

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE MASSACRES OF EL MOZOTE AND NEARBY PLACES  
v. EL SALVADOR**

**JUDGMENT OF OCTOBER 25, 2012  
(*Merits, reparations and costs*)**

In the case of *the Massacres of El Mozote and nearby places*,

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

Diego García-Sayán, President  
Manuel E. Ventura Robles, Vice President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge;

also present,

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

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

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\* The Court’s Rules of Procedure approved by the Court at its eighty-fifth regular session, held from November 16 to 28, 2009.

**Table of contents**

	<b>Paragraph</b>
<b>I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE</b>	1
<b>II PROCEEDINGS BEFORE THE COURT</b>	6
<b>III ACKNOWLEDGEMENT OF THE FACTS CONTAINED IN THE REPORT ON MERITS OF THE INTER-AMERICAN COMMISSION</b>	17
<b>IV COMPETENCE</b>	29
<b>V EVIDENCE</b>	31
<b>A. Documentary, testimonial and expert evidence</b>	32
<b>B. Admission of the evidence</b>	33
<b>VI PRIOR CONSIDERATIONS</b>	42
<b>A. Determination of the presumed victims</b>	42
<b>B. Human rights violations alleged by the representatives</b>	58
<b>VII RIGHTS TO LIFE, TO PERSONAL INTEGRITY, TO PERSONAL LIBERTY, TO PRIVACY, TO MEASURES OF PROTECTION FOR CHILDREN, TO PROPERTY, AND TO FREEDOM OF MOVEMENT AND RESIDENCE, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS</b>	61
<b>A. The facts of the instant case</b>	62
<b>1) <i>The armed conflict in El Salvador</i></b>	62
<b>2) <i>The scorched earth operations and the creation of the Rapid Deployment Infantry Battalions</i></b>	67
<b>3) <i>The massacres of El Mozote and nearby places</i></b>	73
<i>a) Background</i>	80
<i>b) "Operación Rescate" or "Yunque y Martillo" carried out by the "Atlatcatl" Rapid Deployment Infantry Battalion</i>	83
<i>c) The massacre in the village of El Mozote</i>	87
<i>d) The massacre in the canton of La Joya</i>	98
<i>e) The massacre in the village of Ranchería</i>	106
<i>f) The massacre in the village of Los Toriles</i>	110
<i>g) The massacre in the village of Jocote Amarillo</i>	113
<i>h) The massacre in the canton of Cerro Pando canton and in a cave on Cerro Ortiz</i>	117
<b>4) <i>The internal and international displacements</i></b>	122
<b>B. Arguments of the Commission and allegations of the parties</b>	128
<b>C. Considerations of the Court</b>	141
<b>1) <i>The alleged human rights violations to the detriment of those who were executed</i></b>	142
<b>2) <i>The alleged human rights violations to the detriment of those who survived</i></b>	169
<b>3) <i>The alleged human rights violations to the detriment of the next of kin of those who were executed</i></b>	197
<b>4) <i>Conclusion</i></b>	203
<b>VIII RIGHTS TO JUDICIAL GUARANTEES, TO JUDICIAL PROTECTION, AND TO FREEDOM OF THOUGHT AND EXPRESSION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT PROVISIONS OF DOMESTIC LAW AND ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE, AND 7(B) OF THE CONVENTION OF BELÉM DO PARÁ</b>	209
<b>A. The investigation of the facts of this case</b>	210
<b>1) <i>Opening of the investigations and measures taken</i></b>	211
<b>2) <i>The exhumations performed with the support of foreign experts</i></b>	230

<b>B. The obligation to investigate the facts of this case</b>	242
<b>C. Obligation to open an investigation <i>ex officio</i></b>	250
<b>D. Lack of due diligence in the criminal investigation</b>	253
<b>E. The Law of General Amnesty for the Consolidation of Peace and its application to this case</b>	265
<b>1) <i>The facts relating to the peace process and the Law of General Amnesty for the Consolidation of Peace</i></b>	266
<i>a) The internal armed conflict and the process of negotiation to achieve peace</i>	266
<i>b) The National Reconciliation Law and the Law of General La Amnesty for the Consolidation of Peace</i>	274
<i>c) The decision of the Second First Instance Court of San Francisco Gotera to dismiss the proceedings</i>	276
<i>d) Decisions of the Constitutional Chamber of the Supreme Court of Justice</i>	277
<i>e) Requests to re-open the proceedings</i>	279
<b>2) <i>Arguments of the Commission and of the parties</i></b>	281
<b>3) <i>Considerations of the Court</i></b>	283
<b>F. Right to know the truth</b>	297
<b>G. Conclusion</b>	299
<b>IX REPARATIONS (Application of Article 63(1) of the American Convention)</b>	302
<b>A. Injured party</b>	306
<b>B. Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and, as appropriate, punish those responsible and also to locate, identify and return to their next of kin the remains of the victims of the massacres</b>	312
<b>C. Measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition</b>	335
<b>D. Compensation</b>	379
<b>E. Costs and expenses</b>	385
<b>F. Reimbursement of the disbursements from the Victims' Legal Assistance Fund</b>	394
<b>G. Method of compliance with the payments ordered</b>	397
<b>X OPERATIVE PARAGRAPHS</b>	403

## I

### INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. On March 8, 2011, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court, in accordance with Articles 51 and 61 of the American Convention, case No. 10,720 against the Republic of El Salvador (hereinafter also "the Salvadoran State," "the State" or "El Salvador"). The initial petition was lodged before the Commission on October 30, 1990, by *Oficina de Tutela Legal del Arzobispado de San Salvador* (OTLA). On April 5, 2000 the petitioners accredited the Center for Justice and International Law (CEJIL) as co-petitioner in this case. The Commission declared the petition admissible in Admissibility Report No. 24/06 of March 2, 2006.<sup>1</sup> On November 3, 2010, it approved Report on Merits No. 177/10 (hereinafter "the merits report"), under Article 50 of the Convention, in which it made a series of recommendations to the State. On December 8, 2010, this report was notified to the State, which was granted two months to comply with the Commission's recommendations. In view of the State's failure to present information, the Commission decided to submit the case to the Court's jurisdiction. The Commission appointed Paulo Sérgio Pinheiro and Santiago A. Canton, at the time Commissioner and Executive Secretary, respectively, as delegates, and its Deputy Executive Secretary Elizabeth Abi-Mershed, together with Isabel Madariaga and Silvia Serrano Guzmán, lawyers at the Commission's Executive Secretariat, as legal advisers.

2. The case relates to the alleged successive massacres committed between December 11 and 13, 1981, in the context of a military operation by the Atlacatl Battalion, together with other military units, in seven places in the northern part of the department of Morazán, Republic of El Salvador, during which approximately 1,000 people were killed, "including an alarming number of children," as well as to the alleged investigation that was opened into these events and the "decision of September 27, 1993, to halt it based on the Law of General Amnesty for the Consolidation of Peace, which is still in force in El Salvador" and, finally, to the alleged exhumations performed over the following years, without leading to the reactivation of the investigations, "despite reiterated requests to the corresponding authorities."

3. According to the Commission, the alleged massacres of the instant case occurred during the ruthless period of the so-called "counterinsurgency" operations, deployed against civilians on a massive scale by the Salvadoran army during the armed conflict. It was the systematic and generalized nature of this type of action, designed to terrorize the population, which allows it to be concluded that the alleged massacres of the instant case constituted "one of the most heinous manifestations of the crimes against humanity committed at the time by the Salvadoran military." However, owing to the alleged validity of the Law of General Amnesty for the Consolidation of Peace, as well as reiterated omissions by the State, these grave events remain unpunished.

4. In its merits report, the Commission reached the conclusion that the State of El Salvador was internationally responsible for violating:

- The rights to life, to personal integrity and to personal liberty established in Articles 4, 5, and 7 of the American Convention in relation to Article 1(1) thereof, to the detriment of the victims who were extrajudicially executed;
- The special obligations with regard to children, established in Article 19 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the children who were extrajudicially executed;

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<sup>1</sup> In this report, the Commission declared that petition No. 10,720 was admissible in relation to the presumed violation of Articles 4, 5, 7, 8, 11, 19, 21 and 25 of the American Convention in relation to the obligations established in Article 1(1) and 2 of this treaty.

- The rights to personal integrity and to privacy established in Articles 5 and 11 of the American Convention, to the detriment of the women who were raped in the village of El Mozote;
- The right to property established in Article 21 of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the executed victims who were stripped of their possessions, as well as of the survivors whose homes were destroyed or whose means of subsistence were seized or eliminated;
- The right to personal integrity set forth in Article 5 of the American Convention in relation to Article 1(1) thereof, to the detriment of the survivors and next of kin of the executed victims;
- The right to freedom of movement and residence set forth in Article 22 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of those who were forcibly displaced, and
- The rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of this instrument; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women or "Convention of Belém do Pará," to the detriment of the survivors and next of kin of the executed victims.

5. The Commission submitted to the Inter-American Court<sup>2</sup> the State's acts and omissions that occurred after June 6, 1995, the date on which El Salvador accepted the compulsory jurisdiction of the Court. These include: the application of the Law of General Amnesty for the Consolidation of Peace; the failure to reopen the investigations; the absence of continued and sustained efforts to exhume as many mortal remains as possible; the lack of judicial follow-up on the exhumations performed and on the information obtained from them; the lack of response to the requests to re-open the investigations; the effects of the massacres and their impunity on the surviving next of kin; the failure to make reparation to them, and the situation of displacement of some presumed victims. The foregoing, without prejudice to the State of El Salvador accepting the Court's competence to hear this case in full, under the provisions of Article 62(2) of the American Convention. Consequently, the Commission asked that the State be ordered to adopt certain measures of reparation.

## II PROCEEDINGS BEFORE THE COURT

6. The submission of the case by the Commission was notified to the representatives of the presumed victims<sup>3</sup> (hereinafter "the representatives") and the State on June 14 and 15, 2011, respectively.

7. On August 12, 2011, the Center for Justice and International Law (CEJIL) and the *Oficina de Tutela Legal del Arzobispado de San Salvador* (OTLA), in their capacity as representatives,

<sup>2</sup> According to Article 35(3) of the Court's Rules of Procedure, "[t]he Commission shall indicate which facts contained in the report to which Article 50 of the Convention refers it is submitting to the consideration of the Court."

