework of the Peace Agreements that brought an end to the internal armed conflict in El Salvador, on January 16, 1992, a Truth Commission was set up with a mandate to investigate the serious acts of violence that occurred from January 1980 to July 1991. The report of the Commission, issued in 1993, divided its study into four periods: 1980 to 1983; 1983 to 1987; 1987 to 1989, and 1989 to 1991. The first period, which frames the events in this case, was titled “The Institutionalization of Violence” and was described as a period in which “violence became systematic and terror and distrust reigned among the civilian population. The fragmentation of any opposition or dissident movement by means of arbitrary arrests, murders and selective and indiscriminate disappearances of leaders became common practice”<sup>16</sup>.

49. The Truth Commission described the patterns of violence of both agents of the State and members of the FMLN<sup>17</sup>. In its general overview, the CVR “registered more than 22,000 complaints of serious acts of violence that occurred in El Salvador [...] Over 60 per cent of all complaints concerned extrajudicial executions, over 25 per cent concerned enforced disappearances, and over 20 per cent included complaints of torture. Those giving testimony attributed almost 85 per cent of cases to agents of the State, paramilitary groups allied to them, and the death squads. Armed forces personnel were accused in almost 60 per cent of complaints, members of the security forces in approximately 25 per cent [...] The complaints registered accused FMLN in approximately 5 per cent of cases.”<sup>18</sup>.

50. Among the patterns of violence by agents of the State and their collaborators the Truth Commission found that “[a]ll the complaints indicate that this violence originated in a political mind-set that viewed political opponents as subversives and enemies [...] This situation is epitomized by the extrajudicial executions, enforced disappearances and murders of political opponents [...] Counter-insurgency policy found its

---

<sup>14</sup> Annex 2. Report of the Working Group on Forced or Involuntary Disappearances, United Nations Distr. GENERAL E/CN.4/2004/58, January 21, 2004, SPANISH, Original: ENGLISH, par. 109.

<sup>15</sup> *Idem*, pars. 110,111, 113.

<sup>16</sup> Annex 3. Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador), p. 19.

<sup>17</sup> The Truth Commission registered more than 800 complaints of serious acts of violence attributed to the FMLN. It found that this violence occurred mainly in conflict zones and that nearly half the complaints concerned deaths, mostly extrajudicial executions. The rest concern enforced disappearances and forcible recruitment.

<sup>18</sup> Annex 3. Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador), p. 41. The Commission points out that these complaints do not cover every act of violence, as it was able to receive only a significant sample in its three months of gathering testimony.

most extreme expression in a general practice of "cutting the guerrillas lifeline" [...] Roughly 50 per cent of all the complaints analyzed concern incidents which took place during the first two years, 1980 and 1981; more than 20 per cent took place in the following two years, 1982 and 1983. In other words, over 75 per cent of the serious acts of violence reported to the Commission on the Truth took place during first four years of the decade [...] The violence was less indiscriminate in urban areas, and also in rural areas after 1983. [Indeed,] 95 per cent of complaints concerned incidents in rural areas [...]”<sup>19</sup> It should be noted that the report of the Truth Commission does not include a special section on child disappearances in El Salvador; however, it included many such cases in its lists of missing persons.

51. Other research sources confirm that senior Salvadoran military officials knew about the practice of abduction and forced disappearance of children during military operations.

Retired General Adolfo Blandón, who was in charge of military operations in El Salvador as chief of staff of the Armed Forces from 1980 to 1988, recognized in an interview that children were captured in combat zones, although he said that he did not realize the extent of the problem until very recently. “I admit I made a mistake by not having complete control over these children,” he said over. “But... I never thought it was a serious problem. I repeat: I think it was a mistake on the part of the military high command”<sup>20</sup>.

52. In response to the need to look for the children who had disappeared, Executive Decree 45, issued on October 5, 2004, created the Inter-Institutional Commission to Trace Missing Children in El Salvador (hereinafter the “Tracing Commission”). Several international and national agencies have mentioned the need to create a tracing mechanism. They include the UN Committee on the Rights of the Child<sup>21</sup>, the Human Rights Ombudsman of El Salvador, and the petitioner in this case, Asociación Pro Búsqueda.

53. The Human Rights Ombudsman (PDH by the acronym in Spanish) has adopted a number of resolutions in this regard<sup>22</sup>, which are summarized in its resolution on disappeared children of 2003:

In 1996 and 1997 the PDH investigated the practice of forced disappearance of children in the context of the Salvadoran internal armed conflict. On March 30, 1998, the Acting Human Rights Ombudsman, Mr. Eduardo Urquilla Bermúdez, issued a resolution which determined that the Armed Forces of El Salvador bore responsibility

---

<sup>19</sup> Annex 3. Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador), p. 42.

<sup>20</sup> Annex 4. The Boston Globe, *A Country Awakes to the Reality of Its ‘Disappeared Children’*, article published on July 14, 1996, Steve Fainaru (non-official translation), <http://www.boston.com/globe/specialreports/1996/jul/salvador/salvador2.htm>. In a separate interview, General Adolfo Blandón referred to the office of human rights of the Armed Forces, whose responsibilities include studying the cases of disappeared children: “The office has not functioned like it should. Instead of letting it operate on its own, the Defense Minister must direct it to find the children who came from the battlefield in the hands of officials. They need to search intelligence records for information and call on every official who has such children to come forward.” See. Annex 5. The New York Times Magazine, *Salvador’s Disappeared Children*, Tina Rosenberg, Sunday edition, February 7, 1999, translated by Ligia Rubio-White, Gerardo Cotto and Ralph Sprenkels, pp. 11 and 12.

<sup>21</sup> Annex 6. Committee on the Rights of the Child, United Nations, 36th regular session, June 30, 2004, CRC/C/15/Add.232.

<sup>22</sup> Among them, Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998; Annex 7. Ruling of the Prosecutor’s Office for the Defense of Human Rights, Case file SS – 0449 – 96, February 10, 2003; Annex 8. Statement by the Prosecutor’s Office for the Defense of Human Rights regarding the establishment of a Commission to Look for Children who Disappeared during the Armed Conflict, on November 8, 2004.

in the forced disappearance of Reina Elizabeth Carrillo Panameño (aged five); Leonor López Rodríguez (aged two); Herminia Gregoria Contreras Recinos (aged five), Serapio Cristian Contreras Recinos (aged one) and Julia Inés Contreras Recinos (aged four months); Erlinda Serrano Cruz (aged seven) and Ernestina Serrano Cruz (aged three); and José Rubén Rivera (aged three)<sup>23</sup>. On March 14, 2002, the Office of the Ombudsman publicly expressed its "*Opinion on the creation of a Commission to investigate the whereabouts of the children who disappeared as a consequence of the armed conflict,*" which was forwarded to the Salvadoran Parliament so that said branch of government might implement the recommendations contained therein. *Inter alia*, the aforesaid opinion of this institution held that "the adoption of judicial, legislative, administrative, or any other type of measures to restore the identities of the children concerned is a most urgent and present legal and moral imperative for the Salvadoran State. As we have already mentioned, 'the debt of truth owed is far greater with respect to the girls and boys who disappeared during the armed conflict'.

The situation of the children who disappeared as a result of the armed conflict is a matter of the highest importance where human rights are concerned. It is an indisputable truth in the framework of human rights law and international humanitarian law that forced disappearance of persons constitutes one of the highest affronts to human dignity, which is why it has been characterized as one of the most hateful crimes against humanity. This universal repudiation of forced disappearance of persons is based on the fact that this form of human rights violation affects the most basic rights through the use and abuse of state power, from the fundamental right to life to the right to a fair trial, as has been unanimously recognized for years worldwide.

With regard to a group as vulnerable as children who have been torn from their family environment as a result of an armed conflict, the situation is, unquestionably, far more troubling. Apart from abridging the rights mentioned in the preceding paragraph, the violations suffered by disappeared children include impairment of their basic rights to an identity and to live in their family environment.

The offences associated with the child disappearances continue to this day. In other words, forced disappearance constitutes a continuing offence until the whereabouts of the victim have been established and the facts completely clarified. Therefore, it is an offense for which the statute of limitations has not lapsed. Hence, the State's obligation to investigate is a present duty. And this obligation should be performed by every means afforded by constitutional justice, criminal procedure, or other avenues of a judicial, administrative, or legislative nature, including special commissions of inquiry. Thus, a criminal inquiry is not incompatible with the adoption of other mechanisms to determine the whereabouts of 'disappeared' persons.

Based on the foregoing, it should be noted for the record that observance of the duty to clarify the final destination of the children who disappeared is the duty not only of the judiciary and Office of the Prosecutor General, but also of all the Salvadoran state authorities that were in one way or another involved in the situation that concerns us here, including the Armed Forces, Salvadoran Institute for the Protection of Children, Office of the Attorney General, and the National Civil Police. In fact, given the circumstances of the armed conflict in El Salvador, it is also incumbent on the Farabundo Martí Front for National Liberation (FMLN) to provide its contribution to these humanitarian efforts<sup>24</sup>.

---

<sup>23</sup> All the ages given are those of the victims at the time of their disappearance.

<sup>24</sup> Annex 7. Ruling of the Prosecutor's Office for the Defense of Human Rights, Case file SS – 0449 – 96, February 10, 2003.

54. Asociación Pro Búsqueda, an organization whose mandate has been to assist families in the search for the boys and girls who disappeared in El Salvador, has investigated the particular characteristics of the pattern of child disappearances. In its judgment on merits and reparations in the case of the Serrano-Cruz sisters, who were among those who disappeared in El Salvador, the Inter-American Court took the following facts as proven:

Asociación Pro-Búsqueda has received around 721 requests to trace children who disappeared during the armed conflict and has resolved about 246 of them. The Asociación Pro-Búsqueda has found children in several different situations: integrated into a family in El Salvador or abroad by adoption within the judicial system (formal adoptions) or by de facto adoption or abduction by civilians and members of the Armed Forces; brought up in orphanages or in military facilities, and it has learned of 12 cases of children who were murdered. It has found children in El Salvador and in 11 other countries of the Americas and Europe. Pro-Búsqueda is investigating 126 cases of international adoption, and also cases of alleged victims of the illicit trafficking in children [...]

In April 1999, the Asociación Pro-Búsqueda published a report in which it indicated that “there were at least [50] orphanages operating in El Salvador during the time of the conflict.” A document of the Salvadoran Red Cross mentioned that the “program to provide counseling and care to [the] displaced ha[d] been implemented most widely in Chalatenango[, ... from where] they [...had] brought 52 [orphaned children] ranging from new-born babies to just two of 12 years old]. For the information of the Executive Committee, these] children [were] accommodated in[:] the Rosa Virginia Home, the Centro de Observaciones de Menores, Tutelar de Menores, the Guirol Home in Santa Tecla, SOS Villages [...].” Most of the children who were sent to the orphanages at that time came from the armed conflict. Some of the approximately 52 cases of children who disappeared during the military operation known as the “guinda de mayo” in 1982 have been resolved and all the young people that the Asociación Pro-Búsqueda has traced were found alive.

In its investigations, Pro-Búsqueda only received State assistance from the Attorney General’s Office and from the Ombudsman’s Office. In collaboration with the latter, it reviewed and verified the files of the orphanages that were operating during the armed conflict. Pro-Búsqueda also had access to files before the domestic courts, but not to information filed in military facilities

Most of the children who entered an orphanage during the armed conflict had no documents to identify them, so they were registered in the mayors’ offices with other first and last names; usually those of one of the persons who had brought them up or of a fictitious person. This meant that relevant information, such as first and last names, and place and date of birth, was altered, which made it very difficult to trace them.<sup>25</sup>

55. Considering these sources and the Commission’s analysis in former cases, it holds that whether as a deliberate counterinsurgency strategy, a consequence of massacres and displacements, or a result of their subsequent abduction by members of the Armed Forces, the forced disappearance of children occurred as a regular pattern in the framework of military operations during the early 1980’s in El Salvador.

56. In the next sections, the IACHR will describe the established facts separately with respect to each family Group, given the different circumstances in which the disappearances took place. In the same line and even though some of the domestic procedures have commonalities and involve children of different family groups, the IACHR

---

<sup>25</sup> I/A Court H.R., *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, pars. 48(6), to 48(14).

considers it relevant to determine in each case the domestic procedures carried out before the *Procuraduría de Derechos Humanos*, the *Ministerio Público* and the judiciary.

**2. Gregoria Herminia<sup>26</sup>, Serapio Cristián y Julia Inés Contreras**

57. Gregoria Herminia Contreras was born on May 9, 1978, in San Vicente, El Salvador<sup>27</sup>.

58. Serapio Cristián Contreras, was born on December 5, 1980, in San Vicente, El Salvador<sup>28</sup>.

59. Julia Inés Contreras was born on April 20, 1982, in San Vicente, El Salvador<sup>29</sup>.

60. All three are siblings of Marta Daysi and Nelson Geovany<sup>30</sup>, and the children of Mrs. María Maura Contreras<sup>31</sup> and Mr. Fermín Recinos Ayala<sup>32</sup>, common-law spouse of Mrs. María Maura Contreras<sup>33</sup>.

**a. Events that surrounded their disappearance and the current situation of Gregoria Herminia**

61. On August 24, 1982, a military operation was carried out in several cantons in San Vicente department<sup>34</sup>. Units of the Fifth Infantry Brigade took part<sup>35</sup>. The civilian population called the operation the "invasion of the Ring," as it was deployed to form a military cordon. On the second day of the operation, that is, August 25, 1982, a group of civilians who had hidden in a place known as La Conacastada was indiscriminately attacked by military forces with firearms, causing the "rapid extermination of almost the entire group," including children, elderly people, and adults without any resistance having been offered. Among this group of noncombatants was the Contreras family, who tried to escape when the attack started and, therefore, were pursued by soldiers. It was in these circumstances that Mrs. María Maura Contreras saw how the soldiers caught Gregoria

---

<sup>26</sup> The Commission notes that in various documents in the record reference is made indistinctly to the names Gregoria Herminia and Herminia Gregoria. The Commission takes note of the name given on the birth certificate, which is Gregoria Herminia. The Commission also takes note that after the merits report 95/09, petitioners stated that the current name of the victim is Gregoria Jesús Molina.

<sup>27</sup> Annex 10. Birth certificate of Gregoria Herminia Contreras, issued on October 6, 1994.

<sup>28</sup> Annex 11. Birth certificate of Serapio Cristian Contreras, issued on June 29, 1993.

<sup>29</sup> Annex 12. Birth certificate of Julia Inés Contreras, issued on June 29, 1993.

<sup>30</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>31</sup> Annex 10. Birth certificate of Gregoria Herminia Contreras, issued on October 6, 1994; Annex 12. Birth certificate of Julia Inés Contreras, issued on June 29, 1993; Annex 11. Birth certificate of Serapio Cristian Contreras, issued on June 29, 1993.

<sup>32</sup> Annex 14. Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children.

<sup>33</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003, referring to the decision of the Human Rights Ombudsman, March 30, 1998.

<sup>34</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>35</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003. They mention the participation of, at least, elements of the Cavalry Regiment, Armed Forces Engineering School, and Armed Forces Communications Training Center.

Herminia, Serapio Cristián and Julia Inés Contreras, aged four, one year and eight months, and four months, respectively.<sup>36</sup>.

62. Mrs. María Maura Contreras, Mr. Fermín Recinos Ayala, and the two children who managed to escape with them stayed in the hills for several days for fear of being murdered. When they emerged they saw people who had been killed, raped, and burned. They try to find their children; they brought shovels but they could not find them.<sup>37</sup>.

63. At that time, Mrs. María Maura Contreras received news that her children had been evacuated by military personnel and had been seen alive at the military post in Río Frío canton<sup>38</sup>, to the north of the municipality of Tecoluca, where they were in the care of a young woman by the name of Antonia Alemán<sup>39</sup>.

64. Mrs. María Maura Contreras went to channels two, four, and six television networks to publicize what had happened, but was ignored. She also went to the presidential residence to try to speak to Mrs. Margarita de Cristiani but was unable to see her<sup>40</sup>.

65. In an account published by the Human Rights Commission of El Salvador, Mrs. María Maura Contreras described the physical characteristics of her missing children and the clothes they were wearing the day they were taken by the army<sup>41</sup>. In this account, Mrs. María Maura Contreras said, "I will not stop looking; they are my children; they were taken from me, and I have a right to find and hold them again. In my dreams they are still alive and they are waiting for me; that is what sustains my hope that I have not lost them"<sup>42</sup>.