<sup>3</sup> In communications of May 23 and 30, 2011, the *Oficina de Tutela Legal del Arzobispado* and the Center for Justice and International Law (CEJIL) indicated that they "do indeed represent the [presumed] victims in this case," and forwarded their powers of attorney in response to the request made in the note of the Secretariat of May 3, 2011, asking them to confirm whether they indeed represent the presumed victims in this case, in which case they should accredit this representation with powers of attorney or other documents revealing clear evidence of the intention of the presumed victims to be represented by members of the said organizations, as well as "updated lists" of presumed victims. Since the said organizations indicated "that, for some time, [they have been] continually updating the lists of the [presumed] displaced victims and the next of kin of the [presumed] murdered victims," the President, therefore, asked the representatives to advise the Court in due course whether they will represent other individuals during these proceedings. Regarding the "updated lists" of presumed victims presented by the representatives, without these being requested, based on the provisions of Article 35(2) of the Rules of Procedure, they were advised that this information would be submitted to the Court for the pertinent effects.

submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), under Articles 25 and 40 of the Rules of Procedure. The representatives asked the Court to declare that the State was responsible for the violation of:

- he rights of the next of kin of the presumed victims and of the surviving presumed victims of the massacres to judicial guarantees and judicial protection, established in Articles 8 and 25 of the American Convention, in relation to failure to comply with the obligations established in Articles 1(1) and 2 of this instrument, and in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém Do Pará, owing to the failure to investigate the facts of the massacres because of the application of the Law of General Amnesty for the Consolidation of Peace, and because of the unjustified delay in the investigations; T
- he rights of the presumed victims of the massacres to personal integrity and to life, contained in Articles 5 and 4 of the American Convention, in relation to the failure to comply with the obligations contained in Article 1(1) thereof, owing to the failure to investigate the grave human rights violations committed in this case; T
- he right to the truth of the presumed victims of this case, which is protected jointly by Articles 8, 13, and 25 of the American Convention, in relation to the general obligation of Article 1(1) of this instrument, owing to the situation of impunity in which the massacres of El Mozote and nearby places remain; T
- he right to personal integrity of the surviving presumed victims of the massacres and the next of kin of the presumed victims who were executed, protected by Article 5 of the American Convention, due to failure to comply with the obligations contained in Article 1(1) of this instrument, owing to the suffering caused by the violations committed in this case; T
- he right to property, contained in Article 21 of the American Convention, due to failure to comply with the obligations contained in Article 1(1) of this instrument to the detriment of all the surviving presumed victims of the massacres, and T
- he rights contained in Articles 11 and 22 of the American Convention, due to failure to comply with the obligations contained in Article 1(1) of this instrument, owing to the displacement of the presumed victims that continued after June 6, 1995. T

In addition, they asked the Court to order the State to adopt various measures of reparation and to pay costs and expenses.

8. In addition, the presumed victims asked, through their representatives, "that the request for legal assistance in this case be admitted in order to cover some specific costs related to the production of evidence during the proceedings before the Court" since "they d[id] not have the financial resources to undertake these proceedings." In this regard, in an Order of December 1, 2011,<sup>4</sup> the President of the Inter-American Court of Human Rights (hereinafter "the President of the Court" or "the President"), in exercise of the powers granted by article 3 of the Rules of the Court for the Operation of the Legal Assistance Fund<sup>5</sup> (hereinafter "the Rules of the Legal Assistance Fund"), decided to declare admissible the request filed by the presumed victims, through their representatives, and to grant them the necessary financial assistance for the presentation of a maximum of four statements, and that the specific purpose and destination of

<sup>4</sup> See *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Victims' Legal Assistance Fund. Order of the President of the Inter-American Court of Human Rights of December 1, 2011, para. 34. Available at: [http://corteidh.or.cr/docs/Merits\\_victimias/mozote\\_fv\\_11.pdf](http://corteidh.or.cr/docs/Merits_victimias/mozote_fv_11.pdf)

<sup>5</sup> Rules of the Inter-American Court of Human Rights for the Operation of the Victims' Legal Assistance Fund, approved by the Court on February 4, 2010, and in force as of June 1, 2010.

this assistance would be specified when deciding on the expert and testimonial evidence and the opening of the oral proceedings.

9. On December 26, 2011, the State presented its brief in answer to the submission of the case and to the pleadings and motions brief (hereinafter "the answering brief"). In this answering brief, El Salvador acknowledged and accepted "the facts alleged in the application [*sic*] presented by the Commission [...] that had been considered proven facts in its report on merits," as well as the related facts in the pleadings and motions brief submitted by the representatives of the presumed victims; however, it included observations on the loss of property and on the displacement of the surviving presumed victims. In addition, it declared unilaterally that "the limitation of competence – erroneously referred to as 'reservation' – contained in point number II of the written statement of June 6, 1995, is not liable to exceptions or operative in the instant case." Based on this acknowledgment, the Salvadoran State indicated that it waived the possibility of filing preliminary objections under Article 42 of the Rules of Procedure. Similarly, the State did not offer deponents or expert witnesses, as provided for in Article 41(1)(b) and (c) of the Rules of Procedure.

10. On February 10, 2012, the representatives and the Commission submitted their respective observations on the acknowledgment made by the Salvadoran State.

11. After the presentation of the main briefs (*supra* paras. 1, 7 and 9), the President of the Court required, in an Order of March 22, 2012,<sup>6</sup> that the statements of eight deponents, all proposed by the representatives, and the expert opinions of three expert witnesses, one proposed by the Commission and two proposed by the representatives be received by affidavit. The State did not offer deponents or expert witnesses. The representatives, the State, and the Commission had the opportunity to formulate any relevant questions to the deponents and expert witnesses before the latter prepared their respective affidavits, and also to submit their observations on the affidavits. Only the Commission submitted questions.<sup>7</sup> On April 18, 2012, the representatives and the Commission forwarded the affidavits.

12. The President also summoned the parties and the Commission to a public hearing to receive their final oral arguments and observations, respectively, on the merits and eventual reparations and costs, as well as three statements and two expert opinions, all proposed by the representatives. Lastly, the President decided that the financial assistance of the Legal Assistance Fund (*supra* para. 8) should be allocated to cover the necessary travel and accommodation expenses for the three deponents and one expert witness to appear before the Court and provide their statements and expert opinion, respectively, during the said public hearing.

13. The public hearing took place on April 23, 2012, during the Court's forty-fifth special session, which was held in Guayaquil, Republic of Ecuador.<sup>8</sup>

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<sup>6</sup> Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Summons to a public hearing. Order of the President of the Inter-American Court of Human Rights of March 22, 2012. Available at: [http://www.corteidh.or.cr/docs/asuntos/elmozote\\_%202022\\_03\\_12.pdf](http://www.corteidh.or.cr/docs/asuntos/elmozote_%202022_03_12.pdf)

<sup>7</sup> In application of the provisions of Article 50(5) of the Court's Rules of Procedure, and in accordance with the Order of the President of March 22, 2012 (considering paragraphs 27 to 31 and the second operative paragraph), on March 30, 2012, the Commission presented a list of question for the expert witnesses Luis Fondebrider, Silvana Turner and Mercedes C. Doretti. For their part, the representatives and the State indicated that they did not wish to pose questions.

<sup>8</sup> The following appeared at this hearing: (a) for the Inter-American Commission: Rosa María Ortiz, Commissioner, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Isabel Madariaga and Karla I. Quintana Osuna, Experts and lawyers from the Executive Secretariat; (b) for the representatives: Wilfredo Medrano and Ovidio Mauricio González, OTLA, and Gisela De León and Marcela Martino, CEJIL, and (c) for the State: Ambassador Sebastián Vaquerano López, Deputy Agent; David Ernesto Morales Cruz, Director General of Human Rights, Ministry of Foreign Affairs; David Amilcar Mena Rodríguez, Coordinator of the Social Dialogue Unit of the Technical Secretariat of the Presidency; Josué Samuel Hernández, Deputy Director General of Statistics and Censuses, and Gloria Evelyn Martínez Ramos, Expert from the Direction General for Human Rights, Ministry of Foreign Affairs.

14. On May 23, 2012, the representatives and the State submitted their final written arguments, while the Inter-American Commission presented its final written observations on this case. The parties and the Commission were granted the opportunity to make any observations they considered relevant on the attachments to the said briefs. The representatives submitted observations on June 21, 2012; the Commission indicated that it had no observations, and the State did not submit observations within the allotted time.

15. On July 13, 2012, on the instructions of the President of the Court and in accordance with article 5 of the Rules of the Legal Assistance Fund, the State of El Salvador was informed of the disbursements made in application of the Fund. The State presented its observations on July 20, 2012.

16. The Court received *amicus curiae* briefs from Oscar Humberto Luna, Ombudsman of El Salvador,<sup>9</sup> and from Ezequiel Heffes.<sup>10</sup>

### **III ACKNOWLEDGMENT OF THE FACTS INCLUDED IN THE REPORT ON MERITS OF THE INTER-AMERICAN COMMISSION**

17. The State, taking into account the declaration of the President of the Republic of El Salvador on January 16, 2010, during the ceremony to commemorate the eighteenth anniversary of the signature of the Peace Accords in El Salvador, acknowledged and accepted "the facts alleged in the application (*sic*) presented by the Inter-American Commission [...] in the instant case, that were considered proven facts in its report on merits 177/10." In addition, it acknowledged the facts set out in the representatives' pleadings and motions brief, "specifically those described in section C of chapter II of this autonomous brief concerning the exhumations performed between 2000 and 2004; the request to reopen the case at the domestic level presented in 2006 by the *Oficina de Tutela Legal del Arzobispado*, and the suffering experienced by the surviving victims and their next of kin." Regarding point 4 of section C of the pleadings and motions brief, relating to the loss of property and the displacement of the surviving victims, the State only acknowledged "those facts that are based on the reliable testimony of surviving victims, and those described in official reports [of the] Inter-American Commission, international protection agencies that were or continue to be part of the United Nations system, and the contents of the Report of the Truth Commission of the United Nations, created by the El Salvador Peace Accords. The State did not comment explicitly on the alleged violations of rights included in the briefs of the Commission and the representatives. Furthermore, the State did not submit observations on the lists identifying the "victims executed extrajudicially," "the survivors and next of kin of victims who were executed," and "the victims who were forcibly displaced," provided by the Commission and the representatives.

18. Regarding reparations, the State acknowledged "its obligation to investigate the facts denounced, to prosecute by means of a fair trial and punish, as appropriate, those responsible for the facts described in the application," and also "its obligation to adapt its domestic laws pursuant to the provisions of Article 2, in relation to Article 1(1) of the American Convention." The State also expressed its willingness to expedite the measures of reparation recommended by the Commission in its report on merits 177/10. During the public hearing and in its closing arguments, the State expressed its willingness to accept and to carry out, within a reasonable timeframe according to the type of measure: (a) the full identification of the victims of the massacre, both those who were executed and the survivors, as well as their next of kin, and those who suffered enforced displacement; (b) the continuation of the task of exhuming the remaining victims; (c) the public acknowledgment of responsibility, "a measure that [had] already been carried out"; (d) the publication of the relevant parts of the judgment delivered by the Court; (e) the creation of mechanisms to recognize the dignity of the victims and to

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<sup>9</sup> Brief of April 20, 2012, presented on May 4, 2012.

<sup>10</sup> Undated brief, presented on May 7, 2012.



commemorate them; (f) the production and dissemination of an audiovisual presentation; (g) the designation of a national day of the victims of the massacres; (h) the provision of medical and psychosocial services to the victims; (i) the creation of conditions for the return of those who are still displaced, and (j) the promotion of a social development program for the victims of this case. Regarding the request for reparations related to ceasing to “honor those responsible for the massacre,” the State submitted certain considerations and expressed its willingness to comply with the Court’s decision. With regard to the costs and expenses requested by the representatives, it indicated that “the amount [...] exceeds the precedents established by the Court.”

19. On January 16, 2012, on the occasion of the twentieth anniversary of the signature of the Peace Accords, the President of El Salvador, Mauricio Funes, gave a speech in El Mozote, in which he stated:

As Head of State, [...] I acknowledge that, in the cantons of El Mozote, El Pinalito, Ranchería, Los Toriles, Jocote Amarillo, Cerro Pando, La Joya and Cerro Ortiz, during the days and nights of December 11, 12 and 13, 1981, troops of the Atlacatl Rapid Deployment Infantry Battalion of the Armed Forces of El Salvador murdered almost one thousand persons, mainly children. Here, numerous acts of brutality and human rights violations were committed: innocent people were tortured and executed; women and children were raped, and hundreds of Salvadoran men and women form part of a long list of disappeared persons, while others had to emigrate and give up everything to save their lives. [...] For this massacre, for the aberrant human rights violations, and for the abuse perpetrated, on behalf of the State of El Salvador [...] I apologize to the families of the victims and to the neighboring communities. I apologize to the mothers, fathers, sons, daughters, brothers and sisters who still do not know the whereabouts of their loved ones. I apologize to the Salvadoran people who were victims of this atrocious and unacceptable violence. This apology, which is not intended to erase the pain, is an act of acknowledgement and to honor the victims of this tragedy. [...] It is the expression of our commitment to make reparation, morally and materially, to the extent permitted by State’s resources, to the members of the victims’ families. [And] it is also an act to acknowledge responsibility before the Salvadoran people and before history; because, by acknowledging the truth and acting with justice, we establish the basis for peace and coexistence.

20. It is worth noting that, in similar fashion, during the public hearing, the State expressed “its profound regret for the deplorable acts perpetrated by officers and members of the Armed Forces of El Salvador, above all the Atlacatl Infantry Battalion which, in December 1981, exterminated the civilian population in the villages and cantons of El Mozote, Rancheria, Los Toriles, Cerro Pando, La Joya, Jocote Amarillo, El Pinalito and Cerro Ortiz, among other places, such as the village of Arambala.” In addition, it acknowledged the content of the testimony of Dorila Márquez, María del Rosario López and María Margarita Chicas as the truth of what happened, and it apologized to them and their families “for the incalculable damage the said State agents had perpetrated with such infinite cruelty,” extending this State apology to the surviving victims and next of kin of the said massacres. In addition, the State presented, among other documents, a “[s]upplement on the twentieth anniversary of the signature of the Peace Accords in El Salvador, containing a list of [936] victims of the massacres of El Mozote and nearby places, provided by the community of El Mozote itself.”

21. The Commission expressed its satisfaction for the State’s acknowledgment of international responsibility and considered that it had an historical value of the utmost relevance because of the particular severity of the facts of this case. In this regard, it considered that “the content of the State’s answering brief reveals its acceptance of the Court’s competence [...] to hear this case in full; in other words, including all the facts described in report on merits 177/10 and acknowledged as true by the State in its answering brief.” In addition, it noted that, although the State had acknowledged the facts and the international responsibility derived from them, it had not included an explicit statement on each of the violations of the American Convention on Human Rights, of the Inter-American Convention to Prevent and Punish Torture, and of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women. Consequently, and based on the need to contribute to the recovery of the historical memory of the executed victims and to the reparative effect for the next of kin of the judicial clarification of the facts, it considered that the Court must make a detailed determination of the facts of this case and their legal consequences in light of the applicable inter-American instruments. It also emphasized the importance of the State establishing a

mechanism to identify the executed victims, the next of kin and the survivors, in coordination with, and to supplement the measures already taken by, the representatives, "[b]ecause the reparations are closely linked to the identification of victims."

22. The representatives acknowledged the State's good intentions when acknowledging responsibility in this case and submitted the following observations: (i) although the State had indicated that it understood that the limitation presented when accepting the Court's jurisdiction "is not liable to exception or operative in this case," it was unclear whether it accepted the Court's competence to rule on all the facts of the case; nevertheless, in their final arguments brief, they considered that, based on the State's attitude during the procedural stages of this case, the Court could rule on all the facts and, consequently, all the alleged violations; (ii) despite the wide-ranging acknowledgement of the facts, "the State did not make specific mention of the human rights violations for which it acknowledged responsibility," and "[n]or did it indicate who it recognized as victims in the case"; (iii) although the State has expressed itself favorably with regard to the implementation of some of the measures requested, in some cases "it has only done so in relation to some aspects of the measures, and in others without specifying what their true scope would be," and (iv) regarding the facts related to the enforced displacements, destruction of property, and the context of violence in which these events took place, they considered that, even if it is of a general nature, the Court should be taken into account the information contained in the pleadings and arguments brief in order to assess how the enforced displacement affected victims of the massacres. In addition, the representatives considered it essential that the Court deliver a judgment in this case in which it determined the facts together with the violations to which they gave rise, owing to the reparative nature of this action, because it would contribute to the preservation of the historical memory, to prevent a recurrence of similar events, and to satisfy the objectives of the inter-American jurisdiction, which is particularly important in this case "in which, for years, the facts were denied by the authorities and the perpetrators of these facts are still today treated as heroes." In addition, they appreciated the willingness expressed by the State with regard to reparations. They also indicated that the ruling of this Court "is fundamental to ensure that the State [...] complies with its obligation to adapt its domestic law in order to remove the obstacles that, for years, have prevented the victims of grave human rights violations during the armed conflict from obtaining justice."

23. In keeping with Articles 62 and 64 of the Rules of Procedure,<sup>11</sup> and in exercise of its powers for the international judicial protection of human rights, an issue of international public order that exceeds the will of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes sought by the inter-American system. In this task, it is not limited merely to verifying, recording or taking note of the acknowledgment made by the State, or to verifying the formal conditions of the said acts, but must relate them to the nature and severity of the alleged violations, the requirements and interests of justice, the particular circumstances

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<sup>11</sup> Articles 62 and 64 of the Court's Rules of Procedure establish:

Article 62. Acquiescence

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

Article 64. Continuation of a case

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

of the specific case, and the attitude and position of the parties,<sup>12</sup> so that it can determine, insofar as possible and in exercise of its competence, the truth of what occurred.<sup>13</sup>

24. The Court observes that, although the State failed to specify the violations that it was acknowledging, it was clearly willing to accept the facts contained in the merits report in the terms in which the case was submitted to the Court; that is, with the explicit possibility indicated by the Commission that the State recognize "the Court's competence to hear the whole of the instant case," which is what happened (*supra* para. 9). Taking into account the foregoing, the Court finds that the State's acknowledgment of responsibility represents an admission of all the facts that were considered proved in chapter IV of the merits report, which include the events that occurred from 1980 to 2007, and which are described in the sections entitled "A. Context", "B. The massacres", "C. The criminal investigation", "D. The decision to dismiss the case and the application of the Law of General Amnesty for the Consolidation of Peace," "E. Requests to reopen the proceedings," and "F. Exhumations following the decision of the Second First Instance Judge of San Francisco Gotera of September 27, 1993." In addition, the State accepted the facts included in the representatives' pleadings and motions brief, specifically those described in the sections entitled: "(a) Exhumations performed between 2000 and 2004," and "(b) The reopening request filed in 2006," as well as in "(3) The suffering experienced by the surviving victims and their next of kin as a result of the impunity in which the facts remain."

25. Regarding the facts relating to the alleged loss of property and the supposed displacement of the surviving presumed victims, the State accepted those contained in the merits report. With regard to those presented in the representatives' brief that explain, describe, clarify, or reject those mentioned in the merits report,<sup>14</sup> the Court finds that the State's arguments (*supra* para. 17) are related to a matter of assessment of the evidence. Consequently, the Court will make the relevant determination in the corresponding chapters, taking into account the State's observations.

26. Based on the above, the Court considers that the dispute subsists with regard to the legal consequences of the facts that have been acknowledged, owing to the alleged violations of Articles 4, 5, 7, 8, 11, 13, 19, 21, 22 and 25 of the American Convention in relation to the obligations established in Articles 1(1) and 2 of this instrument; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," all in the terms alleged by the Commission and the representatives. In addition, the dispute subsists with regard to the identification of the victims in this case and to compliance with the measure of reparation consisting in the public acknowledgment of responsibility, which the State maintains has already been made. Lastly, regarding the other claims relating to reparations, the Court observes that there is still a dispute with regard to their scope and the results invoked by the State. Consequently, the Court will take the pertinent decisions.

27. In this regard, the State's acknowledgement of responsibility constitutes a full acceptance of the facts, which gives rise to full legal effects in accordance with Articles 62 and 64 of the Court's Rules of Procedure, and the Court must determine the legal consequences. Based on the severity of the acts and of the alleged violations, the Court will proceed to determine the events that occurred comprehensively and in detail, because this contributes to making reparation to the victims, to avoiding a repetition of similar events and, in brief, to meeting the objectives of

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<sup>12</sup> Cf. Case of Kimel v. Argentina. Merits, reparations and costs. Judgment of May 2, 2008. Series C No. 177, para. 24, and Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012. Series C No. 250, para. 22.

<sup>13</sup> Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of May 26, 2010. Series C No. 213, para. 17, and Case of the Río Negro Massacres v. Guatemala, para. 20.

<sup>14</sup> Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237, para. 33, and Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of June 26, 2012. Series C No. 244, para. 34.

the inter-American human rights jurisdiction.<sup>15</sup> The Court will then analyze the violations alleged by the Commission and the representatives, as well as the corresponding consequences as regards reparations.

28. The Court underscores the speech given by the President of the Republic of El Salvador on January 16, 2012, as well as the apology to the surviving victims of the said massacres and the next of kin, which have an important symbolic value to ensure that similar events are not repeated. Similarly, it emphasizes the undertaking made by the State to expedite the necessary measures of reparation in permanent dialogue with the representatives and in keeping with the criteria established by the Court. All these actions make a positive contribution to the advance of these proceedings, to the exercise of the principles that inspire the Convention<sup>16</sup> and, in part, to satisfying the needs for reparation of the victims of human rights violations.<sup>17</sup>

#### **IV COMPETENCE**

29. The Inter-American Court is competent to hear this case, in the terms of Article 62(3) of the Convention, because El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the compulsory jurisdiction of the Court on June 6, 1995. In addition, El Salvador deposited the instruments ratifying the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," on December 5, 1994, and January 26, 1996, respectively.