66. On December 12, 2006, as a result of an investigation carried out by Asociación Pro Búsqueda and after her identity was confirmed by DNA tests, Gregoria

---

<sup>36</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>37</sup> Annex 16. Testimony by Ms. María Maura Contreras, given at the IACHR hearing held at its 126th regular session, October 24, 2006.

<sup>38</sup> Annex 14. Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children.

<sup>39</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003, referring to the decision of the Human Rights Ombudsman, March 30, 1998 which, in turn, mentions in this connection the testimony of a person from San Juan Buenavista who was detained in that place and later released.

<sup>40</sup> Annex 14. Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children.

<sup>41</sup> Annex 14. Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children. In this published accounts, Mrs. Contreras said, "I saw a soldier grab my five-year old girl, Herminia Gregoria Contreras Recinos, by the hair and they took her away with other children. At the time Herminia was wearing a little, light-blue, handmade dress with large red flowers; she was chubby, had black wavy hair, and dimples on her cheeks; I don't know if she still has them; she had brown skin and big light-brown eyes. She looked a lot like me and could speak very well; she could say her full name and knew the name of her dad, Fermín Recinos Ayala, and mine. They also took my two-year-old boy, Serapio Cristian Contreras. He was skinny, had brown skin, light-brown eyes, and black hair. He couldn't speak yet and was only wearing a shirt; he was barefoot. I couldn't carry all the children because I had my other daughter, Julia Inés Contreras, who was a four month-old baby, in my arms. But while I was climbing up a slope I slipped and dropped her and a soldier managed to grab her and took her along with the bag containing her food and clothes. The baby was wearing a pink organza dress; she was the chubby, light-skinned and had big yellow eyes."

<sup>42</sup> Annex 14. Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children.

Herminia Contreras and her parents were reunited. The family needed psychosocial assistance for this meeting<sup>43</sup>.

67. The petitioners reproduced Gregoria Herminia Contreras' account of what happened following her family's separation but said that they wish to keep her current place of residence in confidence, that the process of psychological help has not yet finished, and that a fresh deposition on what happened could reawaken painful memories. According to the petitioners, Gregoria Herminia said that one of the soldiers requested permission to keep her. The soldier first left her with relatives of his and she was later taken to the house of his mother, who registered her as her daughter, changing her given name and last name. According to Gregoria Herminia's testimony, she was subjected to different kinds of physical and psychological abuse and was forced to perform domestic labors. As a result of the mistreatment and threats from the soldiers' siblings, when she was 14 Gregoria Herminia decided to run away and she currently resides outside El Salvador.<sup>44</sup>

68. According to Gregoria Herminia's testimony, she was never told where she was from or the whereabouts of her parents. For years the soldier told her that she was the daughter of guerrillas, that her parents were dead, and that he had killed them<sup>45</sup>.

**b. Domestic proceedings**

**i. Investigation of the Human Rights Ombudsman**

69. On May 31, 1996, the Human Rights Ombudsman (hereinafter "the PDDH") opened an investigation in response to a complaint filed by Asociación Pro Búsqueda concerning the forced disappearance of, initially, 141 children in the framework of the armed conflict. Another four cases were subsequently added<sup>46</sup>.

70. The PDDH deemed it appropriate to process each case individually, in view of the gravity and scale of the complaint<sup>47</sup>. After hearing testimony from a series of witnesses and receiving information from the Ministry of National Defense about the person who was in charge of the Fifth Infantry Brigade at the time of the events, on March 30, 1998, the PDDH issued a decision which found:

The testimonial evidence has demonstrated that, as the complaint alleges, the minors (...) Herminia Gregoria Contreras Recinos, Serapio Cristian Contreras Recinos, Julia Inés Contreras Recinos, (...) have been the victims of forced disappearance attributed to personnel of the Armed Forces of El Salvador, who abducted and permanently separated them from their families (...) The parents, grandparents, or relatives of the aforementioned boys and girls, who continue to look for them, should also be considered victims of the crimes of forced disappearance.

(...)

---

<sup>43</sup> Annex 17. Press release of the Association for the Search of Missing Children on December 12, 2006. *Search Association finds one of the three Contreras children. Case for which El Salvador has been sued before the Inter-American Court of Human Rights.*

<sup>44</sup> Petitioners' briefs received on April 13 and October 31, 2007. See. Appendix III.

<sup>45</sup> Petitioners' briefs received on April 13 and October 31, 2007. See Appendix III.

<sup>46</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>47</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

In all of the cases, it is logical to surmise that there is little likelihood that there is any surviving documentary evidence of a civil nature in relation to the identities of the children or their movements. Far more remote is the possibility that, at the time, the families concerned would have reported these serious offences for the proper authorities to investigate.

(...)

A thorough investigation of such serious occurrences, which includes a determination of the number or identity of the victims, identification of the persons who carried out and orchestrated the killings, and the necessary criminal and forensic procedures, exceed the bounds of this non judicial investigation.

(...)

Furthermore, no record whatsoever was found in the cases investigated that the State promoted the physical and psychological recovery, as well as the social reintegration, of the abducted children<sup>48</sup>.

71. In its concluding points, the decision recommended that the Minister of National Defense and the Chairman of the Joint Chiefs of Staff of the Armed Forces order the necessary investigations in order to gather information about the operations and disappearances and to forward the findings of those investigations to the relevant courts, so that they might apportion the appropriate criminal liability and establish the whereabouts of the abducted children. It also determined to notify the Office of the Prosecutor General of the decision, so that it might institute the statutory proceedings.<sup>49</sup> On November 6, 1998, the PDDH transmitted this decision to the Office of the Prosecutor General.<sup>50</sup>

## **ii. Investigation of the Office of the Attorney General**

72. As a result of the foregoing, on March 16, 2000, the Unit for Crimes against Life and Physical Integrity opened a case in which Gregoria Herminia, Serapio Cristián, and Julia Inés Contreras, among others, were named as victims of the offense of “disappearance of persons.”<sup>51</sup>

73. On June 26, 2003, the prosecutor assigned to the investigation presented himself at the Fifth Infantry Brigade in the city of San Vicente, where he was received by a military investigating judge who told him that in order to carry out a thorough investigation into the disappearances, a meeting was necessary with the Brigade Command. This meeting was held the next day. At the meeting, a lieutenant explained that the “records of operations that the Fifth Infantry Brigade carried out in the 1980’s and 1990’s [we]re in the General Archive of the Ministry of National Defense, since they possess historic value.” The lieutenant added that any information of that nature could be provided by the Human Rights Department of the Office of Legal Affairs of the Ministry of Defense<sup>52</sup>.

---

<sup>48</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>49</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998; Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>50</sup> Annex 18. Letter addressed to the Office of the Attorney General of the Republic on November 6, 1998.

<sup>51</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>52</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

74. On January 29, 2004, an official letter was dispatched to the Office of the Commandant of the Fifth Infantry Brigade, requesting the entries in the "operations logbooks" for several military operations, including the one carried out on August 25, 1982, at the place known as La Conacastada in the Canton of San Juan Bellavista. The letter also requested the name of the Commandant of the Fifth Infantry Brigade at the time, the names of the battalions and officials that took part in those activities, as well as information regarding the possible evacuation, among others, of the Contreras Recinos children.<sup>53</sup>

75. On January 30, 2004 an inspection was scheduled to take place of La Conacastada in the Canton of San Juan Bellavista; however it was suspended because a lieutenant said that authorization was needed from the Ministry of Defense. The procedure was carried out on February 13, 2004, in the presence of the prosecutor assigned to the investigation and representatives of the Fifth Infantry Brigade headquartered at San Vicente. The purpose of this procedure was to locate the relatives of the siblings Gregoria Herminia, Serapio Cristián, and Julia Inés Contreras. It was noted for the record that there were no inhabitants or homes in that place, just remains indicating that it was inhabited in the past.<sup>54</sup>

76. The information available indicates that no further inquiries were made.

iii. ***Habeas corpus proceeding***

77. On October 16, 2002, Mrs. María Maura Contreras filed for a writ of habeas corpus with the Constitutional Chamber of the Supreme Court of Justice, alleging the disappearance of her three children, Serapio Cristián, Julia Inés, and Gregoria Herminia Contreras.<sup>55</sup>

78. The Chamber appointed an enforcing judge, who served a writ on the Minister of National Defense. This authority replied that none of the minors was deprived of liberty or being held at any of the military units of the Armed Forces, and that it was not possible to produce them. The Minister added that according to the Ministry archives and the files of the various military units there was no record or information connected with any possible restrictions on liberty. The enforcing judge also served a writ on the Chairman of the Joint Chiefs of Staff, who replied likewise.<sup>56</sup>

79. In line with constitutional procedure, the enforcing judge issued a report in which he mentioned that "there was no complete and organized record of the military units that took part in the military operations (...) furthermore there was no complete or detailed record of the name and rank of the military personnel alleged to have carried out those operations."<sup>57</sup>

---

<sup>53</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>54</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>55</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>56</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>57</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

80. The Constitutional Chamber of the Supreme Court of Justice returned the following ruling in its decision on February 17, 2003: “The violation having been recognized of the constitutional right to physical freedom of Serapio Cristián Contreras, Julia Inés Contreras, and Herminia Gregoria Contreras, and in accordance with (...) the Constitution, the Office of the Prosecutor General is ordered to adopt the necessary measures in line with its constitutional powers to determine in full the present circumstances of the beneficiaries Serapio Cristián Contreras, Julia Inés Contreras and Herminia Gregoria Contreras, in order to safeguard their fundamental right to liberty”.<sup>58</sup>

81. This decision was based on evidence, according to which it was not shown before the Tribunal that Serapio Cristián, Gregoria Herminia, and Julia Inés Contreras were deceased. It was also founded on the decision of the Human Rights Ombudsman of March 30, 1998, as well as on a recent change in case law, which permitted cases of forced disappearance to be taken up through *habeas corpus* actions<sup>59</sup>.

### **3. Ana Julia and Carmelina Mejía Ramírez**

82. Ana Julia Mejía Ramírez was born on April 12, 1966, in the canton of Cerro Pando, Municipality of Meanguera, Morazán, El Salvador<sup>60</sup>.

83. Carmelina Mejía Ramírez was born on June 27, 1974, in the canton of Cerro Pando, Municipality of Meanguera, Morazán, El Salvador<sup>61</sup>.

84. Both are the daughters of Arcadia Ramírez and Tiburcio Mejía<sup>62</sup> nieces of Reyna Dionila Portillo<sup>63</sup> y and sisters of Etelvina, Avenicio, Nelly y Verónica Ramírez<sup>64</sup>.

#### **a. Events that surrounded their disappearance**

85. On December 13, 1981, a counterinsurgency operation code-named “Operation Rescate” was carried out<sup>65</sup> which targeted, *inter alia*, the Canton of Cerro Pando, situated in Meanguera, Morazán department. The father and other relatives of the Mejía Ramírez girls were killed in that operation. Members of the Atlacatl Rapid Response Battalion, which was in charge of the operation, took Ana Julia and Carmelina Mejía Ramírez, aged 15 and 7, respectively. At approximately 11 a.m., the girls were taken to the home of Mrs. María Herminia Argueta; Mrs. Ester Pastora Guevara, the girls’ godmother, was also there. She told the soldiers that the girls could stay with her; however, at

---

<sup>58</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>59</sup> Annex 13. Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.

<sup>60</sup> Annex 20. Birth certificate of Ana Julia Mejía Ramírez, issued on January 11, 2006.

<sup>61</sup> Annex 21. Birth certificate of Carmelina Mejía Ramírez, issued on January 11, 2006.

<sup>62</sup> Annex 20. Birth certificate of Ana Julia Mejía Ramírez, issued on January 11, 2006, and Annex 21. Birth certificate of Carmelina Mejía Ramírez, issued on January 11, 2006.

<sup>63</sup> Annex 22. Filing of a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000.

<sup>64</sup> Information provided by the petitioners and not objected by the State.

<sup>65</sup> Annex 3. Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador) pp. 118, 119, 124, *et seq.* This report documents the operation as well as the participation of the Atlacatl Rapid Response Battalion. The report established that the operation was under the supervision of Colonel Jaime Flores Grijalva, Commandant of the Third Brigade. The report also found that Lieutenant Colonel Domingo Monterrosa Barrios, Commandant of the Atlacatl Battalion, was in command of the units taking part.

3 p.m. other members of the Atlacatl Battalion arrived and took Ana Julia and Carmelina away. That day, the girls were seen for the last time by Mr. Eusebio Martínez, an acquaintance of their father's, in the company of members of the aforesaid battalion outside a local church<sup>66</sup>.

86. To this day, the whereabouts of Ana Julia and Carmelina Mejía Ramírez remain unknown.

**b. Domestic proceedings**

**i. Investigation of the Second Lower Court in and for San Francisco Gotera**

87. On April 7, 1997, Mrs. Arcadia Ramírez, the mother of Ana Julia and Carmelina Mejía Ramírez filed a complaint charging the disappearance of her daughters with the Second Lower Court in and for San Francisco Gotera<sup>67</sup>. In her complaint, Mrs. Arcadia Ramírez Portillo provided an account of the circumstances in which her daughters disappeared, mentioned that she has no knowledge of their whereabouts, and suggested persons who would be able to testify about those facts<sup>68</sup>.

88. On May 2, 1997, three witnesses were subpoenaed<sup>69</sup>.

89. Mrs. María Herminia Argueta Quevedo appeared in court on June 10, 1997, and in her statement mentioned that members of the army brought the Mejía Ramírez girls to her residence on December 13, 1981, and then took them to an undisclosed destination<sup>70</sup>.

90. Mrs. Ester Pastora Guevara appeared in court on the same day and in her statement mentioned that she was at Mrs. María Herminia Argueta's home when they arrived with the Mejía Ramírez girls and some hours later when they took them away again<sup>71</sup>.

---

<sup>66</sup> Annex 22. Filing of a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000; Annex 23. Statement by María Herminia Argueta Quevedo to the Second Court of First Instance of San Francisco Gotera of June 10, 1997; Annex 24. Statement by Ester Pastora Guevara to the Second Court of First Instance of San Francisco Gotera of June 10, 1997; Annex 25. Statement by José Santos Argueta to the Second Court of First Instance of San Francisco Gotera of June 10, 1997; Annex 26. Report by Ms. Arcadia Ramírez to the Second Court of First Instance of San Francisco Gotera; Annex 27. Extended statement by Arcadia Ramírez Portillo to the Second Court of First Instance of San Francisco Gotera of October 28, 1997; Annex 28. Statements by Eusebio Martínez Luna and María Lucrecia Romero, both of February 19, 1999; Annex 29. Sworn statement by Mr. Eusebio Martínez of September 1, 2005; Annex 30. Sworn statement by Ester Pastora Guevara of September 2, 2005; Annex 31. Hoy (daily newspaper), Friday, December 11, 1981, p. 18; Annex 32. La Prensa Gráfica (daily newspaper), Wednesday, December 9, 1981, p. 3; Annex 33. La Prensa Gráfica (daily newspaper), Thursday, December 10, 1981, pp. 2 and 45.

<sup>67</sup> Annex 26. Report by Ms. Arcadia Ramírez to the Second Court of First Instance of San Francisco Gotera, and Annex 34. Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.

<sup>68</sup> Annex 26. Report by Ms. Arcadia Ramírez to the Second Court of First Instance of San Francisco Gotera.

<sup>69</sup> Annex 35. Brief of the Second Court of First Instance of San Francisco Gotera of May 2, 1997.

<sup>70</sup> Statement by María Herminia Argueta Quevedo to the Second Court of First Instance of San Francisco Gotera of June 10, 1997; Annex 23. Statement by María Herminia Argueta Quevedo to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.

<sup>71</sup> Annex 24. Statement by Ester Pastora Guevara to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.

91. Mr. José Santos Argueta also appeared in court that day and in his statement mentioned that on December 13, 1981, he saw two girls whose last name was Mejía with troops from the Atlacatl Battalion, who were resting outside a church<sup>72</sup>.

92. In that proceeding José Santos Argueta, María Herminia Argueta, and Ester Guevara were subpoenaed as witnesses, and they told the court that Mejía Ramírez girls were taken to a undisclosed destination by members of the Atlacatl Battalion on December 13, 1981, since when they had heard no more about them<sup>73</sup>.

93. On October 28, 1997, Mrs. Arcadia Ramírez Portillo extended her statement, reiterating that she has no knowledge of her daughters' whereabouts<sup>74</sup>.

94. On November 10, 1997, a "special agent" was appointed to represent the Office of the Prosecutor General in the investigation.

95. On June 25, 1998, this prosecutor sent official letters to the Chairman of the Joint Chiefs of Staff of the Armed Forces and the Minister of Defense, requesting them for information on the activities of the Atlacatl Rapid Response Battalion in Cerro Pando, Meanguera, Morazán department, on December 13, 1981. He also requested the names of the officers who were in command there at the time<sup>75</sup>.

96. The request for information was reiterated on September 5, 1998<sup>76</sup>.

97. On October 2, 1998, the Director-General of Divisions of the Ministry of National Defense reported that there was no information to suggest that the Atlacatl Rapid Response Battalion carried out an operation in the Canton of Cerro Pando and the surrounding area<sup>77</sup>.

98. On October 7, 1998, Mrs. Arcadia Ramírez Portillo appeared to give evidence and said that two other individuals had testimony to offer about the disappearance of her daughters because they had once told her that they had seen them on August 13, 1981<sup>78</sup>.

99. Those individuals were subpoenaed on February 15, 1999.<sup>79</sup>

100. Eusebio Martínez Luna and María Lucrecia Romero appeared to give evidence on February 19, 1999. In their statements they mentioned the disappearance of the Mejía Ramírez girls at the hands of the Atlacatl Battalion.<sup>80</sup>

---

<sup>72</sup> Annex 25. Statement by José Santos Argueta to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.

<sup>73</sup> Annex 34. Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.

<sup>74</sup> Annex 27. Extended statement by Arcadia Ramírez Portillo to the Second Court of First Instance of San Francisco Gotera of October 28, 1997; Annex 34. Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.

<sup>75</sup> Annex 36. Letters addressed to the Joint Chief of Staff and the Minister of Defense of June 25, 1998.

<sup>76</sup> Annex 37. Letters addressed to the Joint Chief of Staff and the Minister of Defense of September 5, 1998.

<sup>77</sup> Annex 34. Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.

<sup>78</sup> Annex 45. Statement by Arcadia Ramírez Portillo at the Second Court of First Instance of San Francisco Gotera of October 7, 1998.

<sup>79</sup> Annex 38. Court summons issued to Eusebio Martínez Luna and María Lucrecia Romero, both dated February 15, 1999.

101. On February 23, 1999, the Second Lower Court in and for San Francisco Gotera decided to suspend the proceeding for want of further information and the case was closed<sup>81</sup>.

ii. ***Habeas corpus* proceeding**

102. On November 10, 2000, Mrs. Reyna Dionila Portillo, the aunt of Ana Julia and Carmelina Mejía Ramírez, filed for a writ of *habeas corpus* on behalf of her nieces with the Constitutional Chamber of the Supreme Court of Justice<sup>82</sup>.

103. The Chamber appointed an enforcing judge, who served a writ on the Judge of the Second Lower Court in and for San Francisco Gotera. The latter reported that his court was presiding over the proceedings to investigate the forced disappearance of Ana Julia and Carmelina Mejía Ramírez. The enforcing judge told the Constitutional Chamber that it was not possible to serve a writ on the Commandant of the Atlacatl Rapid Response Infantry Battalion because he was demobilized after the Peace Agreements were signed. He also informed that it was not possible to serve a writ on the other officials mentioned in the *habeas corpus* petition because they had retired from military service.<sup>83</sup>

104. On March 20, 2002, the Constitutional Chamber of the Supreme Court of Justice issued its judgment on the *habeas corpus* proceeding<sup>84</sup>.

105. As regards jurisdiction, the Constitutional Chamber of the Supreme Court of Justice ruled that its competence with regard to *habeas corpus* covers "any restriction placed on the right to personal liberty." In this decision, the Constitutional Chamber changed its case law with respect to the scope of *habeas corpus*, extending it to include cases of alleged forced disappearance. In this connection, the Chamber found:

(...) this Chamber deems it apposite to take cognizance of the case *sub judice* and, therefore, to amend its sustained case law, so as not to exclude from its examination of the guarantee of *habeas corpus* such gross infringements of the right to liberty as forced disappearance or other situations that may arise. Therefore it is not proper - given the purposes pursued- to limit said guarantee only to situations of 'detention'; rather, it is imperative for it to act against any restriction imposed on situations not previously recognized by the law and the Constitution<sup>85</sup>.

106. As to the merits of the petition, the Constitutional Chamber held: that it was not established before the Chamber that the Mejía Ramírez girls were deceased; that an investigation was opened by the Second Lower Court in and for San Francisco Gotera; that there were statements from witnesses in that proceeding which concurred that the operation and the disappearance of the Mejía Ramírez girls took place; that in counterpoint, the said Second Court informed that "there was no record of any kind of operation at the

---

<sup>80</sup> Annex 28. Statements by Eusebio Martínez Luna and María Lucrecia Romero, both of February 19, 1999.

<sup>81</sup> Annex 34. Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.

<sup>82</sup> Annex 22. Filing of a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000.

<sup>83</sup> Annex 39. Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.

<sup>84</sup> Annex 39. Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.

<sup>85</sup> Annex 39. Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.

place and on the date indicated;" and that, in view of this contradiction, it was appropriate to decide in favor of the right to liberty<sup>86</sup>.

107. Accordingly, the Constitutional Chamber ruled as follows: "The violation having been recognized of the constitutional right to physical freedom of Serapio Cristián Contreras, Julia Inés Contreras, and Herminia Gregoria Contreras, and in accordance with (...) the Constitution, the Office of the Prosecutor General is ordered to adopt the necessary measures in line with its constitutional powers to determine in full the present circumstances of the beneficiaries Serapio Cristián Contreras, Julia Inés Contreras and Herminia Gregoria Contreras, in order to safeguard their fundamental right to liberty"<sup>87</sup>.

108. The Office of the Prosecutor General was notified of this decision on March 22, 2002.<sup>88</sup> There is no information on subsequent proceedings.

#### **4. José Rubén Rivera**

109. José Rubén Rivera is the son of Agustín Antonio Rivera Gálvez and Margarita Dolores Rivera de Rivera. His brothers are Juan Carlos and Agustín Antonio and José Daniel. At the time of the events the Rivera Rivera family resided in the Canton of La Joya, San Vicente Department<sup>89</sup>.

##### **a. Events that surrounded his disappearance**

110. In 1981 the civilian population of La Joya began to be affected by military operations that were initially carried out over short periods of time by not overly large groups of soldiers. Therefore, although the population took refuge in "the hills" when operations were carried out, they were able to return to their homes with some frequency. In 1982 conditions worsened as the Armed Forces established an increasingly permanent presence. In 1983 "the scale of the operations increased to massive levels"<sup>90</sup>.

111. In this context, on May 17, 1983, elements of the Fifth Infantry Brigade and troopers from the Cañas Battalion invaded the Canton of La Joya, which led dozens of families to flee and take refuge on the mountain known as El Moncholo. Among these people was Mrs. Margarita Dolores Rivera<sup>91</sup>, who had her three sons with her and was eight months pregnant. In these circumstances and in response to an offer of help from José David Rivera –her husband's nephew– Mrs. Margarita Dolores Rivera agreed to let the latter take her son José Rubén, who was three years old, on horseback, after which she lost sight of them. The following day, the Armed Forces launched a fresh incursion in the area, which led José David Rivera to flee, leaving behind the boy José Ruben Rivera, who was taken away by the soldiers. José David Rivera managed to get away and on returning to the refuge told Mrs. Margarita Dolores Rivera what had happened<sup>92</sup>.

---

<sup>86</sup> Annex 39. Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.

<sup>87</sup> Annex 39. Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.

<sup>88</sup> Annex 40. Notification to the Office of the Attorney General of the Republic of March 22, 2002.

<sup>89</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.

<sup>90</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.

<sup>91</sup> The decision of the PDDH refers to "María de Dolores Rivera"; however, the Commission understands that this is a material error and that the account given is that of Mrs. Margarita Dolores Rivera, the mother of José Rubén Rivera.

<sup>92</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.

112. The day after the Armed Forces withdrew from the mountain and José Ruben Rivera's father began to look for his son. He received news that he had been seen being carried by soldiers on horseback. He also received reports indicating that he had been seen at the headquarters of the Fifth Infantry Brigade in the city of San Vicente<sup>93</sup>.

113. To this day she has no knowledge of the whereabouts of José Rubén Rivera.

**b. Domestic proceedings**

**i. Investigation carried out by the Second Examining Court in and for San Vicente**

114. On November 15, 1996, Mrs. Margarita Rivera, mother of José Rubén Rivera, filed a criminal complaint with the Second Criminal Court in and for San Vicente. On the same day an investigation was opened into the disappearance of José Rubén Rivera and registered as case 479-3-96<sup>94</sup>.

115. On May 14, 1997, an official letter was sent to the Commandant of the Fifth Infantry Brigade to enquire if there was any record of the boy's entry to said institution. The court received a reply on May 22, 1997, stating that there was no information that mentioned him<sup>95</sup>.

116. On July 29, 1997, the judge again wrote to the Fifth Brigade to request the institution's records, and informed that the inspection would be carried out on August 8, 1997. On August 12, 1997, the Commandant of the Fifth Brigade informed the Court that he had ordered the certification of the guard incident books for May 1983<sup>96</sup>.

117. The inspection of the book was carried out on September 16, 1997, and the judge noted for the record that there was no record of any attack on that day on the Canton of La Joya, nor was there any record of the rescue of the minor child José Rubén Rivera. On October 2, 1997, the case was closed for want of further steps to take. The record in the case shows that copies thereof were issued to the Human Rights Ombudsman. On January 19, 2002, the Judge ordered the case closed<sup>97</sup>.

**i. Investigation of the Human Rights Ombudsman**

118. On May 31, 1996, the Human Rights Ombudsman (hereinafter "the PDDH") opened an investigation in response to a complaint filed by Asociación Pro Búsqueda

---

<sup>93</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998; See also: Annex 41. Testimony by Carlota Romero at the Second Criminal Court of San Vicente of November 27, 1996, Annex 42. Sworn statement by Carlota Romero to Notary Public dated November 29, 2005. The account of the second witness, Raúl Rivera, was told by Mrs. Margarita Rivera in the brief for the *habeas corpus* lodged with the Supreme Court of Justice. In it, she says that Raúl Rivera, who was then serving with the Fifth Infantry Brigade reportedly saw her son there and even described what he was wearing to her husband. She says that this individual subsequently refused to cooperate in the case and that he currently resides in the United States.

<sup>94</sup> Annex 43. Criminal proceedings, reference 479-3/96, filed to find the missing child José Rubén Rivera, Second Criminal Court.

<sup>95</sup> Annex 43. Criminal proceedings, reference 479-3/96, filed to find the missing child José Rubén Rivera, Second Criminal Court.

<sup>96</sup> Annex 43. Criminal proceedings, reference 479-3/96, filed to find the missing child José Rubén Rivera, Second Criminal Court.

<sup>97</sup> Annex 43. Criminal proceedings, reference 479-3/96, filed to find the missing child José Rubén Rivera, Second Criminal Court.

concerning the forced disappearance of, initially, 141 children in the framework of the armed conflict. Another four cases were subsequently added<sup>98</sup>.

119. The PDDH deemed it appropriate to process each case individually, in view of the gravity and scale of the complaint. In the framework of the investigation into the disappearance of José Rubén Rivera, the PDDH “established the identity of several officers in the Armed Forces allegedly attached to the Cañas Battalion at the time of the military operation.” Those officers pleaded ignorance about the operation and about cases of children sent to the Fifth Infantry Brigade. Information was also requested from the Ministry of Defense, whose representative held that no operation was carried out in the area from May 16 to 18, 1983, and that Cañas Battalion did not even exist then<sup>99</sup>.

120. In light of the foregoing, on October 2, 1997, the PDDH carried out and inspection of the records of the Fifth Infantry Brigade. The operations log reviewed contained no reference to the operation or to the admission of children at the aforesaid garrison. The general records of the Fifth Infantry Brigade were also inspected. It was not possible to establish the existence of records on the operations in which the Brigade took part and it was clear that a great deal of information in that regard was either missing or never recorded.<sup>100</sup>

121. From the little information that the PDDH was able to glean in these investigations, it was determined that, contrary to the assertion of the Ministry of Defense, the Cañas Battalion did exist and engaged in actions in the area at the time of the operation. The PDDH considered it a “negative sign” that the Ministry of Defense and the military personnel interviewed should have denied any knowledge of the operation, in spite of the fact that the testimonial evidence collected was categorical<sup>101</sup>.

122. Based on this evidence, on March 30, 1998, the PDDH issued a decision in which it found:

The testimonial evidence has demonstrated that, as the complaint alleges, the minors (...) José Rubén Rivera, (...) have been the victims of forced disappearance attributed to personnel of the Armed Forces of El Salvador, who abducted and permanently separated them from their families (...) The parents, grandparents, or relatives of the aforementioned boys and girls, who continue to look for them, should also be considered victims of the crimes of forced disappearance.

(...)

In all of the cases, it is logical to surmise that there is little likelihood that there is any surviving documentary evidence of a civil nature in relation to the identities of the children or their movements. Far more remote is the possibility that, at the time, the families concerned would have reported these serious offences for the proper authorities to investigate.

(...)

A thorough investigation of such serious occurrences, which includes a determination of the number or identity of the victims, identification of the persons who carried out

---

<sup>98</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998.

<sup>99</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998.

<sup>100</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998.

<sup>101</sup> Annex 15. Decision by the Prosecutor’s Office for the Defense of Human Rights on March 30, 1998.

and orchestrated the killings, and the necessary criminal and forensic procedures, exceed the bounds of this non judicial investigation.

(...)

Furthermore, no record whatsoever was found in the cases investigated that the State promoted the physical and psychological recovery, as well as the social reintegration, of the abducted children<sup>102</sup>.

123. In its concluding points, the decision recommended that the Minister of National Defense and the Chairman of the Joint Chiefs of Staff of the Armed Forces order the necessary investigations in order to gather information about the operations and disappearances, and to forward the findings of those investigations to the relevant courts, so that they might apportion the appropriate criminal liability and establish the whereabouts of the abducted children. It also determined to notify the Office of the Prosecutor General of the decision, so that it might institute the statutory proceedings<sup>103</sup>. On November 6, 1998, the PDDH transmitted this decision to the Office of the Prosecutor General<sup>104</sup>.

### iii. Investigation of the Office of the Attorney General

124. As a result of the foregoing, on March 16, 2000, the Unit for Crimes against Life and Physical Integrity opened a case in which José Rubén Rivera, among others, was named as a victim of the offense of "disappearance of persons"<sup>105</sup>.

125. On June 26, 2003, the prosecutor assigned to the investigation presented himself at the Fifth Infantry Brigade in the city of San Vicente, where he was received by a military investigating judge who told him that in order to carry out a thorough investigation into the disappearances, a meeting was necessary with the Brigade Command. This meeting was held the following day. At the meeting, a lieutenant explained that the "records of operations that the Fifth Infantry Brigade carried out in the 1980's and 1990's [we]re in the General Archive of the Ministry of National Defense, since they possess historic value." The lieutenant added that any information of that nature could be provided by the Human Rights Department of the Office of Legal Affairs of the Ministry of Defense<sup>106</sup>.

126. On January 29, 2004, an official letter was sent to the Office of the Commandant of the Fifth Infantry Brigade, requesting the entries in the "operations logbooks" for several military operations, including the one carried out on May 17 and 18, 1983, in the Canton of La Joya, Municipality of San Vicente. The letter also requested the name of the Commandant of the Fifth Infantry Brigade at the time, the names of the battalions and officials that took part in those activities, as well as information regarding the possible evacuation, among others, of the boy José Rubén Rivera.<sup>107</sup>

---

<sup>102</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.

<sup>103</sup> Annex 15. Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.

<sup>104</sup> Annex 18. Letter addressed to the Office of the Attorney General of the Republic on November 6, 1998.