30. Although the declaration of acceptance of the Inter-American Court's jurisdiction included a temporal limitation,<sup>18</sup> in the instant case, the State of El Salvador, based on the acceptance of the facts made in its brief answering the submission of the case and with observations on the pleadings and motions brief, and reiterated in its final oral and written arguments, declared unilaterally that "the limitation of jurisdiction – erroneously called a 'reservation' – contained in clause II of the written declaration of June 6, 1995, cannot be filed as a defense as is not operative in this case." In addition, the State indicated that it "accepts the competence of this Court to rule on the facts that have been acknowledged." Consequently, the Court understands that El Salvador has recognized its competence to examine all the facts that occurred after the ratification of the American Convention, but prior to its acceptance of the compulsory jurisdiction, even when those facts do not constitute violations of a continuing or permanent nature, and to rule on the violations in this case and their consequences; hence the State has expressly waived any temporal limitation to the exercise of the Court's competence. In other words, at all procedural stages before the Court, the State has clearly

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<sup>15</sup> Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of the Río Negro Massacres v. Guatemala*, para. 28.

<sup>16</sup> Cf. *Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 26.

<sup>17</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia*, para. 18, and *Case of the Río Negro Massacres v. Guatemala*, para. 28.

<sup>18</sup> The instrument in which El Salvador accepted the contentious competence of the Court includes the following temporal limitation in relation to cases that could be submitted to the Court's consideration:

The Government of El Salvador recognizes as compulsory *ipso jure* and without any special agreement, the competence of the Inter-American Court of Human Rights, in accordance with the provisions of Article 62 of the American Convention on Human Rights or "Pact of San José."

The Government of El Salvador, on recognizing this competence, places on record that its acceptance is made indefinitely, on the condition of reciprocity, and with the reservation that the cases in which it recognizes the competence include only and exclusively subsequent events or legal decisions, or events or legal decisions that began to be executed after the date of the deposit of this Declaration of Acceptance, [...].

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

expressed its willingness to recognize all the facts that occurred and, explicitly granted jurisdiction for the Court to rule on the full scope of the instant case. The Court appreciates the State's declaration concerning competence for this specific case. Consequently, the Court has full jurisdiction to hear all the facts included in report on merits 177/10, and will therefore decide on the merits and reparations in the instant case.

## **V EVIDENCE**

31. Based on the provisions of Articles 46, 49, 50 and 57(1) of the Rules of Procedure, as well as on it case law regarding evidence and its assessment,<sup>19</sup> the Court will examine the documentary evidence submitted by the parties on different procedural occasions, the statements provided by affidavit and those received at the public hearing before the Court, as well as the useful evidence requested by the Court. To this end, the Court will abide by the principles of sound judicial discretion, within the corresponding legal framework.<sup>20</sup>

### **A) Documentary, testimonial and expert evidence**

32. The Court received various documents submitted as evidence by the Inter-American Commission, the representatives, and the State attached to their main briefs (*supra* paras. 1, 7 and 9). In addition, the Court received affidavits prepared by Juan Bautista Márquez Argueta, Sofía Romero Pereira, Sonia Tobar, Antonia Guevara Díaz, Juan Antonio Pereira Vigil, Eduardo Concepción Argueta Márquez, Saturnino Argueta Claros, José Pablo Díaz Portillo.<sup>21</sup> It also received the opinions of the expert witnesses Tal Linda Ileen Simmons and Father David Scott Blanchard, as well as the joint expert opinion of Luis Fondebrider, Silvana Turner and Mercedes C. Doretti. Regarding the evidence provided at the public hearing, the Court received the testimony of the presumed victims Dorila Márquez de Márquez, María del Rosario López Sánchez and María Margarita Chicas Márquez,<sup>22</sup> as well as the expert opinions of the expert witnesses Salvador Eduardo Menéndez Leal and María Sol Yáñez De La Cruz.

### **B) Admission of evidence**

#### *B.1) Admission of documentary evidence*

33. In this case, as in others, the Court admits the probative value of those documents presented at the appropriate time by the parties and the Commission that were not contested or opposed, and the authenticity of which was not questioned.<sup>23</sup>

34. With their pleadings and motions brief, the representatives forwarded documentary evidence in English, without attaching the translation into Spanish. In this regard, on September 27, 2011, they advised that the documents "were presented in English because these are the only versions available and [they] were unaware of the existence of a Spanish version of these documents"; therefore, they requested their admission. Consequently, the Court decided to consider that this evidence had been submitted and forwarded it to the State and the Commission. Since the said documents were not contested or opposed, the Court admits them

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<sup>19</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of 25 de mayo de 2001. Series C No. 76, para. 51, and *Case of the Río Negro Massacres v. Guatemala*, para. 40.

<sup>20</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of the Río Negro Massacres v. Guatemala*, para. 40.

<sup>21</sup> According to the notary's attestation of April 19, 2012, these statements were provided on April 1 and 2, 2012. Cf. Merits file, tome III, folio 1184.

<sup>22</sup> In her passport, she appears as María Margarita Chica de Argueta. Cf. merits file, tome II, folio 1112.

<sup>23</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para.140, and *Case of Palma Mendoza et al. v. Ecuador. Preliminary objection and merits*. Judgment of September 3, 2012. Series C No. 247, para. 23.

and will assess them taking into account the whole body of evidence, the observations of the State, and the rules of sound judicial discretion (*supra* para. 25 and *infra* para. 191).

35. Regarding newspaper articles, the Court has considered that these can be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case.<sup>24</sup> The Court noted that the date of publication is illegible in some of these documents. Consequently, the Court decides to admit the documents that are complete or that, at least, permit determination of the source and date of publication, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.<sup>25</sup>

36. Regarding some documents indicated by electronic links, the Court has established that if one of the parties provides, at least, the direct electronic link to the document that it cites as evidence and it can be accessed, neither legal certainty nor procedural balance are affected, because it can be found immediately by the Court and by the other parties.<sup>26</sup> In this case, neither the parties nor the Commission opposed or made observations on the content and authenticity of the said documents.

37. Regarding articles or texts indicating events relating to this case, the Court has considered that they are documents that contain declarations or claims of their authors for public dissemination. Thus, the assessment of their content is not subject to the formalities required for testimonial evidence. Nevertheless, their probative value will depend on whether they corroborate or refer to aspects related to this specific case.<sup>27</sup>

38. During the public hearing (*supra* para. 13), the State presented copies of several documents, a copy of which was given to the representatives and to the Commission. In addition, with its final written arguments the State presented a video as well as copy of a table and photographs. The representatives and the Commission had the opportunity to submit their observations in this regard. Considering them useful for deciding this case and under Article 57(2) of the Rules of Procedure, the Court admits this evidence provided by the State, insofar as it refers to facts that occurred after the presentation of the brief answering the presentation of the case and with observations on the representatives' pleadings and motions brief, and will consider the information indicated therein, insofar as it is pertinent, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

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

#### B.2) Admission of statements and expert opinions

40. The Court finds it pertinent to admit the statements and expert opinions provided at the public hearing and by affidavit, to the extent that they are in keeping with the purpose defined

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<sup>24</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 146, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 62.

<sup>25</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 77, and *Case of Vélez Restrepo and family members v. Colombia*, para. 62.

<sup>26</sup> Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Vélez Restrepo and family members v. Colombia*, para. 63.

<sup>27</sup> Cf. *Case of Radilla Pacheco v. Mexico*, para. 72, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 55.

by the President in the Order requiring them,<sup>28</sup> and the purpose of this case, and they will be assessed in the corresponding chapter together with the other elements of the body of evidence. In accordance with the Court's case law, the statements made by the presumed victims cannot be assessed separately, but rather within the entire body of evidence of the proceedings, because they are useful to the extent that they can provide more information about the alleged violations and their consequences.<sup>29</sup>

41. With their final written arguments, the representatives submitted in writing an expanded version of the expert opinion of Maria Sol Yáñez de la Cruz, which had been requested by the Court during the public hearing (*supra* para. 13). In this regard, the State and the Commission had the opportunity to present their observations on this document; however, they made no observations in this regard. Considering it useful for deciding this case, the Court incorporates it also, in accordance with Article 58 of the Rules of Procedure, and it will be assessed as pertinent, taking into account the body of evidence and the rules of sound judicial discretion.

## **VI PRIOR CONSIDERATIONS**

### **A. Determination of the presumed victims**

42. In its brief submitting the case, the Commission indicated that, in keeping with Article 35 of the Court's Rules of Procedure, it was attaching report on merits 177/10 which included three annexes on the presumed victims that it had been able to identify up until the approval of the said report, namely: (i) the victims of extrajudicial executions; (ii) the survivors and the next of kin of the executed victims, and (iii) the forcibly displaced victims. According to the Commission, in report on merits 177/10, it explained the difficulties it had faced to identify the presumed victims in this case and described the criteria used to identify them, in order not to exclude from this status *a priori* any person said to have died in the massacres or to be surviving next of kin, "taking into account the exceptional characteristics of this case." Nevertheless, it clarified that "much of the data on name, age, gender or family ties is approximate and imprecise" and that, in this case, it had adopted "flexible criteria for the identification of the victims," in the understanding that, as indicated in one of recommendations of the merits report, "the State of El Salvador must make the full identification of the executed victims [...], as well as of the next of kin of the victims executed, within the framework of the investigation it is required to conduct."

43. Specifically, in the merits report, the Commission observed that, in this case, several complex circumstances existed concurrently that entailed serious difficulties for the identification of the presumed victims, both those who had died and their surviving next of kin. The Commission explained that, regarding the victims who had lost their life in the massacres, it had based itself on the list from the Report of the *Oficina de Tutela Legal del Arzobispado* published in 1992, and on the list provided by the petitioners on September 24, 2010. With regard to the surviving next of kin, it indicated it had the names of: (i) those who had testified before the Second First Instance Court of San Francisco Gotera during the judicial proceeding; (ii) some people who had testified before the Argentine Forensic Anthropology Team (EAAF) and other authorities in the context of the investigations prior to the exhumations of 1992, 2000, 2001 and 2003, and (iii) the partial list of 154 people provided by the petitioners in a communication of September 24, 2010. However, the Commission observed that the number of people who died in the massacres and the surviving next of kin "may exceed the number of people identified to date." It considered that, owing to the scale and nature of the violations that occurred in this case, those people added by the representatives should also be considered victims. According to

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<sup>28</sup> The purpose of all these statements was established in the Order of the President of the Court of March 22, 2012, first and fifth operative paragraphs, which can be consulted on the Court's web page at: [http://www.corteidh.or.cr/docs/asuntos/elmozote\\_%202022\\_03\\_12.pdf](http://www.corteidh.or.cr/docs/asuntos/elmozote_%202022_03_12.pdf)

<sup>29</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Río Negro Massacres v. Guatemala*, para. 43.

the Commission, the same was true of the victims of some violations that certainly occurred; however, owing to their nature and the absolute absence of State activity to investigate the events for more than a decade, there was no individualized list of people. In addition, during the public hearing and in its final written observations, the Commission reiterated the particular circumstances that hindered the identification of the victims, and recalled that Article 35(2) of the Court's Rules of Procedure establishes the possibility for the Commission to provide an explanation when it is not possible to identify all the victims in a case; for example, because it involves violations on a massive scale. It also emphasized the importance that the State establish a mechanism to identify victims who were executed, next of kin, and survivors, in coordination with and as a complement to the efforts already made by the representatives, "[b]ecause the reparations are closely connected to the identification of the victims."

44. Meanwhile, with a brief of May 23, 2011, the representatives forwarded powers of attorney, as well as "updated lists of the victims of the case" (*supra* footnote 3). Subsequently, with their pleadings and motions brief of August 12, 2011, they presented updated "lists of victims" and referred to the application of Article 35(2) of the Court's Rules of Procedure in this case. In addition, with their brief with final arguments of May 23, 2012, they again forwarded "updated lists of victims" and asked the Court to take a flexible approach with regard to the identification of the victims. In this regard, they indicated that, in the instant case, the State's acts and omissions had created a series of obstacles that had made it impossible to identify all the victims. According to the representatives, the only lists of victims that exist to date were prepared by the *Oficina de Tutela Legal del Arzobispado de San Salvador*; however, "this [was] a list that, owing to its nature, [could] have names added or removed," and this would explain why the lists they had presented to the Court were slightly different from those presented by the Commission as annexes to its report on merits 177/10. In this regard, they asked the Court to order the State to identify all the executed victims and survivors of the massacres and their next of kin. Based on the foregoing and without prejudice to the Court considering as victims of the events the persons identified in the lists they had submitted, the representatives asked the Court to leave the possibility open for those individuals who the State identifies to be included as victims and, consequently, as beneficiaries of the reparations.

45. During the public hearing, the Court asked the Commission, first, to clarify whether all the women who appear as victims of execution should also be understood to have been victims of rape and, second, how the forced disappearance of the Ramirez Mejia girls, who were the victims of a case that this Court has decided previously, could be reconciled with the information presented by the Commission in the instant case in which they appear as victims of extrajudicial execution. The Court also asked the Commission and the representatives, as a preliminary element, to specify on their lists of next of kin and survivors whether the places indicated on those lists signify that those survivors were in one of the places where the massacres occurred as established in the Commission's merits report and in the representatives' pleadings and motions brief; secondly, whether there was any information that could clarify the identity of the individuals who were victims of the alleged violation of Article 21 of the American Convention, or if this refers to an issue that should be left pending, to be completed on the list of victims. Lastly, the Court asked the representatives to explain the meaning of the term "location" that appeared on their lists of victims; in other words, whether the term refers to the origin of the victims, or to the place where they were presumably executed.

46. In response, the Commission clarified that, regarding the alleged rape "not all the women identified in the merits report were victims of that type of abuse." In this regard, it explained that the Commission's analysis was based on testimonial statements, and this was confirmed in the Report of *Tutela Legal del Arzobispado* and the Report of the Truth Commission, "the best possible determination of the victims being that, at least, it was certain [...] that the victims were the youngest women in the context of the first massacre." However, when ruling on the merits "it did not have the name of any victim of this situation"; therefore, "in the understanding [...] that it was the State's obligation to identify the victims of all the violations [...], the Commission found it necessary to declare the rape as a fact that was proved in the case file and, as one of its specific recommendations, leave the State to identify [the] victims." Regarding the



case of the sisters Carmelina and Ana Julia Ramírez Mejía, the Commission indicated that, in the understanding that they had been forcibly disappeared, they were excluded from the final list of victims in the merits report. With regard to the survivors and the next of kin, the Commission indicated that some of those on its list of victims are both next of kin and survivors; some are only next of kin "because, for example, they were away from the place and days later returned and realized that their family members had died," and others had no next of kin in the area, but were there and survived the massacre. However, among all these people, the Commission had found it impossible to determine who was in each specific situation, in the understanding that it was the State's obligation to identify the people on those lists who were in each of the said categories. This situation also occurs in relation to the alleged violation of the right to property, because it is mentioned in all the testimonies, but, owing to the particular circumstances of the case, it was not possible to make a factual determination of which possessions of each person were seized or destroyed.

47. For their part, the representatives mentioned that there are different lists based on the work of *Tutela Legal del Arzobispado* over the last 20 years, which "have numerous shortcomings," and change daily; hence they considered it essential that, as a measure of reparation, the State be ordered to draw up official lists of victims, because it had greater resources available to it. For the same reason, the representatives indicated that they were unable to draw up a specific list of individuals whose right to property had been violated; nevertheless, they maintained that the facts themselves reveal that, at least, most of the surviving victims of the massacre were also victims of the violation of their right to property, because most of the testimonies indicated that their homes were burned down and their property was destroyed. Regarding the column headed "location" that appears on the lists provided by the representatives, they clarified that this refers "to the specific place in which the victims were executed."

48. The State indicated that it agreed with the victims that the list of victims should be as complete as possible and that it should be drawn up in the specific form of a formal permanent and open record; in other words, that it should remain open to future inclusions as the existence of new victims is determined. Regarding the Mejía Ramírez girls, the State indicated that their forced disappearance did not contradict the acknowledgement of the facts of the massacre of El Mozote and nearby places; therefore, should they be found and "even if they are found alive, the State also considers them to be victims [...] in this case, since immediate members of the girls' family were exterminated."

49. First, this Court has verified that, with its brief submitting the case, the Commission presented an attachment entitled "Victims who died in the massacres" in which it indicated that "[t]he petitioners included Ana Julia and Carmelina Ramírez Mejía as victims of the massacre. However, the Commission notes that the Ramírez Mejía girls are disappeared and appear as victims in case 12,517 Gregoria Herminia Contreras *et al.* v. El Salvador, which is under the jurisdiction of the Inter-American Court." Meanwhile, in the annexes entitled "List of Murdered Victims," attached by the representatives to both the pleadings and motions brief and to their final written arguments, the names of Ana Julia and Carmelina Ramírez Mejía (*sic*) appear, with the clarification that both are disappeared. In this regard, on August 31, 2011, the Court delivered judgment in the *Case of Contreras et al v. El Salvador*, ruling that the State was responsible for the violation of certain rights recognized in the American Convention, to the detriment of the sisters Ana Julia and Carmelina, whose correct last name is Mejía Ramírez, and also of their next of kin, owing to their forced disappearance, and ordered specific measures of reparation.<sup>30</sup> All things considered, since the forced disappearance of the said sisters has already been the subject of an earlier ruling by the Court, it is not appropriate to make any determination in their regard in the instant case. Consequently, the Court will exclude the names of Ana Julia and Carmelina Mejía Ramírez from the lists of "killed" or "murdered" victims.

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<sup>30</sup> *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232.

50. In addition, the Court recalls that, under Article 35(2) of the Rules of Procedure, “[w]hen it has not been possible to identify [in the submission of the case] one or more of the alleged victims of the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims.” In this regard, from the time it submitted the case and during the proceedings before the Court, the Commission repeatedly referred to the impossibility of identifying all the victims in this case, because it is exceptional in nature due to its gravity and its massive dimensions, as well as to the specific circumstances of the case, an opinion shared by the representatives and not contested by the State. The reasons given by both the Commission and the representatives to justify the application of this provision are: the massive scale of the events, which encompassed seven villages; several of the massacres were accompanied by setting fire to the places where the bodies of the murdered people were left; the number of children who lost their life in the massacres, because, owing to their age, there was a more than normal deterioration of their remains; there are no records or documents that could provide a list of the people who were living in the cantons and villages affected; most of the surviving next of kin had to take refuge in other places and even outside El Salvador, and the first measures taken by the State, taking statements and performing exhumations, took place more than 10 years after the massacres and were not completed at that time.

51. The Court notes that it is difficult to identify and individualize each presumed victim owing to the scale of this case, which relates to massacres perpetrated in seven different places, to the nature of the events and the circumstances surrounding them, and to the time that has passed. Consequently, it finds it reasonable to apply Article 35(2) of the Court’s Rules of procedure in this case.

52. In this regard, the Court has noted that the lists presented by the Commission in its brief submitting the case and the lists presented by the representatives in their briefs of May 23 and August 12, 2011, and May 23, 2012, differ because there are more people on the lists of the representatives than on the lists of the Commission. When comparing the most recent lists presented by the representatives with the lists presented by the Commission, the Court also noted that the latter includes names that do not appear on the former. In addition, the said lists are inconsistent as regards the names, ages and relationships, as well as the addresses of the individuals mentioned as survivors and displaced. Furthermore, The Court has noted that some women were pregnant when they were executed.

53. In addition, the Court takes note of the certifications provided by the representatives indicating that, in the case of the village of El Mozote, the ledgers recording births and deaths prior to 1983 no longer exist, because “they were destroyed during the armed conflict” and that the files of the Family Status Records of the Mayor’s Office of the municipality of Arambala “were partially destroyed by the armed conflict,” so that only some records exist.<sup>31</sup> Accordingly, with regard to some people for whom birth certificates were requested, the Family Status Records responded that it was not possible to find any record of their birth “because the records were destroyed during the armed conflict,” or that “it is not possible to provide this certificate because the records of births for that year cannot be found.”<sup>32</sup>

54. As it has previously,<sup>33</sup> the Court considers that, in application of Article 35(2) of the Rules of Procedure, for a person to be considered a victim and receive reparation, he or she must be reasonably identified. The Court recalls that its intention is not “to obstruct the development of the proceedings with formalities, but rather, to the contrary, to ensure that the determination

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<sup>31</sup> Certification of the Mayor’s Office of Villa de Meanguera, department of Morazán, El Salvador, issued on August 10, 2011 (evidence file, tome XI, annex 18 to the pleadings and motions brief, folio 7026), and Certification of the Mayor’s Office of Arambala, department of Morazán, El Salvador, issued on August 10, 2011 (evidence file, tome XI, annex 18 to the pleadings and motions brief, folio 7027).

<sup>32</sup> Cf. Compact disc containing documents that prove the relationship between the victims who were executed and the survivors (evidence file, tome XVI, annex 36 to the pleadings and motions brief, folio 9898).

<sup>33</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, para. 49.

made in the judgment is in keeping with the demands of justice.”<sup>34</sup> Consequently, in order to be able to decide this case, the Court requires a minimum degree of certainty about the existence of these persons.

55. The case file before the Court contains evidence on the identity of some of the individuals indicated as victims in this case, particularly birth certificates, baptism certificates, certifications from the Family Status Registry, individual identity documents, death certificates, and powers of attorney that were sent by the representatives. In addition, there are affidavits and testimony provided at the public hearing before the Inter-American Court, as well as statements made before the judicial authority during the domestic criminal investigation and statements made before the *Oficina de Tutela Legal del Arzobispado* that also mention the names of people indicated as victims by the representatives. Given that the said evidence was not contested by the State, the Court finds that it is sufficient to authenticate the existence and identity of the individuals who appear on the Commission’s lists, as well as on the most recent updated lists submitted by the representatives.