<sup>105</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>106</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>107</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

127. On July 16, 2003, with the prosecutor assigned to the investigation and representatives of the Fifth Infantry Brigade headquartered at San Vicente taking part, a procedure was carried out in the Canton of La Joya, jurisdiction of San Vicente, aimed at locating the relatives of José Rubén Rivera. It was noted for the record that the locality is a hamlet inhabited by approximately 30 families. Contact was made with the community president. She mentioned having known a family by the name of Rivera and that a son of theirs had gone missing during the war.<sup>108</sup>

128. The information provided by both parties indicates that no further enquiries were made.

**iv. Habeas corpus proceeding**

129. On November 10, 2000, Mrs. Margarita Rivera, mother of José Rubén Rivera, filed a petition for a writ of habeas corpus with the Constitutional Chamber of the Supreme Court of Justice. The Court appointed an enforcing judge, who inspected the Daily Operations Log and the Military Summary Book of the Fifth Infantry Brigade in San Vicente, and reported that he found no record in them of any operation in the Canton of La Joya on that date, nor any record of entry of the boy José Rubén Rivera. The Court examined the procedure conducted by the Human Rights Ombudsman, as well as the record of the investigation by the Second Examining Court in and for San Vicente. In a judgment of March 21, 2002, it ruled that it recognized the violation of the constitutional right to physical freedom of José Rubén Rivera and ordered the Office of the Prosecutor General to adopt the necessary measures to determine his present circumstances<sup>109</sup>.

**VII. CONSIDERATIONS OF LAW**

130. The Commission highlights that the cases bear close similarities and constitute examples of a widespread practice that occurred in the armed conflict and was common knowledge in El Salvador, namely, the unlawful abduction of children by members of the Armed Forces. First, the Commission will present the characteristics of this practice and how it relates to the concept of forced disappearance of persons. Then the Commission will argue the respective violations bearing in mind the similarity of the cases, but specifying certain particular legal considerations based on the cases individually, particularly with respect to Gregoria Herminia Contreras, who was identified and reunited with her family in December 2006, 24 years after she went missing.

**1. General considerations on abduction of children as a form of forced disappearance of persons**

131. In its consistent case law on cases of forced disappearance of persons, the inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the disappearance forms part of a systematic pattern or practice applied or tolerated by the

---

<sup>108</sup> Annex 19. Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.

<sup>109</sup> Annex 44. Ruling of the Constitutional Chamber of the Supreme Court of Justice of El Salvador. Writ of habeas corpus, March 21, 2002, 378-2000.

State. In brief, it is a crime against humanity involving a gross rejection of the essential principles on which the inter-American system is based<sup>110</sup>.

132. In its judgment in *Goiburú v. Paraguay*<sup>111</sup>, the Court offered the following review of the international treatment of forced disappearance:

Although the international community adopted the first declaration and the first treaty using the term forced disappearance of persons only recently in 1992 and 1994, respectively, already in the 1970s, the issue as such was examined in international human rights law and was developed within the framework of the United Nations system as of the 1980s<sup>112</sup>. The inter-American regional system had frequently used this term to refer to this series of acts and violations as a crime against humanity<sup>113</sup>. It is even described as such by Article 7(1)(i) of the 1998 Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed against any civilian population<sup>114</sup>. This description of the offense in reference has been reiterated in the text of Articles 5 and 8(1)(b) of the United Nations International

---

<sup>110</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153, par. 82; *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 92; *Case of the Serrano-Cruz Sisters. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, pars. 100 to 106; and *Case of Molina Theissen. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C, No. 108, par. 41; IACHR. Report No. 101/01. Case 10.247 and others. Extra-legal Executions and forced disappearance of persons. Peru. October 10, 2001. par. 178.

<sup>111</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82.

<sup>112</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. The establishment of the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, by Resolution 20 (XXXVI) of February 29, 1980, is a clear demonstration of general censure and repudiation of the practice of disappearances, which had already received world attention by the General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the Special Rapporteurs or representatives of the Commission on Human Rights show concern that the practice of disappearances be stopped, that the victims reappear, and that those responsible be punished (*Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 151. Likewise, the *Godínez Cruz Case*, par. 159, and *Fairén Garbí and Solís Corrales Case*. Judgment of March 15, 1989. Series C No. 6, par. 146). The following resolutions of the United Nations General Assembly should also be cited: Resolution 3450 (XXX) of December 9, 1975, thirtieth session, on the question of missing persons in Cyprus as result of the armed conflict; Resolution 32/128 of December 16, 1977, thirty-second session, proposing the establishment of a body to investigate the disappearances in Cyprus "impartially, effectively and speedily," and Resolution 33/173 of December 20, 1978, thirty-third session, entitled "Disappeared Persons," in which the General Assembly expressed its deep concern owing to "reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations," as well as its concern about "reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons," and indicating that there was a "danger to the life, liberty and physical security of such persons arising from the persistent failure of these authorities or organizations to acknowledge that such persons are held in custody or otherwise to account for them."

<sup>113</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. Resolution AG/RES. 666 (XIII-O/83) of November 18, 1983, and resolution AG/RES. 742 (XIV-O/84) of November 17, 1984, of the General Assembly of the Organization of American States. Also, cf. Inter-American Commission on Human Rights. Annual Report 1983-1984. Chapter IV, pars. 8, 9 and 12, and Chapter V, I.3, OEA/Ser.L/V/II.63 doc. 10 of September 28, 1984; Annual Report 1986-1987. Chapter V.II, OEA/Ser.L/V/II.71 Doc. 9 rev. 1 of September 22, 1987; Annual Report 1987-1988. Chapter IV, OEA/Ser.L/V/II.74 Doc. 10 rev. 1 of September 16, 1988; Annual Report 1990-1991. Chapter V, OEA/Ser.L/V/II.79, Doc. 12 rev. 1 of February 22, 1991, and Annual Report 1991. Chapter IV, OEA/Ser.L/V/II.81 Doc. 6 Rev. 1 of February 14, 1992.

<sup>114</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. Rome Statute of the International Criminal Court adopted on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an international criminal court, A/CONF.183/9.

Convention for the Protection of All Persons from Forced Disappearance, adopted by the recently created United Nations Human Rights Council in June 2006<sup>115</sup>.

133. According to the Inter-American Court,

the need to consider integrally the offense of forced disappearance of an autonomous, continuing or permanent nature, composed of multiple elements with their complex interrelationships, and related criminal acts, can be deduced not only from the its definition in the abovementioned Article III of the Inter-American Convention on Forced Disappearance of Persons, the *travaux préparatoires* for this instrument<sup>116</sup>, its preamble and provisions, but also from Article 17(1) of the 1992 United Nations Declaration on the Protection of all Persons from Forced disappearance, which even adds one further element, related to the obligation to investigate, by indicating that this must be considered "a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts have not been clarified." International case law also reflects this understanding<sup>117</sup> as do Articles 4 and 8(1)(b) of the above-mentioned United Nations international convention on this matter<sup>118</sup>.

134. Among the distinctive characteristics of disappearance are the means used to carry it out, which are designed to conceal any evidence of the facts, the corresponding responsibility, and the fate of the victim. Another feature is the manner in which the failure to elucidate the facts and identify those responsible affects not only the direct victim, but also their family and society in general.

135. In keeping with its consolidated case law, the Commission finds that forced disappearance is a complex human rights violation that continues in time so long as the fate or whereabouts of the victim are not known. The disappearance as such only ceases when the victim appears, his or her fate is established or his or her remains are located. The Commission has adopted an integral approach to this human rights violation, understanding it as a continuing violation so as to analyze and determine the full extent of the State's responsibility. It should be borne in mind that so long as the fate or whereabouts of the victim are not determined or their remains located and identified, the family and the rest of society must endure the experience of a forced disappearance with all the attendant consequences.

---

<sup>115</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. UN Human Rights Council. International Convention for the Protection of all Persons from Forced Disappearance. First session, agenda item 4, A/HRC/1/L.2, June 22, 2006.

<sup>116</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent because it is committed permanently, rather than instantaneously, and it continues while the person remains disappeared" (OEA/CP-CAJP, Report of the President of the Working Group responsible for examine the draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).

<sup>117</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 82. Cf. *European Court of Human Rights, Cyprus v. Turkey, Judgment of 10 May 2001*, Application No. 25781/94, pars. 136, 150 and 158; United Nations Human Rights Committee, *Ivan Somers v. Hungary*, Communication No. 566/1993, 57th session, CCPR/C/57/D/566/1993 (1996), 23 July 1996, para. 6.3; *E. and A.K. v. Hungary*, Communication No. 520/1992, 50th session, CCPR/C/50/D/520/1992 (1994), 5 May 1994, para. 6.4, and *Solorzano v. Venezuela*, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983, 26 March 1986, Para. 5.6.

<sup>118</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 83.

136. The subject of disappearance of children amid climates of violence both in dictatorships and in armed conflicts, and how that relates to the concept of forced disappearance, has been addressed by the international community

137. In the course of its functions in the individual petitions system, the Inter-American Commission examined the case of the Serrano-Cruz sisters v. El Salvador, which concerns the disappearance of two girls, also in the framework of the internal armed conflict and in circumstances similar to those alleged in the instant case. The Commission concluded in that case that the Serrano-Cruz sisters had been victims of forced disappearance and, consequently, found that the State was responsible for a series of violations of the American Convention. In its application to the Inter-American Court, the Commission submitted that what happened to the victims constituted forced disappearance<sup>119</sup>. This conclusion is consistent with the development of the subject in international human rights law.

138. Article 20 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance provides:

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.
2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such<sup>120</sup>.

139. In more categorical terms, the International Convention for the Protection of all Persons from Forced Disappearance, sets out at Article 25(1) the duty of states parties to take the necessary measures to prevent and punish under their criminal law:

- a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance:
- b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph ( a ) above.

140. Paragraphs (2), (3), and (4) of this Article, provide that:

---

<sup>119</sup> IACHR. Application to the Inter-American Court of Human Rights. *Case of the Serrano Cruz Sisters*. par. 15.

<sup>120</sup> United Nations Declaration on the Protection of all Persons from Enforced Disappearance. Adopted by General Assembly resolution 47/133 of 18 December 1992

Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 ( a ) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 ( a ) of this article.

Given the need to protect the best interests of the children referred to in paragraph 1 ( a ) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

141. For its part, the then-UN Commission on Human Rights adopted resolutions in which it decided to continue to give particular consideration to cases of children subjected to enforced disappearance and to cooperate with the governments concerned in their identification.<sup>121</sup>

142. In its reports to the now-United Nations Human Rights Council, the Working Group on Enforced or Involuntary Disappearances, has noted that children are also victims of disappearances, both directly and indirectly. The disappearance of a child, his/her wrongful removal, and the loss of a parent through disappearance are serious violations of children's rights<sup>122</sup>.

143. In the report on its mission to Argentina, this Working Group, in reference to the chapter on "missing children and pregnant women" in the 1984 Report of the National Commission on the Disappearance of Persons, mentioned:

A specific phenomenon that occurred in the country under the military dictatorship from 1976 to 1983 in the Argentine Republic was the enforced disappearance of children and children born in captivity. The children were removed, stripped of their identity, and torn from their families. It was also common for children to be abducted by military commanders, who would take them into their families as their own children.<sup>123</sup>

144. Bearing in mind the foregoing, the Commission must analyze the established facts in the instant case to determine if they conform to the concept of forced disappearance. Although the Salvadoran State is not a party to the Inter-American Convention on Forced Disappearance of Persons, the definition contained therein may be used in the instant analysis as it constitutes a consensus in this area.<sup>124</sup> Article II of said instrument states that "forced disappearance is considered to be the act of depriving a

---

<sup>121</sup> UN Commission on Human Rights. *Question of enforced or involuntary disappearances* Resolution 2000/37.

<sup>122</sup> UN Human Rights Council. Report of the Working Group on Enforced or Involuntary Disappearances. A/HRC/10/9. 25 February 2009. par. 456.

<sup>123</sup> UN Human Rights Council. Report of the Working Group on Enforced or Involuntary Disappearances. Addendum. Mission to Argentina. A/HRC/10/9/Add.1. 5 January 2009. par. 10 [*unofficial translation*].

<sup>124</sup> See Concurring Opinion of Judges García-Sayán and García Ramírez in the Case of Ticona Estrada et al. I/A Court H.R. *Case of Ticona Estrada et al v. Bolivia*. Merits, Reparations and Costs Judgment of November 27, 2008. Series C No. 191.

person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”

145. The facts that the Commission has deemed established in the instant case suggest that Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera all disappeared in similar circumstances: in the framework of the armed conflict; following the execution of so-called military counterinsurgency operations in which their next-of-kin either managed to escape or were murdered; and that they were seen for the last time in the company of members of the Armed Forces, who abducted them and decided their fate.

146. The Commission finds that Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera, were all taken by members of the Armed Forces once their next of kin had been murdered, or had fled in order to avoid being killed, or had been put in a perilous, defenseless, and vulnerable position, such that they were unable to care for them. All of the testimonies included in the “considerations of fact” section indicate that the operations were not carried out in the context of confrontations but in order to repress with extreme violence groups of persons who were not involved in the conflict but regarded as “insurgents” by the security forces. In that connection, the State’s argument that the children were not detained but “rescued” in the wake of the customary fighting, is not consistent with the evidence in the record. The Commission holds that Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera, were deprived of their liberty by military officials and since then the whereabouts or fate of five of them remain unknown.

147. As to Gregoria Herminia Contreras, it was only possible to discover her fate 24 years after she disappeared. Coupled with the foregoing is the fact that there is no record or information of any sort about what befell the five other victims. As the Commission has described, the attitude of military officials of denial of what happened and the absence of official records about the fate of the children who were in the custody of military institutions in the wake of an operation have been the main stumbling blocks in the investigations that were opened at the domestic level.

148. The Commission holds that the foregoing suffices to conclude that what happened to Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera qualifies as forced disappearance of persons. The forced disappearance of Gregoria Herminia Contreras lasted until December 2006, when it was possible to identify her and the process of reunification with their biological family began. As for the girls Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez, and the boys Serapio Cristian Contreras and José Rubén Rivera, their forced disappearance continues to this day.

149. Next, in keeping with its consistent practice, the Commission will present its arguments regarding the provisions of the American Convention have been infringed.

**2. Rights to personal liberty, humane treatment, life, and juridical personality (Articles 7, 5, 4, and 3 of the American Convention in connection with Article 1(1) thereof)**

150. The pertinent parts of Article 7 of the American Convention provide:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

151. The pertinent parts of Article 5 of the American Convention recognizes:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

152. The pertinent parts of Article 4 of the American Convention state:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

153. Article 3 of the American Convention provides, "Every person has the right to recognition as a person before the law."

154. Article 1(1) of the Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

155. According to the case law of the Inter-American Court, in cases of forced disappearance it is unnecessary to perform a detailed analysis of the arrest in relation to each of the guarantees recognized in Article 7 of the American Convention. In the opinion of the Inter-American Court, when it is demonstrated that deprivation of freedom was a step prior to achieving the disappearance of the victims, it is not necessary to determine whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the legislation in force at the time of the events; or whether the acts of the detention were unreasonable, unpredictable or disproportionate<sup>125</sup>.

---

<sup>125</sup> I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C No. 162, par. 109.

156. The Court has also held that when examining an alleged forced disappearance it should be taken into account that the deprivation of liberty of the individual must be understood merely as the beginning of the constitution of a complex violation that is prolonged over time until the fate and whereabouts of the alleged victim are established<sup>126</sup>.

157. As to the right to humane treatment, the Inter-American Court has recognized that “a person illegally detained [...] is in a situation of heightened vulnerability in which there is a high risk of his/her rights being violated, such as the right to physical integrity and to be treated with dignity”<sup>127</sup>.

158. Furthermore, the Inter-American Court has held that forced disappearance violates that right since “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment which [...] violates the right of every detainee under Article 5(1) and 5(2)”<sup>128</sup>.

159. The Court determined that it was clear that in the case of a forced disappearance, the victim’s personal integrity is affected in all its dimensions<sup>129</sup>.

160. The Commission considers it relevant to draw attention to the circumstances in which the victims were taken by the army officials.