56. In addition, the Court observes that, from the explanation provided by the representatives in relation to the column headed “location” in their lists, this corresponds to “the specific place where the victims were executed” (*supra* para. 47); thus, some people included on the lists were victims of execution in the departmental capital of Arambala, or in the canton of Tierra Colorada, the village of Pinalito, and the village of Guacamaya. However, the factual framework of this case does not include events that occurred in these places. Consequently, the Court will not consider the persons who suffered a possible violation of their rights in the said places to be victims in this case, unless the evidence reveals that, at the time of the facts, they were in one of the places that are the object of this case.

57. Considering that the State is not opposed to persons other than those indicated by the Commission being included as presumed victims, owing to the particularities of this case, the Court will consider victims those persons identified and individualized by the Commission in its lists attached to the merits report and/or by the representatives in their lists attached to their final written arguments, who have suffered any human rights violation in the context of the massacres in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo, the canton of Cerro Pando, and a cave on Cerro Ortiz, provided that the Court has the necessary evidence to verify the identity of each of these individuals. Based on these criteria and the evidence that has been provided, this Court has been able to determine a number of victims that is much lower than those on the lists provided. Notwithstanding this, and considering that the State itself provided a list of 936 individualized victims, the Court considers it essential that, in the context of the Single List of Victims that is being drawn up (*infra* para. 309), the State proceed to make a conclusive determination of other individuals who should also be considered victims and, as appropriate, beneficiaries of the reparations ordered by the Court. Lastly, this Court will include as Annex “E” to this Judgment, a list of individuals, regarding whom there are indications about their possible status as presumed victims in this case, even though they are not on the lists provided by the parties and the Inter-American Commission. In this regard, the State is requested, in the context of the said Register, to determine whether they should be considered victims and beneficiaries in this case.

### **B. Human rights violations alleged by the representatives**

58. The Court has noted that, at the first stage corresponding to the presentation of the pleadings and motions brief, and based on the State’s acceptance of the compulsory jurisdiction of the Court and the temporal limitation contained in the declaration of June 6, 1995, the representatives alleged that the State was responsible for the violation of certain rights recognized in the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará. In general, they submitted to

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<sup>34</sup> *Case of the Río Negro Massacres v. Guatemala*, para. 49.

the Court's consideration the failure to investigate the events and the grave human rights violations committed in this case, the application of the Law of General Amnesty for the Consolidation of Peace, and the situation of impunity in which the massacres remained after June 6, 1995. In addition, they alleged the violation owing to the suffering caused as a result of the violations committed in this case to the victims who survived the massacres and the next of kin of the victims who were murdered, as well as the continuing violation of the right to property to the detriment of all the victims who survived the massacres, and the violation owing to the displacement of the presumed victims committed over time and continuing after June 6, 1995 (*supra* para. 7).

59. At a second stage, which corresponded to the final arguments, the representatives introduced "additional considerations on the merits, particularly in relation to those facts that were not included in [their] brief with pleadings, motions and evidence, given the limitations that existed at the time for [the] Court to hear some of the facts that are part of the factual framework of the case, and that have now been overcome." The foregoing, taking into account that the State has made an acknowledgment of the facts considered proved in the Commission's merits report, that it has accepted the facts described in the representatives' pleadings and motions brief, and has accepted the Court's competence to rule in this regard. Thus, they included the violation of Articles 4, 5 and 19 of the Convention, in relation to the rights to life and to personal integrity of the victims of the massacre of El Mozote and nearby places, including the children. In addition, in their arguments on the violation of rights owing to the displacement of the victims and the destruction of the possessions and homes, they included arguments on the facts that presumably gave rise to these situations and on the time when the massacres occurred, without referring to the alleged continuity of the said violations included in their pleadings and motions brief. In addition, they argued that burning down the homes had resulted in an additional violation of Article 11 of the Convention. Lastly, they asked the Court, when delivering its judgment in this case, to "refer to the aggravated responsibility of the State, because all the violations committed [had occurred] in the context of a military strategy developed and executed by the State in absolute contradiction of the requirements of the American Convention and the principles that inspire it."

60. In sum, the Court observes that, based on the State's acknowledgment of the facts and acceptance of the Court's competence in this case to rule on the facts that occurred prior to June 6, 1995 - the date of acceptance of the Court's compulsory jurisdiction (*supra* paras. 29 and 30) - in their final arguments, the representatives upheld a substantially different argument regarding the legal grounds that supported their allegations in the pleadings and motions brief on human rights violations and the State's international responsibility in this case. Given the circumstances of this case, the Court finds it pertinent to admit these arguments of the representatives, because it was only following the State's answering brief (when El Salvador expressly granted the Court competence to rule on the facts that had occurred prior to June 6, 1995, that they were able to submit arguments relating to them.

## VII

### **RIGHTS TO LIFE, TO PERSONAL INTEGRITY, TO PERSONAL LIBERTY, TO PRIVACY, TO MEASURES OF PROTECTION FOR CHILDREN, TO PROPERTY, AND TO FREEDOM OF MOVEMENT AND RESIDENCE, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS**

61. Given the importance of determining the facts in this case, and also the context in which they occurred, in order to preserve the historical memory and prevent a repetition of similar events,<sup>35</sup> and as a measure of reparation for the victims,<sup>36</sup> the Court will consider proved the facts of this case and the international responsibility derived from them, based on the factual

<sup>35</sup> Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of Contreras et al. v. El Salvador*, para. 56.

<sup>36</sup> Cf. *Case of Tiu Tojín v. Guatemala*, para. 39, and *Case of Contreras et al. v. El Salvador*, para. 56.

framework of the case and the State's acknowledgement of the facts, and taking into consideration the pleadings and motions brief of the representatives and the body of evidence. To this end, it will proceed to determine the proven facts that constituted the massacres and the displacements, and will then analyze their legal consequences. In Chapter VIII, the Court will determine the facts relating to the investigation opened into the massacres and the exhumations performed, and will also analyze the respective legal arguments.

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

### **1) The armed conflict in El Salvador**

62. From approximately 1980 until 1991 El Salvador was immersed in an internal armed conflict,<sup>37</sup> and it is estimated that more than 75,000 members of the Salvadoran population were its victims.<sup>38</sup>

63. The year 1980 marked the beginning of "several indiscriminate attacks against the non-combatant civilian population and collective summary executions [by security forces] that particularly affect[ed] the rural population."<sup>39</sup> The violence in the rural areas, in the early years of the 1980s, "was extremely indiscriminate."<sup>40</sup>

64. In October and November 1980 the Farabundo Martí National Liberation Front (hereinafter also "FMLN") was created, bringing together the five armed political opposition groups: *Fuerzas Populares de Liberación*, *Ejército Revolucionario del Pueblo*, *Fuerzas Armadas de Liberación*, *Fuerzas Armadas de Resistencia Nacional* and *Partido Revolucionario de los Trabajadores de Centroamérica*. In 1981, the FMLN organizations decided to launch an offensive to promote a popular uprising and overthrow the Governing Junta.<sup>41</sup> Even though it failed to achieve this objective, the FMLN ended up controlling several villages, established areas of political influence, and achieved international recognition as a fighting force.<sup>42</sup>

65. The peace negotiation process began when the five Central American Presidents requested the intervention of the Secretary-General of the United Nations, asking him to intervene in order to achieve peace in Central America. Between 1989 and 1992, various agreements were signed by the Government of El Salvador and the FMLN and, finally, following 12 years of armed conflict, on January 16, 1992, the Peace Agreement ending the hostilities was signed in Chapultepec, Mexico, sponsored by the Secretary-General of the United Nations<sup>43</sup> (*infra* paras. 266 to 272).

66. In its report published on March 15, 1993, the Truth Commission, created by the agreement signed in Mexico on April 27, 1991, which began its activities on July 13, 1992,

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<sup>37</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 48.1, and *Case of Contreras et al. v. El Salvador*, para. 41.

<sup>38</sup> Cf. United Nations. *El Salvador Agreements: on the road to peace, 1992, 1992* (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5805).

<sup>39</sup> Cf. Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1096).

<sup>40</sup> Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1119).

<sup>41</sup> Cf. Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador. U.N. Doc. A/HRC/7/2/Add.2, 26 October 2007, para. 12 (evidence file, tome X, annex 11 to the pleadings and motions brief, folio 6708), and Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1100).

<sup>42</sup> Cf. Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador. U.N. Doc. A/HRC/7/2/Add.2, 26 October 2007, para. 12 (evidence file, tome X, annex 11 to the pleadings and motions brief, folio 6708).

<sup>43</sup> Cf. United Nations. *El Salvador Agreements: on the road to peace, 1992* (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5810)

described the patterns of violence during the armed conflict, both by State agents and by members of the FMLN.<sup>44</sup> For methodological reasons, it divided the period examined (1980-1991) into four stages: 1980 to 1983; 1983 to 1987; 1987 to 1989, and 1989 to 1991. The first stage, from 1980 to 1983, during which the events of this case occurred, was named "the institutionalization of violence," in which "[t]he establishment of systematic violence, terror and distrust among the civilian population [...] are the essential features of this stage. The dismantling of any opposing or dissident movement by arbitrary detention, murder, and the indiscriminate and selective disappearances of leaders became common practice."<sup>45</sup> According to the Truth Commission, "the greatest number of deaths and human rights violations were record[ed]" during this period.<sup>46</sup>

## **2) The scorched-earth operations and the creation of the Rapid Deployment Infantry Battalions**

67. Starting in January of 1981, the United States of America significantly increased military and economic assistance to El Salvador, targeting those resources "to train, modernize and expand the structure of the Armed Forces and increase the number of soldiers."<sup>47</sup> The Rapid Deployment Infantry Battalions of the Salvadoran Armed Forces were created in this context; they were elite units specially trained for counterinsurgency combat that had completed their training under the guidance and supervision of United States military personnel.<sup>48</sup> The first unit was created in March 1981 with the name "Atlacatl," under the command of Lieutenant Colonel Domingo Monterrosa Barrios.<sup>49</sup>

68. In its most extreme form, the counterinsurgency was expressed by an extended concept of "taking the water away from the fish";<sup>50</sup> in other words, destroying the insurgent's support base. The inhabitants of areas where there was a significant FMLN presence "were either assimilated with the guerrilla based on suspicion, or belonged to or collaborated with it, and therefore ran the risk of being eliminated."<sup>51</sup>

69. The Truth Commission received direct testimony of numerous mass executions that occurred during 1980, 1981 and 1982, in which, during counterinsurgency operations, members of the Armed Forces "executed peasants, men, women and children, who had offered no resistance, merely because they were considered collaborators with the guerrilla."<sup>52</sup> The Truth

<sup>44</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1087 to 1088).

<sup>45</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1096).

<sup>46</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1097).

<sup>47</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1100 to 1101).