161. As the Commission concluded in the “considerations of law” section, Gregoria Herminia and Serapio Cristian Contreras were caught as they attempted to flee from the soldiers of the Fifth Infantry Brigade of San Vicente and catch up with their parents and younger sister, Julia Inés. According to the testimony of their mother, María Maura Contreras, she saw when a soldier grabbed Gregoria Herminia by her hair. As for Ana Julia and Carmelina Mejía Ramírez, both girls were detained by officials of the Atlacatl Battalion after they had murdered several members of their family, including their father. According to the testimony of Mrs. Ester Pastora Guevara, the girls’ godmother, when the soldiers left them at the home of an acquaintance of hers for some hours, she found them with bloodstained clothes. With respect to José Rubén Rivera, finding herself unable to continue to care for him because she was being pursued by members of the Fifth Infantry Brigade of San Vicente, his mother put him in the care of a relative who, upon realizing that he too was being pursued, had to hide, leaving José Rubén completely defenseless and at the mercy of those officials.

162. The Commission finds that based on these circumstances it is fair to assume that in that moment Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Mejía Ramírez; and José Rubén Rivera feared for their lives and felt a profound sense of abandonment, vulnerability, and defenselessness against imminent separation from their parents and/or family members. The Commission underscores that this

---

<sup>126</sup> I/A Court H.R., *Case of Heliodoro-Portugal*. Preliminary Objections, Merits, Reparations and Costs Judgment of August 12, 2008, par. 112.

<sup>127</sup> I/A Court H.R., *Bámaca Velásquez Case*, par. 150; *The “Street Children” Case* (Villagrán Morales et al.), par. 90.

<sup>128</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Merits, *supra* note 16, pars. 156 and 187; *Case of the Miguel Castro-Castro Prison*. Merits, Reparations and Costs Judgment of November 25, 2006. Series C No. 160, par. 323; and *Case of Chaparro Álvarez and Lapo Íñiguez*. Preliminary Objections, Merits, Reparations and Costs Judgment of November 21, 2007. Series C No. 170, par. 171; and *Case of Ticona-Estada et al.* Merits, Reparations and Costs, par. 58.

<sup>129</sup> I/A Court H.R. *Case of Ticona-Estada et al.* Merits, Reparations and Costs, par. 58.

assumption is made independently of the ages of the victims. The Commission notes that the victims' ages at the time of the events ran from four months to 15 years old. Therefore, the manifestations of fear and feelings of defenselessness may have varied in each case, without that signifying that they experienced no such affliction.

163. As regards Gregoria Herminia Contreras, after her whereabouts were established, the Commission received information about the fate that befell her. According to the account provided by the petitioners of her testimony, one of the soldiers requested permission to keep her, and he took her initially to the home of some relatives of his and later to his mother's house, where she remained until the age of 14, at which point she decided to run away. The Commission holds that these facts demonstrate that in the case of Gregoria Herminia Contreras, her right to humane treatment continued to be violated for many years and, according to the petitioners, still does so to this day.

164. With respect to the right to life, the Inter-American Court has repeatedly held that said right is a fundamental human right, the full exercise of which is a prerequisite for the enjoyment of all other human rights<sup>130</sup>. The Court has also said that the foregoing means that States have both the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur, as well as the duty to prevent the infringement of the said right by its officials or private individuals<sup>131</sup>. According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*)<sup>132</sup>.

165. The Court has also reiterated in its case law that "compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction<sup>133</sup>.

166. According to the Court's case law, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention<sup>134</sup>. The jurisprudence of the Inter-American system has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he has been killed<sup>135</sup>.

---

<sup>130</sup> I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166, par. 78; and *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 144.

<sup>131</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 144.

<sup>132</sup> I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166, par. 79; and *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 83.

<sup>133</sup> I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166, par. 80; and *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 144.

<sup>134</sup> I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109. par. 154; *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70. par. 130.

<sup>135</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 188.

167. It has been described that on August 24, 1982, the Contreras Recinos family was being pursued by elements of the Fifth Infantry Brigade of San Vicente, and that initially the boy Serapio Cristian and the girl Gregoria Herminia were caught. According to her testimony, Mrs. María Maura Contreras attempted to flee with her daughter Juana Inés in her arms but when she slipped the girl fell to the ground and was also caught by the aforesaid officials. According to the testimony of witnesses, the three children were seen alive at a military facility. After 24 years had elapsed Gregoria Herminia's whereabouts were discovered and the process of reunification with her biological family began.

168. The Commission also described that on December 13, 1981, following the murder of their father and other family members, the girls Ana Julia and Carmelina Mejía Ramírez were taken by elements of the Atlacatl Rapid Response Battalion to a house where they were seen by their godmother. Some hours later, the soldiers returned to the house and took the girls away; they were seen for the last time that night in the company of said officials.

169. The Commission has also mention that on May 17, 1983, José Rubén Rivera, who had been in the care of a youth who was a relative of his who decided to flee for his life, was taken on horseback by a member of the Fifth Infantry Brigade of San Vicente, and was last seen at the headquarters of said Brigade.

170. As to the right to life, as mentioned above, in cases of forced disappearance, the consistent case law both of the Commission and of the Court has been to adopt the assumption that the disappeared person is deceased until their whereabouts are determined.

171. The Commission holds that there are no reasons to analyze otherwise in the instant case. While it is true that the disappearance of children display certain characteristics that distinguish them from other forms of forced disappearance, and experience has demonstrated that there is a greater probability of finding the victims alive, those differences are not sufficient to disregard the above assumption. The Commission notes that the aim of the case law of the inter-American system in this regard is precisely to determine the full extent of international responsibility in cases of forced disappearance, where the inherent risk posed to the lives of individuals is undeniable. The aim is also for states to do everything in their power to establish the whereabouts of the victims and, as appropriate, disprove the presumed violation of the right to life.

172. The Commission finds that the way in which the soldiers acted in depriving them of their liberty, abducting them, and deciding their fate, without taking into consideration their special protection needs or adopting measures by which to determine their identity and, therefore, facilitate their immediate reunification with their families, all in a climate of permanent and extreme violence that characterized the armed conflict in El Salvador, implied that all six children were placed in a situation of imminent danger to their lives from agents of the state.

173. Of the six victims, the only one whose fate is known is that of Gregoria Herminia Contreras, who was identified 24 years after her disappearance and is currently in the process of being reunited with her family. This means that in her case alone is the presumption of death disproved. In the case of the five other children, for the reasons given above, it corresponds to maintain the position that the organs of the Inter-American System have adopted for years.

174. As regards the right to recognition of juridical personality, The Commission recalls that the right of recognition of juridical personality is an essential and necessary prerequisite in order to hold and exercise all rights, since without it, a person does not enjoy the protection and guarantees that the law offers, simply because they are invisible to it.

175. By its very nature, forced disappearance of persons seeks the juridical annulment of the individual precisely in order to remove them from the protection that the laws and justice afford them. Thus, the apparatus of repression ensures that persons may be deprived of their rights with impunity by placing them beyond the reach of any possible judicial protection. The aim of those who perpetrate forced disappearance is to operate outside the law and conceal any evidence of crime, thereby seeking to avert its investigation and punishment, and prevent the person or their next-of-kin from filing suit or, in the event suit is filed, from accomplishing a positive result.

176. The Commission also notes that since its earliest case law, the Court has consistently found that forced disappearance of persons comprises multiple offenses.<sup>136</sup> This multiple violation of a person's basic rights is possible for the very reason that the latter is held outside of the law and deprived of their juridical personality. Accordingly, and bearing in mind, moreover, the continuous nature of this crime, the Commission considers that in the case of forced disappearance it is not possible to establish that extinction of the person because it is impossible to determine whether or not the person is still alive. Therefore, one of the multiple rights abridged by forced disappearance is the right of victims of this practice to recognition of their juridical personality. Furthermore, the Commission finds that the mechanism through which violation of all the other rights infringed by forced disappearance is sought and achieved is precisely deprivation of juridical personality.

177. The violation of the right to legal personality that comes with forced disappearance is such that several states in the region have had to adopt specific laws to distinguish this phenomenon from extrajudicial execution. The State prevents living persons from exercising their rights and obligations because the State denies their final fate.<sup>137</sup>

178. In that regard, the Commission has held that:

The objective of those who perpetrate a disappearance is to operate beyond the margins of the law, to conceal all evidence of their crimes, and to escape any sanction. When a disappearance is carried out, the fundamental protections established by law are circumvented and the victim is left defenseless. For the victim, the consequence of an enforced disappearance is to be denied every essential right deemed to inhere in the very fact of being human. In this way, the act of enforced disappearance violates the right of the individual under Article 3 of the American Convention "to recognition as a person before the law."<sup>138</sup>

---

<sup>136</sup> *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, par. 155; I/A Court H.R., *Case of Heliodoro-Portugal*. Judgment of August 12, 2008. Series C No. 186, pars. 106 and 112; *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, pars. 81 to 85; and *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 92.

<sup>137</sup> For example, in the case of detainees-disappeared persons who remain alive the State denies the right of access to a judge if they are in detention, and in the case of detainees-disappeared persons who had been executed it denies the consequential rights of the deceased persons' next-of-kin, such as, rights of inheritance, for instance, which are obstructed by the indeterminate legal status of the detainee-disappeared person.

<sup>138</sup> See IACHR, Report 11/98, Case 10.606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, par. 57, available at <https://www.cidh.oas.org/annualrep/97eng/Guatemala10606.htm>.

179. These arguments have been consistently presented in the applications filed by the IACHR before the Court in the last years with regard to forced disappearance of persons<sup>139</sup>.

180. In keeping with the foregoing, the UN Human Rights Committee has concluded that one of the violations that may result from forced disappearance is a denial of the victim's right to recognition as a person before the law:

The Committee points out that intentionally removing a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person before the law if the victim was in the hands of the State authorities when last seen and, at the same time, if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (...) have been systematically impeded. In such situations, disappeared persons are in practice deprived of their capacity to exercise entitlements under law, including all their other rights under the Covenant, and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law.<sup>140</sup>

181. Recently, the Inter-American Court has recognized that, in view of its multiple and complex character, forced disappearance can entail a violation of the right to juridical personality. Specifically the Court found that "apart from the fact that the disappeared person is unable to continue to enjoy and exercise other rights -- or indeed any of their rights, their disappearance seeks not only one of the most serious forms of removing a person from every sphere of the legal system, but also to deny their very existence and leave them in a type of limbo or indeterminate legal situation in the eyes of society, the State, and even the international community."<sup>141</sup>

182. In the present case, the forced disappearance of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Ramírez, and José Rubén Rivera was aimed at depriving them of their juridical personality, leaving them outside the legal and institutional system. Indeed, in the context in which they took place, their disappearances were the means whereby their perpetrators achieved impunity of their actions, guaranteed by the impossibility of the victims and their next of kin to look for due legal protection, as a result of the constant and systematic absence of any investigation regarding their whereabouts, as this information was denied and/or distorted by the authorities. For the victims, the consequence of their disappearance was the denial of all their rights, inherent to them as human beings, by the removal of due protection by the denial of their recognition as a person before the law.<sup>142</sup>

183. Based on the foregoing considerations, the Commission requests the Inter-American Court to conclude and declare that the State of El Salvador violated the rights to

---

<sup>139</sup> IACHR. Applications before the Inter-American Court in the cases: Renato Ticona Estrada *et al* (12.527), paras. 153-165; Rosendo Radilla Pacheco (12.511), paras. 138-145; Kenneth Ney Anzualdo Castro (11.385), paras. 167-176; Julia Gómez Lund *et al* (11.552), paras. 208-220; Florencio Chitay Nech (12.599), paras. 136-146; Rainer Ibsen Cárdenas and José Luís Ibsen Peña (12.529), paras. 251-262.

<sup>140</sup> Human Rights Committee of the International Covenant on Civil and Political Rights. Communication 1327/2004. *Grioua v. Algeria*, paras. 7.8 and 7.9.

<sup>141</sup> I/A Court H.R., Case of Anzualdo-Castro, Judgment of September 22, 2009, par. 90.

<sup>142</sup> See also: IACHR, Report 11/98 (Case 10.606 – Guatemala), paragraph 57; Report 55/99 (Cases 10.815, 10.905, 10.981, 10.995, 11.042, 11.136 – Peru), paragraph 111; Report 56/98 (Cases 10.824, 11.044, 11.124, 11.125, 11.175 – Peru), paragraph 110; Report 3/98 (Case 11.221 – Colombia), paragraph 64; Report 30/96 (Case 10.897 – Guatemala).

personal liberty, humane treatment, and juridical personality recognized at Articles 7, 5, and 3 of the American Convention, in conjunction with the obligations set forth in Article 1(1) of said instrument, to the detriment of Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera. The Commission further requests that the Court conclude and declare that the State violated the right to life recognized in Article 4 of the American Convention in conjunction with the obligations set forth in Article 1(1) of said instrument, to the detriment of Serapio Cristian and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera.

**3. Right to protection of the family and special protection of the children (Articles 17(1), 19, and 1(1) of the American Convention)**

184. Article 17(1) of the American Convention provides, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

185. Article 19 of the American Convention states, “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

186. Article 1(1) of the Convention stipulates:

the States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

187. Bearing in mind the particular characteristics of the instant case and the fact that all of the victims were children at the time of their forced disappearance, the Commission considers that the State has not complied its obligations under Article 17 of the American Convention interpreted in conjunction with Article 19 of said instrument.

188. By the Court’s case law, Article 19 of the American Convention should be understood as a complementary right that the Convention establishes for individuals who need special measures of protection, owing to their stage of physical and emotional development<sup>143</sup>. Children, therefore, possess not only the same human rights that correspond to all persons, but also special rights accruing to their child status, in regard to which the family, society and the State have specific duties. In other words, children are entitled to special measures of protection<sup>144</sup>.

189. In sum, the rights of children must be safeguarded both in view of their status as human beings and by reason of their special condition, to which end special

---

<sup>143</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 106; *Case of Baldeón García*, Judgment of April 6, 2005. Series C No. 147, par. 244; *Case of the “Mapiripán Massacre”*, Judgment of September 15, 2005. Series C No. 134, par. 152; and, in particular, *Case of the “Juvenile Reeducation Institute”*, Judgment of September 2, 2004. Series C No. 112, par. 147, and *Case of Servellón-García et al.* Judgment of September 21, 2006, par. 113

<sup>144</sup> Advisory Opinion OC-17/2002, par. 62:

Adoption of special measures to protect children is a responsibility both of the State and of the family, community, and society to which they belong.

protective measures must be adopted. This added obligation to provide protection<sup>145</sup> and these special duties should be regarded as determinable based on the needs of the child as a person with rights<sup>146</sup>.

190. In this regard, the Inter-American Court has referred in previous cases to the *corpus juris* on the human rights of the child<sup>147</sup>. The Commission has previously addressed this notion in the following terms:

For an interpretation of a State's obligations vis-a-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere<sup>148</sup>.

191. Specifically, the Court held that both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention. Indeed, in various cases concerning children, the Court has relied on specific provisions contained in the Convention on the Rights of the Child to interpret Article 19 of the American Convention<sup>149</sup>.

192. Therefore, the Commission highlights a number of provisions in the Convention on the Rights of the Child that have a bearing on the duty to provide special protection to children through the institution of the family.

193. Article 9 of said Convention provides:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

(...)

---

<sup>145</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*, par. 160; *Case of the Gómez Paquiyauri Brothers*, pars. 124, 163-164, and 171; *Case of Bulacio*, pars. 126 and 134; *The "Street Children" Case (Villagrán Morales et al.)*, pars. 146 and 191; and *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005, par. 172. In the same connection: Advisory Opinion OC-17/02, pars. 56 and 60.

<sup>146</sup> I/A Court H.R., *Case of the Indigenous Community Sawhoyamaya*. Judgment of March 29, 2006, par. 154

<sup>147</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63.

<sup>148</sup> IACHR, Report No. 41/99, Case 11.491, *Minors in Detention, Honduras*, March 10, 1999, par. 72.

<sup>149</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 194; see also: *Case of the "Juvenile Reeducation Institute"*, Judgment of September 2, 2004. Series C No. 112, par. 148; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, par. 166.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

194. The *travaux préparatoires* for this Convention considered the need for separations of children from their family nucleus to be duly justified and preferably temporary, and for the child to be returned to his or her parents as soon as circumstances allow. The standards set forth in Article 9 of the Convention on the Rights of the Child may be summarized as the right of the child to stay with their biological family except where that would be contrary to their best interests and, should it be necessary to separate the child from their family, equitable procedures shall be applied in which fair trial guarantees are observed.

195. This instrument also contains various provisions that recognize the right of the child to live with and be cared for by their parents<sup>150</sup>. The preamble expressly recognizes the family as the natural environment for the growth of children and establishes the duty of states to support this institution so that it can perform its function in the community.

196. Other declarations and sets of principles recognize the relationship between the rights of the child and protection of the family. The United Nations Guidelines for the Prevention of Juvenile Delinquency, or "Riyadh Guidelines", provide that:

(...) the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. (...) <sup>151</sup>

197. In keeping with this international development in the link between protection of the child and protection of the family, the Inter-American Court has held:

---

<sup>150</sup> Article 7: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents; Article 10: 1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family. 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention; Article 11: 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. (...).

<sup>151</sup> The Beijing Rules (17, 18 and 46) made a similar statement. See also, *inter alia*, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (1985) adopted by UN General Assembly resolution 41/85 of 3 December 1986, and the Plan of Action of the Third Summit of the Americas held in Quebec, Canada, in April 2001.

The child has the right to live with his or her family, which is responsible for satisfying his or her material, emotional, and psychological needs. Every person's right to receive protection against arbitrary or illegal interference with his or her family is implicitly a part of the right to protection of the family and the child (...) <sup>152</sup>.

198. The same Tribunal, citing the European Court of Human Rights, has determined that mutual enjoyment of harmonious relations between parents and children is a fundamental component of family life and that the essential content of this precept is protection of the individual in face of arbitrary action by public authorities. One of the gravest interferences is that which leads to division of a family <sup>153</sup>.

199. All of the foregoing, examined in the light of the obligations of the State under Articles 17 and 19 of the American Convention, means that even in a state of emergency the State, through its agents, must ensure the protection of the family institution as an essential mechanism for the protection of the rights of the children under its jurisdiction. Therefore, if a child is separated from their family nucleus, the State should seek to preserve that link by intervening temporarily and directing its efforts toward the return of the child to their family and community, provided that is not contrary to their best interests. The Inter-American Court of Human Rights has established very clearly that in such situations children should be returned to their parents as soon as circumstances permit <sup>154</sup>.

200. In the instant case, it was the Salvadoran State itself that, through its armed forces, cause the separation of Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera from their biological families through their forced disappearance. All of the victims in the instant case were seen at least once after their separation from their families in the custody of army personnel, and yet there is not the slightest indication that any military authority adopted any measures so that the children might be reunited with their families. Although the State has argued that these events occurred in confrontations that very often resulted in the death of the parents and, therefore, it was difficult to establish the identity of the families of the children who were left behind, the Commission finds that the evidence in the record proves the opposite.

201. To begin with, some of the victims in the case were old enough to know their names and where members of their families lived. It is obvious that the soldiers who abducted the child victims in this case did not attempt to establish their identity in order to permit their reunification with their families. On the contrary, the way in which the facts described by the Commission occurred shows that the military officials deliberately sought the separation of the children from their families by pursuing and even murdering the latter, as, for instance, in the case of the father of Ana Julia and Carmelina Mejía Ramírez. It should be mentioned with respect to the Mejía Ramírez girls that the soldiers had direct contact with the children's godmother, and yet they took them away from the home where they met. A further example of this is the case of Gregoria Herminia, whose identity was changed, which ultimately obstructed her reunification with her biological family for 24 years.

202. Second, the State's argument regarding the death of the families in combat is baseless since, as the record shows, at least the mothers of all six victims are alive and

---

<sup>152</sup> I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, par. 71.

<sup>153</sup> I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, par. 72.

<sup>154</sup> I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, pars. 75 and 77.

have done everything in their power to find their missing daughters and sons. In that connection, it should be recalled that during the armed conflict, “[c]ounter-insurgency policy found its most extreme expression in a general practice of “cutting the guerrillas’ lifeline”<sup>155</sup>.” This state policy consisted of attacking mainly rural populations in areas considered to be under guerrilla control, which led, *inter alia*, to the deaths of many civilians, separation of families, forced displacement of entire communities, abduction of children, and destruction of property.

203. Based on the foregoing considerations, the Commission requests the Court to conclude and declare that the Salvadoran State breached its duties under Article 19 of the American Convention, in connection with the obligations set forth in Article 1(1) of said instrument, to the detriment of Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera. The Commission also the Court to conclude and declare that the State failed its duty of protection of the family recognized in Article 17 of the American Convention, in connection with its obligations under in Article 1(1) of said instrument, to the detriment of Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera, and of their next-of-kin.

204. Regarding identification of the next of kin who consider themselves victims in the present case, the Commission informs the Inter-American Court that, in accordance with its ongoing practice, at the time of adopting Report 95/09, it referred to the next of kin of the missing children and mentioned the persons whose names appeared in the case file at the time of adopting the decision. Indeed, the language used by the Commission specified “to the detriment of the next of kin identified to date, María Maura Contreras, Fermín Recinos Ayala, Daysi and Nelson Geovany Contreras, Arcadia Ramírez, Reyna Dionila Portillo, Avenicio, Nelly and Verónica Ramírez, Agustín Antonio Rivera Gálvez, Margarita Dolores Rivera de Rivera, Juan Carlos, Agustín Antonio, and José Daniel Rivera”.

205. After approval of the Report on the Merits and in line with the practice and regulatory provisions in force at the time, the petitioners informed the Commission about the list of next of kin affected by the violations stated in the Report. This list is longer than what was included in the Report on the Merits. Likewise, the petitioners corrected the names of some of the relatives. The list provided by the petitioners after approval of the Report on the Merits is as follows:

- Abenicio Portillo, brother of Ana Julia and Carmelina Mejía Ramírez.
- María Nely Portillo, sister of Ana Julia and Carmelina Mejía Ramírez.
- Santos Verónica Portillo, sister of Ana Julia and Carmelina Mejía Ramírez.
- Reina Dionila Portillo de Silva, aunt of Ana Julia and Carmelina Mejía Ramírez.
- Arcadia Ramírez Portillo, mother of Ana Julia and Carmelina Mejía Ramírez.
- Margarita Dolores Rivera de Rivera, mother of José Rubén Rivera.
- Agustín Antonio Rivera Gálvez, father of José Rubén Rivera.
- Agustín Antonio Rivera Rivera, brother of José Rubén Rivera.
- José Daniel Rivera Rivera, brother of José Rubén Rivera.
- Milton Rivera Rivera, brother of José Rubén Rivera.
- Irma Cecilia Rivera Rivera, sister of José Rubén Rivera.
- Cándida Marisol Rivera Rivera, sister of José Rubén Rivera.
- María Maura Contreras, mother of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.

---

<sup>155</sup> Annex 3. Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador). Cases and Patterns of Violence A and B

- Fermín Recinos, father of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.
- Julia Gregoria Recinos Contreras, sister of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.
- Marta Daysi Leiva Contreras, sister of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.
- Rubén de Jesús López Contreras, brother of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.
- Sara Margarita López Contreras, sister of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.
- Santos Antonio López Contreras, brother of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras.

206. The Commission stresses that the names of the relatives incorporated into the Report on the Merits 95/09 were drawn from various items of the case file and were included to indicate the persons that the IACHR had been able to specify up to that date, in the understanding that there had been more next of kin affected. In line with the practice and regulatory provisions in force at the time, the next of kin were individually identified during the period of transition between adoption of the Report on the Merits and filing of the case with the Commission (see Article 43.3 of the Commission's Rules of Procedure in force at the time). Because of this, historically and in a large number of cases, the Commission incorporated, in the brief of the complaint filed with the Court the names of the next of kin who should be viewed either as victims or as beneficiaries of reparations. This practice was not meant by the parties or by the Inter-American Court to undermine the right to defense of the States. Furthermore, in some cases, the Court considered as victims persons who were not identified in the complaint but who were closely connected with the incidents of the case and as long as a balance with the parties was struck in terms of procedures.<sup>156</sup>

207. The regulatory reforms that came into force on January 1, 2010 entail a change regarding the time when the relatives viewed as victims in the proceedings filed with the Court are individually identified. Currently, the Inter-American Commission, through its new regulatory processes, tries to ensure the best possible identification and individualization of those persons before ruling on the merits of the case. Nevertheless, the Report on the Merits of the present case was approved on September 8, 2009, date on which the regulatory reforms had not yet entered into force.

208. By virtue of these changes in the Court's approach and regulatory reforms, the Commission considers that, in the framework of the cases whose reports on the merits were approved before their entry into force, practices prevailing at the respective times must be taken into consideration, ensuring in all cases counter submissions and a balance in the proceedings for the parties.

209. In short, the Commission requests the Court to take into consideration what was pointed out in the preceding paragraphs at the time of determining the next of kin who should be viewed as victims in the present case. This also applies for the arguments presented in the section on the right to humane treatment of the relatives *infra* paragraphs 222-223 and the rights to a fair trial and judicial protection *infra* paragraphs 224-252.

---

<sup>156</sup> See: Inter-American Court of Human Rights, *Case of Goiburú and others*. Judgment of September 22, 2006. Series C No. 153, paragraphs 29 and 30; Inter-American Court of Human Rights, *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 91; Inter-American Court of Human Rights, *Case of Acevedo Jaramillo and others v. Peru*. Judgment of February 7, 2006. Series C No. 144, paragraph 227; and Inter-American Court of Human Rights, *Case of the "Mapiripán Massacre" v. Colombia. Preliminary objections*. Judgment of March 7, 2005. Series C No. 122, paragraph 183.

#### **4. Right to a name and special protection of the child (Articles 18, 19 and 1(1) of the American Convention)**

210. Article 18 of the American Convention provides, "Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary."

211. Article 19 of the American Convention says, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

212. Article 1(1) of the Convention stipulates:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

213. Bearing in mind what is mentioned in the foregoing section on interpretation of the American convention in the light of the *corpus juris* on the rights of the child, the Commission believes it appropriate to mention that Article 7 of the Convention on the Rights of the Child provides as follows:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

214. It is worth noting that the international development of the right to an identity, in particular where child victims of forced disappearance are concerned, acquired greater importance with the adoption of Convention on the Rights of the Child. Based on its legislative history, the Argentine state, its sensitivity sharpened by the situations that occurred in that country as well as in other parts of the region, submitted a proposed alternative to Article 8 of said instrument, in order to include the notion of identity<sup>157</sup>.

215. The final version of Article 8 of the Convention explicitly recognizes the right to an identity and its link to the right to the name as follows:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

---

<sup>157</sup> Working Group of the Commission on Human Rights (E/CN.4/1985/64, para. 9 and E/CN.4/1986/39, para. 35). The main argument put forward by the representative of Argentina was as follows: "the importance of the article submitted by his delegation stemmed both from the special protection that was to be given by the State to the child as soon as possible, when the right of the child to preserve his or her true identity had been violated, and from the distinction made between the child's true and genuine identity and his or her legal one". A similar proposal was submitted by the Informal NGO Ad hoc Group in 1986: "The States Parties to the present Convention shall take all appropriate measures to enable the child to exercise his/her inalienable right to know and to retain his/her true and genuine personal, legal and family identity". See E/CN.4/1986/WG.1/WP.1, p. 26.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

216. Other international instruments recognize the right to personal identity<sup>158</sup>. Specifically with regard to forced disappearance, Article 25 of the International Convention for the Protection of All Persons from Enforced Disappearance provides:

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance:

b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph ( a ) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 ( a ) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

(...)

4. Given the need to protect the best interests of the children referred to in paragraph 1 ( a ) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

(...)

217. The foregoing leads to the conclusion that international human rights law recognizes the existence of a right to an identity that is associated with other rights, such as the right to a name, to nationality, to a family, and to maintain family relations, all of which are included in the American Convention. Referring to the contents of Article 18 of the Convention, the Inter-American Court has already established that the right to a name constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State<sup>159</sup>.

218. In that regard, the Commission considers that Articles 18 and 19 of the American Convention recognize the right to an identity and, therefore, any suppression or modification, whether total or partial, of the right of a child to preserve their identity and its constituent elements may engage the responsibility of the State. Furthermore, with respect

---

<sup>158</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 17, 21, and 31); Declaration on Race and Racial Prejudice (Articles 1(3) and 5(1)); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Article 8(1)(e)); and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Article 1(1)).

<sup>159</sup> I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005, pars. 182 and 184.

to the obligations under Article 1(1) of the Convention, where an identity has been suppressed or modified, it is the duty of the State to seek its restoration and to conduct a thorough, impartial, and effective investigation in order to identify and, as appropriate, punish those responsible.

219. In the instant case, 24 years after her forced disappearance, in December 2006 Gregoria Herminia Contreras was identified and reunited with her biological family. The petitioners' reproduction of her testimony indicates that after being separated from her family at the age of four, a soldier requested permission to keep her and delivered her to his mother, who registered her as her daughter and changed her given and last names. The account of the petitioners also mentions that the persons with whom she lived, including the soldier who deprived her of the liberty, gave her distorted information about the origin of her family, telling her that her parents were dead and that they had been guerrillas. This supplanting of Gregoria Herminia's identity meant, among other things, that despite the tireless efforts of her mother, María Maura Contreras, to find her, and the support of Pro Búsqueda and the PDDH, her location was obstructed for more than two decades.

220. Based on the foregoing, the Commission requests the Court to conclude and declare that the State of El Salvador, by forcibly disappearing Gregoria Herminia Contreras and facilitating the substitution of her identity through an illegal change of names, violated the rights guaranteed by Articles 18 and 19 of the American Convention, in connection with the obligations set forth in Article 1(1) of said instrument.

##### **5. Right to humane treatment of the families of the victims (Articles 5(1) and 1(1) of the American Convention)**

221. As the Court has indicated on repeated occasions, the next of kin of victims of human rights violations may, in turn, become victims<sup>160</sup>. In a number of cases, the Inter-American Court has considered that the mental and moral integrity of the victims' next of kin has been violated "in light of the additional suffering experienced as a result of the specific circumstances surrounding the violations committed against their loved ones and of the subsequent acts or omissions by State authorities with respect to the incidents at issue"<sup>161</sup>.

222. Specifically, in cases of forced disappearance, the Court has held that it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred<sup>162</sup>.

---

<sup>160</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 96; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149. par. 156; and I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141. par. 119.

<sup>161</sup> I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136. par. 60; I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134. pars. 144 and 146.

<sup>162</sup> I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C No. 162. par. 132; I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. par. 97; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136. par. 61.

223. The Commission finds that this assumption is even more evident in a case such as the instant one, where the victims are all children, who, because of their condition, are in an even greater state of defenselessness and vulnerability. This permits the conclusion that their next-of-kin felt profound fear and impotence with regard to the fate of the victims. Bearing in mind the above-described circumstances of each of the disappearances, the failed attempts to clarify what happened, and the resulting uncertainty as to the fate or whereabouts of the victims, the Commission requests the Court to conclude and declare that the State violated the right to mental and moral integrity of the next-of-kin, as indicated in paras. 204-209.

**6. Right to a fair trial and judicial protection (Articles 8(1), 25(1), and 1(1) of the American Convention)**

224. Article 8(1) of the American Convention provides,

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

225. Article 25(1) of the American Convention states,

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

226. Article 1(1) of the Convention stipulates:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

227. The Court has held that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law”<sup>163</sup>.

228. With respect to the rights of the next of kin of victims of human rights violations to obtain justice and reparation, the Court has found that

[f]rom Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to

---

<sup>163</sup> I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 124; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163. par. 145; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, par. 106.

act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation<sup>164</sup>.

229. By the same token, the Court has ruled that the next of kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired<sup>165</sup>. Based on the foregoing, once state authorities have knowledge of a violation of human rights, in particular of the rights to life, humane treatment, and personal liberty,<sup>166</sup> they should initiate a serious, impartial and effective investigation, ex officio and without delay<sup>167</sup>, which should be carried out within a reasonable time<sup>168</sup>.

230. As to the substance of the duty to investigate with due diligence, the Inter-American Court has held that the investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth<sup>169</sup>. In that same vein, the Court has found that the State has the duty to ensure that everything necessary is done to learn the truth about what happened and for those responsible to be punished<sup>170</sup>, and involving every State institution<sup>171</sup>. The Court has also said that the authorities should adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation<sup>172</sup>.

231. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be

---

<sup>164</sup> I/A Court H.R., *Case of García-Prieto et al.*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. par. 102; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. par. 227; I/A Court H.R., *Case of the Serrano-Cruz Sisters. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, par. 63.