<sup>48</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

<sup>49</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196); Report of the UCA Human Rights Institute (IDHUCA), *Consideraciones sobre la impunidad to propósito de la masacre de El Mozote, Proceso: número 451*, November 7, 1990 (evidence file, tome III, annex 2 to the submission of the case, folio 1290); Americas Watch, *The Massacre at El Mozote: The need to remember*, Volume No. IV, Issue No. 2, March 4, 1992 (evidence file, tome II, annex 3 to the submission of the case, folios 1299 to 1300), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 39 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5293).

<sup>50</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1119).

<sup>51</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1119). See also Expert opinion provided by affidavit by Father David Blanchard in April 2012 (evidence file, tome XVII, *affidavits*, folio 10345).

<sup>52</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1208).

Commission ruled out “any possibility that these were isolated incidents or excesses by the soldiers or their immediate superiors. Everything confirms that these deaths fell within a pattern of conduct, a deliberate strategy to eliminate or terrorize the peasant population of areas where the guerrilla was active, in order to deprive the latter of this source of supplies and information, as well as the possibility of hiding or blending in among the population.”<sup>53</sup> According to the Truth Commission, it cannot be claimed that this pattern of conduct can be attributed solely to the local commanders, and that the senior commanders were unaware of it, because the massacres of peasant populations were denounced repeatedly, with no evidence of any effort to investigate them.<sup>54</sup>

70. Similarly, the Office of the El Salvador Ombudsman established that the “massacres occurred within the framework of military operations, one of the objectives of which was the mass extermination of civilians, including women, children and the elderly, as part of an aberrant military strategy known as ‘scorched earth’ executed by the State of El Salvador” mainly from 1980 to 1982.<sup>55</sup> The scorched earth strategy consisted of “the indiscriminate annihilation of one or several villages during a single operation,” followed by destroying or setting fire to the crops, homes and possessions of the victims who had previously been executed or who had fled the area,<sup>56</sup> and “its evident objectives were to massacre civilians, cause mass enforced displacements and destroy the people’s means of subsistence, because it sought the ‘dismantling’ of essential social relations in those communities that could provide logistic support to the guerrilla”;<sup>57</sup> in other words, they sought “to take the water away from the fish.” Thus, it can be said that “the phenomenon of the massacres occurred deliberately as part of a strategy systematically planned by the Armed Forces of El Salvador; [thus] it cannot be argued that the innumerable mass executions of the civilian population were isolated acts of violence of which the senior authorities of the Armed Forces and the Government in power were unaware; to the contrary, they were inserted in and were a central part of a specific counterinsurgency policy of the State.”<sup>58</sup> Consequently, “the massacres [...] were not the result of eventual abuse by certain units of the Salvadoran army or of mid-level officers who committed excesses.”<sup>59</sup>

71. The military counter-insurgency operations had a significant effect on the civilian population with a high cost in terms of lives, and resulted in the concept of the “displaced person.”<sup>60</sup> At August 1982, the National Commission to Assist Displaced Persons (CONADES)<sup>61</sup>

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<sup>53</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1208).

<sup>54</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1208).

<sup>55</sup> Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1319).

<sup>56</sup> Cf. Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1358).

<sup>57</sup> Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1361).

<sup>58</sup> Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1358).

<sup>59</sup> Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1358).

<sup>60</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1101). See also Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1360).

reported 226,744 internally displaced persons. Meanwhile, according to the United Nations High Commissioner for Refugees (UNHCR), at June that year, there were between 175,000 and 295,000 Salvadoran refugees in the countries of Latin America.<sup>62</sup>

72. In sum, during the internal armed conflict in El Salvador, there was a State policy executed by means of the 'scorched-earth' operations that sought to depopulate the rural areas considered to support the guerrilla or where the guerrilla were present, by the systematic perpetration of massacres of members of the civilian population by the Salvadoran Armed Forces and the incineration and destruction of homes, crops and other possessions, as well as the killing of animals.

### **3) The massacres of El Mozote and nearby places**

73. The case of the El Mozote massacres was one of the incidents addressed by the Truth Commission in its 1993 report, as a case that illustrated the peasant massacres committed by the Salvadoran Armed Forces during the counterinsurgency operations. However, until that date and for several years, the occurrence of the massacres of El Mozote and nearby places was systematically denied and concealed by the State. According to the Truth Commission, "despite public reports of the event and even though it would have been easy to prove it [owing to the number of bodies that had not been buried], the Salvadoran authorities failed to order any inquiry and permanently denied the existence of the massacre."<sup>63</sup>

74. Indeed, the articles on the incidents that appeared in the Salvadoran newspapers at the time merely recount, based on military sources, the implementation of a counterinsurgency operation in different areas of the department of Morazán, with results described as successful in terms of the dismantling of guerrilla camps and the supposed protection of the peasants and inhabitants of those areas.<sup>64</sup> However, it was because of two international feature stories published on January 27, 1982, in The New York Times and The Washington Post, with testimony from survivors obtained on site,<sup>65</sup> that the truth of what happened began to be exposed, even though, both nationally and internationally, attempts were made to discredit the

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<sup>61</sup> Established in 1985 to develop policies and plan the organization, management and execution of programs designed to assist the displaced. Cf. International Center for Research on Women. Working paper No. 25: Conflict, displacement and reintegration: household survey evidence from El Salvador, July 2000 (evidence file, tome X, annex 9 to the pleadings and motions brief, folio 6476), and Expert opinion provided by affidavit by Father David Blanchard on April 15, 2012 (evidence file, tome XVII, *affidavits*, folio 10346).

<sup>62</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1103).

<sup>63</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1195).

<sup>64</sup> Cf. Newspaper article in *Diario Latino* on December 9, 1981 entitled "Mueren 4 terroristas al atacar base militar" [4 terrorists die in attack on military base] (file of proceedings before the Commission, tome II, folio 877); Newspaper article in *La Prensa Gráfica* on December 9, 1981 entitled "Inició ayer operación de contrainsurgencia la F.A." [Armed Forces counterinsurgency operation began yesterday] (file of proceedings before the Commission, tome II, folios 879 to 881); Newspaper article in *La Prensa Gráfica* on December 10, 1981 entitled "Avanza ejército en zonas de Morazán" [Army advances in parts of Morazán] (file of proceedings before the Commission, tome II, folio 878); Newspaper article in *El Diario de Hoy* on December 11, 1981 entitled "'Yunque and Martillo' se llama Operación de Tropa" [Army operation is called 'Anvil and Hammer'] (file of proceedings before the Commission, tome II, folio 885); Newspaper article in *La Prensa Gráfica* on December 14, 1981 entitled "Continúan acciones militares en Morazán" [Military actions in Morazán continue] (file of proceedings before the Commission, tome II, folio 882), and Newspaper article in *La Prensa Gráfica* on December 19, 1981 entitled "Recuperan Morazán al terminar operación FA" [Morazán recovered following the Army's operation] (file of proceedings before the Commission, tome II, folio 886).

<sup>65</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1197); Newspaper article in The New York Times on January 27, 1982, entitled "Massacre of Hundreds Reported in Salvador Village" (file of proceedings before the Commission, tome II, folio 874), and Newspaper article in The Washington Post on January 27, 1982, entitled "Salvadoran Peasants Say Army Killed Hundreds in Community" (file of proceedings before the Commission, tome II, folios 873 and 875).



information provided by the journalists Raymond Bonner and Alma Guillermoprieto as “FMLN propaganda.”<sup>66</sup>

75. As the State has acknowledged, to the contrary, these journalists provided the first evidence that the Salvadoran Army “had incurred in the brutal murder of civilians,” indicating that more than 700 peasants had been murdered, mainly children, women and the elderly. For its part, the United States Government indicated that “there was no proof to confirm that government forces had massacred civilians in the areas of operation,” adding that “there were probably no more than 300 people living in El Mozote at the time of the massacre.” The information available indicates that these versions were based on a report prepared by the United States Embassy in San Salvador, without having visited the scene of the events.<sup>67</sup> At the national level, “an army spokesperson [...] assured that the accounts of a massacre committed by members of the army were ‘completely false’ and that they had been invented by the subversives.”<sup>68</sup>

76. In the same vein, it is worth noting that, before 1990, the State had not conducted any type of investigation into the massacres<sup>69</sup> (*infra* paras. 251 and 252). The excavations and exhumations of the remains beginning in 1992 – once the Truth Commission had begun operating – by the Argentine Forensic Anthropology Team (EAAF), the start of which was seriously delayed and hindered,<sup>70</sup> removed any shadow of doubt about the truth of what had happened and provided conclusive evidence of one of the largest civilian massacres to have occurred on the American continent<sup>71</sup> (*infra* paras. 231 and 232).

77. In this regard, it is pertinent to underscore the State’s words during the public hearing, invoking the apology expressed by the President of the Republic on January 16, 2012, in the village of El Mozote during the commemoration of the twentieth anniversary of the Peace Accords, when he acknowledged that: “a little more than thirty years ago, a criminal excess took place in El Mozote and the neighboring communities and a systematic attempt was made to deny and conceal it; [...] during three days and three nights, the largest massacre against civilians in the contemporary history of Latin America was perpetrated; almost a thousand Salvadorans were exterminated there, half of them children under the age of 18; [...] numerous barbaric acts and human rights violations were committed [t]here; innocent people were tortured and executed; women and girls were raped, hundreds of Salvadorans today form part

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<sup>66</sup> Cf. Newspaper article in The Washington Post on October 22, 1992, entitled “Skeletons Verify Killing of Salvadoran Children: Army Battalion Accused in 1981 Massacre” (evidence file, tome II, annex 13 to the submission of the case, folios 1555 to 1557), and Prologue by Aryeh Neier in: Pedro Linger Gasiglia, *El Mozote. La Masacre 25 años después*. 1st. Ed., Buenos Aires, 2007 (evidence file, tome VIII, annex 4 to the pleadings and motions brief, folios 5609 and 5615).

<sup>67</sup> Similarly, see compact disc with video “Denial” (evidence file, tome X, annex 10.3 to the pleadings and motions brief, folio 6698).

<sup>68</sup> Report of the UCA Human Rights Institute (IDHUCA), *Consideraciones sobre la impunidad a propósito de la masacre de El Mozote, Proceso: número 451*, November 7, 1990 (evidence file, tome III, annex 2 to the submission of the case, folio 1290)

<sup>69</sup> Cf. Report of the Secretariat of the Second First Instance Court of San Francisco Gotera, department of Morazán of April 19, 1991 (evidence file, tome II, annex 23 to the submission of the case, folio 1772).

<sup>70</sup> Cf. Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, affidavits, folios 10306 to 10312). See also, Internal report of the *Oficina de Tutela Legal del Arzobispado* of March 27, 1992 (evidence file, tome II, annex 10 to the submission of the case, folios 1537 to 1539), and Communiqué of the *Oficina de Tutela Legal del Arzobispado de San Salvador* issued on April 8, 1992 (evidence file, tome II, annex 11 to the submission of the case, folios 1545 to 1549).