<sup>165</sup> I/A Court H.R., *Case of García-Prieto et al.*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. par. 103; I/A Court H.R., *Case of Bulacio. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, par. 114; and I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 382.

<sup>166</sup> I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 100.

<sup>167</sup> I/A Court H.R., *Case of García-Prieto et al.*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. par. 101; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110. pars. 146; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*, Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 130.

<sup>168</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 382.

<sup>169</sup> I/A Court H.R., *Case of García-Prieto et al.*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. par. 101.

<sup>170</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163. par. I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 382.

<sup>171</sup> I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 130; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140. par. 120; and I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, par. 66.

<sup>172</sup> I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166. par. 122.

undertaken in a serious manner and not as a mere formality preordained to be ineffective<sup>173</sup>, or as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof<sup>174</sup>.

232. As regards the guarantee of reasonable time, the Court has determined that three elements should be taken into account to determine the fairness of the time incurred: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities<sup>175</sup>. In other cases, the Court has included a fourth element: the effects that a delay in the proceeding might have on the legal situation of the victim<sup>176</sup>.

233. Based on the above-cited precedents, the Commission will argue that the State of El Salvador did not carry out a meaningful and diligent investigation within a reasonable time into the abduction and forced disappearance of the victims as a means to ensure the rights of the victims, and to safeguard the rights to the truth, justice, and reparation of their next of kin.

**i. In relation to Gregoria Herminia, Serapio Cristián and Julia Inés Contreras**

234. The Commission has described that three proceedings were instituted at the domestic level in connection with what happened to Gregoria Herminia, Serapio Cristián and Julia Inés Contreras. The first was a procedure before the Human Rights Ombudsman; the second, an investigation by the Office of the Attorney General; and the third, a *habeas corpus* petition filed with the Constitutional Chamber of the Supreme Court of Justice.

235. The first and third of these proceedings culminated in decisions of May 31, 1996, and February 17, 2003, respectively, in which the forced disappearance of the three victims was confirmed and the Office of the Prosecutor General was instructed to investigate what had happened. The second procedure was opened on March 16, 2000, and, to date, constitutes the only criminal inquiry into the forced disappearance of the Contreras children.

236. The Commission notes that their disappearance was publicly knowledge at least since March 1993, when the Truth Commission issued its report in which it makes reference to them. Despite this, it was only on March 16, 2000, seven years after the the aforesaid report was published and two years after the decision of the PDDH, that the State opened a criminal investigation of the events.

237. In the opinion of the Commission, this fact in itself entails a disregard of the duty of the State to initiate and pursue investigations *ab initio*, as part of the obligation to

---

<sup>173</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4. par. 177; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 131; and I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166. par. 120.

<sup>174</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4. par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 166. par. 120.

<sup>175</sup> I/A Court H.R., *Case of Escué-Zapata*. Merits, Reparations and Costs Judgment of July 4, 2007. Series C No. 165. par. 72; I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C No. 162. par. 102.

<sup>176</sup> I/A Court H.R., *Case of Kawas-Fernández v. Honduras*; *Case of Valle-Jaramillo*.

provide victims of human rights violations and their next of kin with effective remedies, in keeping with Articles 8(1) and 25(1) of the American Convention.

238. Furthermore, when it examined the record, the Commission noted a series of shortcomings and irregularities:

- Since the investigation was opened in 2000, only three procedures have been carried out.
- The first procedure was performed on June 26, 2003; in other words, more than three years after the investigation was formally opened.
- In this procedure to obtain the operational records of the Fifth Infantry Brigade, a lieutenant informed the prosecutor that said records were in the General Archive of the Ministry of National Defense and should be requested from the Office of Legal Affairs of that Ministry. However, there is no record that the prosecutor took subsequent steps to obtain the information from that General Archive.
- The second procedure was a request for information to the Fifth Infantry Brigade on the operations carried out on August 25, 1982, and on the officials and battalions that took part. There is no record of any response to this request or that the prosecutor reiterated it or used any admonitory mechanism to secure the information's disclosure.
- The third measure was an inspection of the scene of the events, where no member of the Contreras family was found. There is also no record that other mechanisms were employed to obtain information about the Contreras family.
- No statement whatsoever was taken on the facts and there is nothing in the record to suggest that potential witnesses were called.
- Despite knowledge of the identification of Gregoria Herminia, who revealed new information about the operation, the disappearance of her siblings, and those responsible for the disappearance, to date there is no information about any steps ordered to reactivate the investigation based on this new evidence.

239. The Commission also highlights that, despite the fact that the decision in the *habeas corpus* proceeding ordered the notification of the Office of the Prosecutor General so that it might investigate the facts, the inquiry remains dormant.

**ii. In relation to Ana Julia and Carmelina Mejía Ramírez**

240. The Commission described in the "considerations of fact" section, that two proceedings were instituted at the domestic level in connection with what happened to Ana Julia and Carmelina Mejía Ramírez. The first, in response to a complaint filed on April 7, 1997 by Mrs. Arcadia Ramírez Portillo, the mother of the girls, with the Second Lower Court in and for San Francisco Gotera, and the second, as a consequence of a *habeas corpus* petition lodged by Reyna Dionila Portillo, the girls' aunt.

241. The investigation carried out by the Second Lower Court in and for San Francisco Gotera was opened on April 7, 1997 and closed on February 23, 1999 "for lack of further information." The Commission highlights that in almost 2 years the only testimonies received were those of the individuals mentioned by the plaintiff. The only measure ordered by the prosecutor in charge was a request for information to the Chairman of the Joint Chiefs of Staff of the Armed Forces and to the Minister of Defense, who indicated that there was no information about an operation carried out by the Atlacatl Battalion on the day of the events.

242. The Commission underlines that this investigation did not progress beyond the preliminary stage and that, furthermore, other than the request for information to the Minister of Defense, no other measures were adopted to follow up on the statements from

the five witnesses who concurred with the disappearance of the Mejía Ramírez girls. Despite the contradiction between the statements of all the witnesses and what the Ministry of Defense said, the prosecutor did not order any measures aimed at verifying the accuracy of what said authority expressed. Furthermore, no attempt was made to inspect the historic archive. There was no attempt to obtain information on the members of the Atlacatl Battalion at the time of the events and, therefore, it was not possible to identify potential culprits.

243. The Commission also emphasizes that, despite the fact that the decision in the *habeas corpus* proceeding ordered the notification of the Office of the Prosecutor General so that it might investigate the facts, the inquiry remains dormant.

**iii. In relation to José Rubén Rivera**

244. According to the facts described by the Commission, four proceedings were instituted at the domestic level in connection with the forced disappearance of José Rubén Rivera: the first, in response to a complaint filed on November 15, 1996, by Mrs. Margarita Rivera, the mother of José Rubén Rivera, with the Second Examining Court in and for San Vicente; the second, a proceeding initiated before the PDDH on May 31, 1996; the third, an investigation by the Office of the Attorney General in response to the decision of the PDDH; and the fourth, the *habeas corpus* proceeding.

245. The criminal inquiry opened on November 15, 1996 by the Second Examining Court in and for San Vicente as a result of the complaint filed by Mrs. Margarita Rivera, was closed on October 2, 1997, "for want of further steps to take". In the period of 11 months that this investigation was open, for six of those months there was no activity whatsoever. In the five other months, two procedures were carried out which consisted of a request for information from the Fifth Infantry Brigade regarding any record of the entry of José Rubén Rivera and the inspection of the institutions records. When said inspection revealed no record of the victim, the decision was made to close the investigation without taking any more steps. There is no mention in the record of the summons of potential witnesses or further examination of the complainant.

246. It was not until March 16, 2000, two years after the decision of the PDDH confirming the forced disappearance of José Rubén Rivera, that a new investigation was opened by the Unit for Crimes against Life and Physical Integrity. The Commission notes that this case is the same as the one mentioned above. Accordingly, the observations contained in that paragraph also apply here:

- Since the investigation was opened in 2000, only three procedures have been carried out.
- The first procedure was performed on June 26, 2003; in other words, more than three years after the investigation was formally opened.
- In this procedure to obtain the operational records of the Fifth Infantry Brigade, a lieutenant informed the prosecutor that said records were in the General Archive of the Ministry of National Defense and should be requested from the Office of Legal Affairs of that Ministry. However, there is no record that the prosecutor took subsequent steps to obtain the information from that General Archive.
- The second procedure was a request for information to the Fifth Infantry Brigade on the operations carried out on August 25, 1982, and on the officials and battalions that took part. There is no record of any response to this request or that the prosecutor reiterated it or used any admonitory mechanism to secure the information's disclosure.

- The third measure was an inspection of the scene of the events, where no member of the Rivera family was found. There is also no record that other mechanisms were employed to obtain information about the Rivera family.
- No statement whatsoever was taken on the facts and there is nothing in the record to suggest that potential witnesses were called.

247. The Commission also notes that, despite the fact that the decision in the *habeas corpus* proceeding ordered the notification of the Office of the Prosecutor General so that it might investigate the facts, the inquiry remains dormant.

#### iv. Conclusion

248. The information available on the criminal proceedings indicates that, to date, the investigations into the forced disappearances established in the instant report have not progressed beyond the preliminary stages and have been closed or are at a standstill, without any taking of evidence to determine the circumstances of the disappearance of the victims, establish their whereabouts, or identify potential culprits. All of the investigations have featured long periods of inactivity and, for what few steps have been taken, the necessary follow-up has not been carried out. On a number of occasions military institutions were requested to provide complete information about operations and their participants, but there has been either no response or an incomplete response. Faced with this situation, the authorities in charge of the investigation took no steps whatsoever. On the contrary, they closed the investigations.

249. The Commission recalls that according to the Court's case law, a diligent investigation also includes preventing the obstruction of proceedings by public officials or private citizens. In this connection, the Court has ruled that those who hamper, divert or unduly delay investigations tending to clarify the truth of the facts must be punished, rigorously applying, in this regard, provisions of domestic legislation<sup>177</sup>.

250. The Commission is troubled by the passage of time without an adequate and diligent investigation of the facts. The passage of time helps to perpetuate impunity as it inevitably has the effect of reducing the prospects of finding accurate testimony and evidence for establishing what happened and punishing those responsible. The Commission holds that forced disappearance of persons is a phenomenon whose complexity may entail a delay in investigations. However, in the instant case, the Commission finds that the delays in the proceedings have not been caused by the nature of the matter or by especially complex enquiries. On the contrary, the available information suggests that the lack of progress in the proceedings has been due to the inaction of the authorities in charge of the investigation.

251. Finally, even though, because of the scant progress in the investigations, the Law on General Amnesty for the Consolidation of Peace has not been applied to any of the cases examined in the instant application, the Commission reminds the State that the Inter-American Court has established in its judgment in the case of the *Serrano Cruz Sisters* that it should refrain from using figures such as amnesty and prescription or the establishment of measures designed to eliminate responsibility, or measures intended to prevent criminal prosecution or suppress the effects of a conviction<sup>178</sup>.

---

<sup>177</sup> I/A Court H.R., *Case of the Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, par. 119.

<sup>178</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra* note 10, par. 148; *Case of the 19 Merchants*, *supra* note 15, par. 175; and *Case of Maritza Urrutia*, *supra* note 19, par. 126; I/A Court H.R., *Case of the Serrano Cruz Sisters. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, par. 73.

252. Based on the foregoing, the Commission concludes that the Salvadoran State violated the rights to a fair trial and judicial protection recognized in Article 8(1) and 25(1) of the American Convention, in conjunction with the obligations set forth in Article 1(1) of said instrument, to the detriment of Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras; Ana Julia and Carmelina Ramírez; and José Rubén Rivera, as well as of the next of kin as indicated in paras. 204-209.

## VIII. REPARATIONS AND COSTS

253. Because of the incidents alleged in the present complaint and the Inter-American Court's ongoing case law that establishes that "it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately,"<sup>179</sup> the Commission submits to the Court its points of view on the reparations and costs that El Salvador must grant as a result of its responsibility for the violations of human rights perpetrated to the detriment of the victims.

254. Bearing in mind the Court's Rules of Procedure, which grants autonomous representation to the individual, the Commission shall simply outline below the general criteria and claims regarding the reparations and costs it considers should be applied by the Court in the present case. The Commission understands that it pertains to the victims and their representatives to substantiate in greater detail their claims, in conformity with Article 63 of the American Convention and Article 25 and others of the Court's Rules of Procedure. Nevertheless, in the possible event that the representatives of the victims do not make use of this right, the Court is requested to grant the Inter-American Commission a procedural opportunity to quantify the relevant claims. Likewise, the Commission shall apprise the Court in due time if it has any observation regarding the quantification of the claims by the representatives of the victims.

### 1. Obligation to redress

255. In the present case, the Inter-American Commission has requested the Honorable Court to conclude and declare that the Salvadoran State incurred international liability for the violation of the rights to juridical personality, to life, to humane treatment, to personal liberty, of the family, to a name, of the child, to a fair trial and judicial protection as provided for in Articles 3, 4, 5, 7, 17, 18, 19, 8 and 25 of the American Convention, with respect to the general obligations of respect and guarantee enshrined in Article 1(1) of the same instrument.

256. Article 63.1 of the American Convention establishes that

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

257. As indicated by the Court in its ongoing case law, "[a]rticle 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of the

---

<sup>179</sup> Inter-American Court of Human Rights. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, paragraph 156; Inter-American Court of Human Rights. *Case of Zambrano Vélez and others*. Judgment of July 4, 2007. Series C No. 166, paragraph 103; and Inter-American Court of Human Rights. *Case of Escué Zapata*. Judgment of July 4, 2007. Series C No. 165, paragraph 126.

contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."<sup>180</sup>

258. The obligation to compensate, which is governed in all aspects by international law (scope, nature, modalities and determination of the beneficiaries), may be neither modified nor disregarded by the obliged State by calling upon its own domestic law for this purpose.<sup>181</sup>

## 2. Beneficiaries

259. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that fair compensation be paid. In line with the nature of the present case, the beneficiaries of the reparations ordered by the Court are as follows:

- a) Gregoria Herminia, Serapio Cristian, Julia Inés Contreras, and their next of kin: María Maura Contreras, Fermín Recinos, Julia Gregoria Recinos Contreras, Marta Daysi Leiva Contreras, Nelson Geovany Contreras, Rubén de Jesús López Contreras, Sara Margarita López Contreras and Santos Antonio López Contreras;
- b) Ana Julia and Carmelina Mejía Ramírez, and their next of kin: Abenicio Portillo, María Nely Portillo, Santos Verónica Portillo, Reina Dionila Portillo de Silva and Arcadia Ramírez Portillo; and
- c) José Rubén Rivera and his next of kin: Margarita Dolores Rivera de Rivera, Agustín Antonio Rivera Gálvez, Agustín Antonio Rivera Rivera, José Daniel Rivera Rivera, Milton Rivera Rivera, Irma Cecilia Rivera Rivera and Cándida Marisol Rivera Rivera.

## 3. Measures of reparation in the present case

260. Reparations are crucial to guarantee that justice is done in an individual case, and they constitute the mechanism to take the Court's decision beyond the realm of moral condemnation. Reparations for the damage stemming from the breach of an international obligation calls for, to the extent possible, full restitution (*restitutio in integrum*), which consists of restoring the situation prior to said breach. If not feasible, reparations consist of measures that tend to make the impact of the violations perpetrated disappear.<sup>182</sup> These measures include various ways that a State can accept international liability for what occurred, which in accordance with international law consist of measures of restoration, compensation, rehabilitation, satisfaction and non repetition.<sup>183</sup>

---

<sup>180</sup> Inter-American Court of Human Rights, *Case of La Cantuta*. Judgment of November 29, 2006 Series C No. 162, paragraph 200; Inter-American Court of Human Rights, *Case of the Miguel Castro Castro Penitentiary*. Judgment of November 25, 2006. Series C No. 160, paragraph 414; Inter-American Court of Human Rights, *Case of Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraph 116.

<sup>181</sup> Inter-American Court of Human Rights. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, paragraph 190; Inter-American Court of Human Rights. *Case of Zambrano Vélez and others*. Judgment of July 4, 2007. Series C No. 166, paragraph 148; Inter-American Court of Human Rights, *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, paragraph 200; Inter-American Court of Human Rights, *Case of the Miguel Castro Castro Penitentiary*. Judgment of November 25, 2006. Series C No. 160, paragraph 415.

<sup>182</sup> Inter-American Court of Human Rights, *Case of the Gómez Paquiyauri Brothers*, paragraph 190; Case of the 19 Tradesmen, paragraph 223; *Case of Myrna Mack Chang*. paragraph 237; *Case of Cantos*. paragraph 108, and *Case of the Caracazo*. Reparations (Article 63.1 of the American Convention on Human Rights). Judgment of August 29, 2002. Series C N° 95, paragraph 78.

<sup>183</sup> See United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the right to reparation to victims of gross violations of human rights and humanitarian law, E/CN.4/Sub2/1990/10, July 26, 1990. See also Inter-American Court of Human Rights, *Case of Blake*. Reparations (Art. 63.1 American Convention

261. Owing to the nature of the present case, the Commission requests the Court to order the State of El Salvador to conduct an impartial, diligent and effective investigation of the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera. If they are found, to order to restitution of their right to a name and to make the efforts needed to ensure reunification with their respective families. If it is found that certain are no longer alive, to adopt the measures needed to hand over their mortal remains to their relatives.

262. Likewise, the Commission requests the Court to order the Salvadoran State to conduct an impartial, diligent and effective investigation of the circumstances surrounding the forced disappearances of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera, in order to identify those responsible and to impose the corresponding sanctions.

263. The Commission also requests the Court to order the State to carry out criminal, administrative or other kinds of investigations to determine the legal consequences for the deeds or omissions of the state officials who contributed to the cover-up, denial of justice and impunity in of the incidents of the case.

264. Furthermore, the Commission requests the Court to order other measures of compensation, satisfaction, rehabilitation, and non-repetition, as indicated below in general.

265. The Court has set the basic criteria governing fair compensation aimed at providing adequate and effective financial compensation for damages sustained as a result of the violations of human rights. Likewise, the Court has established that compensation is merely of a compensatory nature and that it shall be granted to the extent and measure deemed sufficient to compensate both the pecuniary and non-pecuniary damages caused.<sup>184</sup>

266. The Court, in its case law on reparations, has been consistent with establishing that pecuniary damages include consequential damage and lost earnings, as well as non-pecuniary or moral damage for both the victims and their immediate family in certain cases.<sup>185</sup>

267. On non-pecuniary damage, the Court has established that:

[n]on-pecuniary damages may include the suffering and affliction caused by the violations as well as the detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of a victim. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, it is necessary to

---

on Human Rights). Judgment of January 22, 1999. Series C No. 48, paragraph 31; *Case of Suárez Rosero*, Reparations (Article 63.1 American Convention on Human Rights), Judgment of January 20, 1999. Series C No. 44, paragraph 41, and Inter-American Court of Human Rights, *Case of Castillo Páez*. Reparations (Article 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43.

<sup>184</sup> Inter-American Court of Human Rights. *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, paragraph 210; Inter-American Court of Human Rights, *Case of Hilaire, Constantine and Benjamin and others*. Judgment of June 21, 2002. Series C No. 94, paragraph 204; Inter-American Court of Human Rights, *Case of Garrido and Baigorria*. Reparations (Article 63.1 American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, paragraph 41.

<sup>185</sup> Inter-American Court of Human Rights. *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, paragraphs 213 and 214; Inter-American Court of Human Rights. *Case of the Miguel Castro Castro Penitentiary*. Judgment of November 25, 2006. Series C No. 160, paragraph 423.

provide the comprehensive reparation of the damage caused in other forms. First, through payment of an amount of money, which the Tribunal will establish through reasonable application of judicial discretion and equity. And, second, through acts or works which are public in their scope or effects, such as the transmission of a message of official disapproval of the corresponding violations to human rights and of commitment with the efforts tending to avoid the repetition of the violations. These acts seek to recover the victim's memory, the acknowledgment of their dignity, and the consolation of their next of kin.<sup>186</sup>

268. Without detriment to the claims filed in due time by the representatives of the victims in the proceedings, the IACHR requests the Court to set, on the basis of the evidence submitted, an equitable amount for the corresponding compensation for pecuniary and non-pecuniary damage caused as a result of the violations alleged in the present complaint.

269. In addition, the Commission requests the Court to order the State to provide measures of satisfaction that include, at least, public acknowledgment of international liability and publication of the relevant parts of the judgment that shall eventually be issued by the Court.

270. The Commission also requests the Court to provide measures of rehabilitation for the benefit of Gregoria Herminia Contreras, her next of kin, as well as the next of kin of the other victims who continue to be missing.

271. Finally, the Commission requests the Court, in keeping with the case of the Serrano Cruz Sisters and in view of the failure to implement most of the measures of redress ordered in this case, to reiterate to the Salvadoran State the obligation to effectively ensure the functioning of a national commission to look for young people who disappeared when they were children during the armed conflict, to set up web page for this search, and to create a genetic information system.

#### **4. Costs and expenses**

272. In compliance the Court's ongoing case law, costs and expenses must be included under the term reparations as enshrined in Article 63(1) of the American Convention, because the proceedings filed by the victim, her successors or representatives to obtain access to international justice involve outlays and commitments of a financial nature that have to be compensated.<sup>187</sup>

273. In the present case, the Commission requests the Court, after it has heard the representatives of the victims, to order the Salvadoran State to pay the costs and

---

<sup>186</sup> Inter-American Court of Human Rights, *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, paragraph 216; Inter-American Court of Human Rights, *Case of the Miguel Castro Castro Penitentiary*. Judgment of November 25, 2006. Series C No. 160, paragraph 430; Inter-American Court of Human Rights, *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 383; Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 254.

<sup>187</sup> Inter-American Court of Human Rights, *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, paragraph 243; Inter-American Court of Human Rights, *Case of the Miguel Castro Castro Penitentiary*. Judgment of November 25, 2006. Series C No. 160, paragraph 455; Inter-American Court of Human Rights, *Case of Terminated Congress Employees (Aguado Alfaro and others)*. Judgment on preliminary objections, merits, reparations and costs. Judgment of November 24, 2006. Series C No. 158, paragraph 152.

expenses arising or that shall arise from the processing of the present case not only in domestic courts but also in the Inter-American Human Rights System.

## **IX. PETITION**

274. On the basis of the arguments of fact and law indicated above, the Inter-American Commission on Human Rights request the Court to requests the court to conclude and declare that

- a) El Salvador is responsible for the violation of the rights to juridical personality, to humane treatment, to personal liberty, of the family, to a name and of the child, as provided for in Articles 3, 5, 7, 17, 18, and 19 of the American Convention, with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of Gregoria Herminia Contreras;
- b) El Salvador is responsible for the violation of the rights to juridical personality, to life, to humane treatment, to personal liberty, of the family and of the child, as provided for in Articles 3, 4, 5, 7, 17, and 19 of the American Convention, with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Ramírez, and José Rubén Rivera.
- c) El Salvador is responsible for the violation of the rights to humane treatment, of the family, to a fair trial and to judicial protection, as provided for in Articles 5, 17, 8, and 25 of the American Convention with respect to the obligations enshrined in Article 1.1 of the same instrument, to the detriment of the persons indicated in the respective sections.

275. And, as a result, to order the State to

- a) Conduct an impartial, diligent and effective investigation of the fate and whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera. If they are found, to provide for the restitution of their right to a name and to make the efforts needed to ensure reunification with their respective families.
- b) Conduct an impartial, diligent and effective investigation of the circumstances surrounding the forced disappearances of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera, in order to identify those responsible and to impose the corresponding sanctions.
- c) Conduct criminal, administrative or other kinds of investigations to determine the legal consequences for the deeds and omissions of state officials who contributed to the cover-up, denial of justice and impunity of the facts in the case.
- d) Pay pecuniary and non-pecuniary damages caused as a result of the violations alleged in the present complaint.
- e) Order measures of satisfaction that include, at least, public acknowledgment of international liability and the publication of the relevant parts of the judgment that shall eventually be issued by the Court.
- f) Order measures of redress for the benefit of Gregoria Herminia Contreras, her relatives, as well as the relatives of other victims who continue to be missing.
- g) Effectively start up the functioning of a national commission to look for young people who disappeared when they were children during the armed conflict, set up a web page for this search, and create a genetic information system in

keeping with what was ordered by the Court in the judgment for the case of the Serrano Cruz Sisters.

- h) Pay the costs and expenses incurred in processing the present case in the Inter-American Commission and Court.

**X. EVIDENCE**

**1. Documentary evidence**

276. A listing of documentary evidence available to date is provided below:

**Appendix 1.** IACHR, Report No. 11/05 (admissibility), petition 708-03, *Gregoria Herminia, Serapio Cristian and Julia Inés Contreras*, El Salvador, February 23, 2005.

IACHR, Report No. 53/05 (admissibility), petition 880-01, *José Rubén Rivera*, El Salvador, October 12, 2005.

IACHR, Report No. 56/05 (admissibility), petition 779-01, *Ana Julia and Carmelina Mejía Ramírez*, El Salvador, October 12, 2005.

**Appendix 2.** IACHR, Report No. 95/09 (merits), Case 12.517, *Gregoria Herminia Contreras and others*, El Salvador, September 8, 2009.

**Appendix 3.** Case file of the proceedings with the Inter-American Commission on Human Rights.

**Annex 1.** IACHR, *Annual Report 1982-1983*, OEA/Ser.L/V/II.61, Doc. 22 rev. 1, September 27, 1983.

**Annex 2.** Report of the Working Group on Forced or Involuntary Disappearances, United Nations Distr. GENERAL E/CN.4/2004/58, January 21, 2004, SPANISH, Original: ENGLISH.

**Annex 3.** Report of the UN Commission on the Truth for El Salvador: From madness to hope (the 12-year war in El Salvador).

**Annex 4.** The Boston Globe, *A Country Awakes to the Reality of Its 'Disappeared Children'*, article published on July 14, 1996, Steve Fainaru (non-official translation), <http://www.boston.com/globe/specialreports/1996/jul/salvador/salvador2.htm>.

**Annex 5.** The New York Times Magazine, *Salvador's Disappeared Children*, Tina Rosenberg, Sunday edition, February 7, 1999, translated by Ligia Rubio-White, Gerardo Cotto and Ralph Sprenkels.

**Annex 6.** Committee on the Rights of the Child, United Nations, 36th regular session, June 30, 2004, CRC/C/15/Add.232.

**Annex 7.** Ruling of the Prosecutor's Office for the Defense of Human Rights, Case file SS – 0449 – 96, February 10, 2003.

- Annex 8.** Statement by the Prosecutor's Office for the Defense of Human Rights regarding the establishment of a Commission to Look for Children who Disappeared during the Armed Conflict, on November 8, 2004.
- Annex 9.** Report of the Prosecutor's Office for the Defense of Human Rights, July–December 2001.
- Annex 10.** Birth certificate of Gregoria Herminia Contreras, issued on October 6, 1994.
- Annex 11.** Birth certificate of Serapio Cristian Contreras, issued on June 29, 1993.
- Annex 12.** Birth certificate of Julia Inés Contreras, issued on June 29, 1993.
- Annex 13.** Ruling of the Constitutional Chamber of the Supreme Court of Justice on February 17, 2003.
- Annex 14.** Publication by the Human Rights Commission of El Salvador of the account of María Maura Contreras on the disappearance of her three children.
- Annex 15.** Decision by the Prosecutor's Office for the Defense of Human Rights on March 30, 1998.
- Annex 16.** Testimony by Ms. María Maura Contreras, given at the IACHR hearing held at its 126th regular session, October 24, 2006.
- Annex 17.** Press release of the Association for the Search of Missing Children on December 12, 2006. *Search Association finds one of the three Contreras children. Case for which El Salvador has been sued before the Inter-American Court of Human Rights.*
- Annex 18.** Letter addressed to the Office of the Attorney General of the Republic on November 6, 1998.
- Annex 19.** Case file 225-UDVSV-00 on the Disappearance of Persons, Unit on Crimes to Life and Bodily Safety. Ministry of Justice.
- Annex 20.** Birth certificate of Ana Julia Mejía Ramírez, issued on January 11, 2006.
- Annex 21.** Birth certificate of Carmelina Mejía Ramírez, issued on January 11, 2006.
- Annex 22.** Filing of a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice on November 10, 2000.
- Annex 23.** Statement by María Herminia Argueta Quevedo to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.
- Annex 24.** Statement by Ester Pastora Guevara to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.
- Annex 25.** Statement by José Santos Argueta to the Second Court of First Instance of San Francisco Gotera of June 10, 1997.

- Annex 26.** Report by Ms. Arcadia Ramírez to the Second Court of First Instance of San Francisco Gotera.
- Annex 27.** Extended statement by Arcadia Ramírez Portillo to the Second Court of First Instance of San Francisco Gotera of October 28, 1997.
- Annex 28.** Statements by Eusebio Martínez Luna and María Lucrecia Romero, both of February 19, 1999.
- Annex 29.** Sworn statement by Mr. Eusebio Martínez of September 1, 2005.
- Annex 30.** Sworn statement by Ester Pastora Guevara of September 2, 2005.
- Annex 31.** Hoy (daily newspaper), Friday, December 11, 1981.
- Annex 32.** La Prensa Gráfica (daily newspaper), Wednesday, December 9, 1981.
- Annex 33.** La Prensa Gráfica (daily newspaper), Thursday, December 10, 1981.
- Annex 34.** Report of the Trial Judge to the Constitutional Chamber of the Supreme Court of Justice.
- Annex 35.** Brief of the Second Court of First Instance of San Francisco Gotera of May 2, 1997.
- Annex 36.** Letters addressed to the Joint Chief of Staff and the Minister of Defense of June 25, 1998.
- Annex 37.** Letters addressed to the Joint Chief of Staff and the Minister of Defense of September 5, 1998.
- Annex 38.** Court summons issued to Eusebio Martínez Luna and María Lucrecia Romero, both dated February 15, 1999.
- Annex 39.** Ruling of the Constitutional Chamber of the Supreme Court of Justice of March 20, 2002.
- Annex 40.** Notification to the Office of the Attorney General of the Republic of March 22, 2002.
- Annex 41.** Testimony by Carlota Romero at the Second Criminal Court of San Vicente of November 27, 1996.
- Annex 42.** Sworn statement by Carlota Romero to Notary Public dated November 29, 2005.
- Annex 43.** Criminal proceedings, reference 479-3/96, filed to find the missing child José Rubén Rivera, Second Criminal Court.
- Annex 44.** Ruling of the Constitutional Chamber of the Supreme Court of Justice of El Salvador. Writ of habeas corpus, March 21, 2002, 378-2000.

**Annex 45.** Statement by Arcadia Ramírez Portillo at the Second Court of First Instance of San Francisco Gotera of October 7, 1998.

**Annex 46.** *Curriculum vitae* of Douglas Cassel, expert witness for the Commission.

**Annex 47.** *Curriculum vitae* of Rodolfo Mattarollo, expert witness for the Commission.

277. The Commission now clarifies that, to date, the copies of the documents referred to as annexes are the best that it has available and that it has been able to obtain to date.

## **2. Expert testimony**

278. The Commission requests the Court to receive the opinion of the following experts:

- Douglas Cassel, who shall testify as an expert witness on the concept of the appropriation of children by state officials as a way to forcibly make persons disappear. The expert shall also refer to the specific features of this violation of human rights, the corresponding duties of the State, as well as the measures that, in conformity with relevant international standards, must be adopted by the State to find the whereabouts of children who are victims of this practice and to order appropriate measures of redress. The purpose of this expert testimony is of interest to the Inter-American public.
- Rodolfo Mattarollo, who shall testify as an expert witness on the development of the right to a name in international human rights law, its scope and contents, and its application to the cases involving the appropriation of children. Likewise, the expert shall refer to the State's obligations in cases such as the present one regarding the rebuilding of the identity of children who are victims of this practice. All aspects are of interest to the Inter-American public.

## **XI. INFORMATION ON THE REPRESENTATIVES OF THE VICTIMS**

279. In conformity with the provisions of the Court's Rule of Procedure, the Inter-American Commission informs the Court that, by means of a communication received on October 29, 2009, the petitioners indicated that the representatives of the victims and their next of kin in this case are the Association for the Search of Missing Children (Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos) and the Center for Justice and International Law (CEJIL). They also specified their legal address for the proceedings:

Center for Justice and International Law (CEJIL)



Washington, D.C.  
June 28, 2010