<sup>71</sup> Cf. Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1197); Agence France Presse (AFP) report written by Carlos Mario Márquez on November 13, 1991, entitled “*Iglesia exige investigar brutal matanza de campesinos ocurrida en 1981*” [Church demands investigation of brutal slaughter of peasants in 1981] (evidence file, tome II, annex 14, to the submission of the case, folios 1559 to 1560); Newspaper article in The Washington Post on October 22, 1992, entitled “Skeletons Verify Killing of Salvadoran Children: Army Battalion Accused in 1981 Massacre” (evidence file, tome II, annex 13 to the submission of the case, folios 1555 to 1557), and Newspaper article in The New York Times on October 22, 1992, entitled “Salvador Skeletons Confirm Reports of Massacre in 1981” (evidence file, tome VIII, annex 4 to the pleadings and motions brief, folios 5603 to 5604).

of a long list of disappeared persons, while others were forced to emigrate and lose everything to save their lives.”

78. The State indicated that: “it consider[ed] it appropriate to declare expressly its appreciation to the surviving victims of the massacre who, in a brave and exemplary manner, permanently testified in their own communities, before the human rights organizations, before the courts, and before the national and international press, finally allowing the truth to prevail about these tragic events that the Salvadoran State had regrettably denied in the past. The State expressed its particular appreciation to Rufina Amaya, survivor of the village of El Mozote (now deceased), who, based on her struggle, became a symbol of the truth in this case. Also to Pedro Chicas Romero, Juan Bautista Márquez, Antonio Pereira, Teófila Pereira, Dorila Márquez and many other person who have testified for many years. The State also acknowledges the admirable efforts to defend the human rights of the victims in this case of María Julia Hernández Chavarría, Director of *Tutela Legal del Arzobispado*, supported by the Archbishop of San Salvador, Monseigneur Arturo Rivera Damas (both now deceased), who supported the fight for truth and justice in this and many other similar cases that occurred during the Salvadoran internal armed conflict, up until the end of their life, both of whom were the voice of hope and action for the victims and their humanist legacy still influences Salvadoran society. The State also expresse[d] its appreciation for the invaluable work carried out in this case by the experts of the Argentine Forensic Anthropology Team, whose contribution as judicial experts granted scientific certainty to the establishment of the truth about this severe violation of human rights.”

79. Taking into consideration the State’s acknowledgement, and based on the testimony of the survivors and of the next of kin who visited the affected areas after the events in order to inquire about the fate of their family members, on the conclusions of the forensic anthropology reports on the exhumations that were performed, on the facts established by the Truth Commission, and on the reports of *Tutela Legal del Arzobispado de San Salvador*, an organization dedicated to investigating, documenting and issuing various publications on this case, the Court will proceed to determine the facts that took place between December 8 and 16, 1981.

#### a) Background

80. In 1981, counterinsurgency operations were common (*supra* paras. 67 to 72); therefore some of the inhabitants of the northern area of the department of Morazán, in the Republic of El Salvador, did not live in their homes permanently, but rather hid in woods and caves during the periods of greatest danger.<sup>72</sup>

81. The inhabitants of the north of the department of Morazán were mainly involved in agricultural and domestic activities, such as growing corn in their *milpas*, growing sugar cane, spinning thread from sisal, and sawing lumber.<sup>73</sup> Some people were members of agricultural cooperatives.<sup>74</sup> The families also had farm animals, horses and/or livestock.<sup>75</sup>

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<sup>72</sup> Cf. Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1701); Victim statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on February 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1731); Victim statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2351); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 to 5523); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10276), and Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10289).

<sup>73</sup> Cf. Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10278); Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715); Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1741); Sworn statement made by María Erlinda Amaya Márquez before the *Oficina de Tutela Legal del Arzobispado* on June 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5590); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence

82. That year, the radio stations broadcast information that the Atlacatl Rapid Deployment Infantry battalion was going to launch an operation.<sup>76</sup> On December 9 and 10, 1981, the inhabitants of the region heard on the radio that a powerful Armed Forces operation was heading toward the north of Morazán.<sup>77</sup>

**b) "Operación Rescate" or "Yunque y Martillo" carried out by the "Atlacatl" Rapid Deployment Infantry Battalion**

83. Between December 8 and 16, 1981, the Atlacatl Rapid Deployment Infantry Battalion (hereinafter "Atlacatl BIRI"), together with units of the San Miguel Third Infantry Brigade and the San Francisco Gotera Command Training Center, conducted a large-scale military operation in the northern area of the department of Morazán, known as "Operación Rescate" (Operation Rescue) or "Yunque y Martillo" (Anvil and Hammer), apparently intended to eliminate the guerrilla presence – a camp and a training center – in a place called La Guacamaya, in the canton of the same name.<sup>78</sup> A precedent to this operation was the fact that a few months earlier, the Atlacatl BIRI had taken part in an unsuccessful counterinsurgency operation in the same area.<sup>79</sup>

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file, tome XVII, affidavits, folio 10286), and Expert opinion provided by affidavit by Father David Blanchard on April 15, 2012 (evidence file, tome XVII, affidavits, folio 10358).

<sup>74</sup> Cf. Expert opinion provided by affidavit by Father David Blanchard in April 2012 (evidence file, tome XVII, affidavits, folio 10358).

<sup>75</sup> Cf. Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10278); Affidavit provided by Sofía Romero Pereira on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10281); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10286); Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10289); Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1671); Witness statement made by María Amanda Martínez before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1704), and Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10521 to 10525).

<sup>76</sup> Cf. Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1701), and Victim statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on February 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1731).

<sup>77</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1695); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1724); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10278), and Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1701).

<sup>78</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1195); Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folios 1324 to 1325), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 39 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5452).

<sup>79</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196); Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1325), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 322 and 323 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5451).

84. It has been determined that the Atlacatl BIRI commander was in charge of the participating units, while the commander of the Third Brigade was in charge of the operation.<sup>80</sup> Also, both the Truth Commission and the investigations of *Tutela Legal del Arzobispado* indicate the participation of between 1,000 to 2,000 military personnel in the operation, and also identified the names of those responsible for it.<sup>81</sup>

85. The operation began with aerial and artillery bombardments on the village of El Mozote and the canton of La Joya (*infra* paras. 89 and 99). Also, as acknowledged by the State, Salvadoran Air Force helicopters transported members of the Atlacatl BIRI to the town of Perquín, from where they began to deploy by land. Other companies entered the area by land from San Francisco Gotera.<sup>82</sup> Among other places, the operation covered the villages of El Mozote, Ranchería, Los Toriles and Jocote Amarillo, the cantons of La Joya and Cerro Pando, and the place known as Cerro Ortiz.

86. As the State has acknowledged and as established by *Tutela Legal del Arzobispado* in its report,<sup>83</sup> when the operation ended, the troops of each company of the Atlacatl BIRI re-gathered in the canton of Guacamaya, where the leadership of the operation expressed their satisfaction with the results obtained.

**c) The massacre in the village of El Mozote**

87. The village of El Mozote is located in Guacamaya canton, in the jurisdiction of Meanguera, department of Morazán. At the time of the events it consisted of around 20 houses located on an open space known as "El Llano," a type of main square.<sup>84</sup> Facing the square was "La Ermita" or village church and a small adjacent building known as "El Convento."<sup>85</sup> The school was nearby.<sup>86</sup>

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<sup>80</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196); Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1325), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 322 and 323 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5452).

<sup>81</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1201); Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1330), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 322 and 323 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5452 to 5454).

<sup>82</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 50 and 326 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5294 and 5453).

<sup>83</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 66 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5307).

<sup>84</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1195 to 1196); Special report of the Ombudsman on massacres of civilian population perpetrated by State agents in the context of the internal armed conflict in El Salvador between 1980 and 1992, issued on March 7, 2005 (evidence file, tome II, annex 4 to the submission of the case, folio 1324); Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2927), and Expert opinion provided by affidavit by Father David Blanchard on April 15, 2012 (evidence file, tome XVII, *affidavits*, folio 10358).

<sup>85</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2927).

<sup>86</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

The area was surrounded to the west by "Cerro El Chingo" and, on the east, by the "Cerro La Cruz."<sup>87</sup>

88. At the end of November or in early December 1981, soldiers told a storekeeper from El Mozote village, named Marcos Díaz, that he should stock up on supplies and advise the population to gather in the village, because those that were in the village would be safe, but those who had dispersed would be killed.<sup>88</sup> Around the first week of December 1981, this person spread the warning of the members of the Armed Forces, that a large-scale operation would soon be launched in the area; therefore many inhabitants of areas adjacent to El Mozote abandoned their homes and gathered in "El Llano" or village center, especially in the home and store of Marcos Díaz.<sup>89</sup>

89. On December 10, 1981, troops of the different companies of Atlacatl BIRI converged on the village of El Mozote, following bombardments perpetrated by the Salvadoran Air Force,<sup>90</sup> and took control of the population of the area. When the soldiers reached the village they were accompanied by several people captured in the vicinity, who had refused to leave their homes.<sup>91</sup> The soldiers made people come out of their homes, including those gathered in the house and store of Marcos Díaz, forcing them to lie face down on the ground in order to question them about guerrilla presence in the area.<sup>92</sup> The people were stripped of their belongings and ordered to return to their homes and lock themselves in, with the threat that they should "not even poke their nose out," or they would be shot.<sup>93</sup>

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<sup>87</sup> Cf. Record of judicial inspection in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1961), and Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2927).

<sup>88</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1573), and Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1747).

<sup>89</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1573); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1747); Victim statement made by María Teófila Pereira before the Second First Instance Court of San Francisco Gotera on February 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1731), and Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>90</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1573).

<sup>91</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574), and Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1745).

<sup>92</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1660); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1745), e Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

<sup>93</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1660); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1745), and Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

90. At approximately 5 a.m. on December 11, 1981, the soldiers made everyone leave their homes and assembled them in the village square in front of the church.<sup>94</sup> In the square the soldiers ordered them to form two lines, one of men and another of women and children, telling them that they would have to stay there until a decision had been made about what to do with them.<sup>95</sup> Two hours later, they divided the people into two groups: one of men and older boys who were sent to the church, and another of women and young children who were placed in the home of Alfredo Marquez.<sup>96</sup>

91. As acknowledged by the State and established by *Tutela Legal del Arzobispado*<sup>97</sup> in its report, the commanders of the Atlacatl BIRI, the San Miguel Third Infantry Brigade, and the San Francisco Gotera Commandos Training Center and other high-ranking officers held a meeting during the operation, following which they gave the order to execute the people.

92. At approximately 8 a.m. on December 11, 1981, the mass execution of the people gathered in El Mozote began. At noon, after concluding the murder of the men assembled in the church, several soldiers entered the home of Alfredo Márquez – where the women and young children were – saying “today, you the women; we have already released the men, only you are left. We are going to take you out in groups, because we are going to send you home in groups, to Gotera, to wherever you want.”<sup>98</sup> Following this, the women were taken out in groups of around 20 individuals, from the youngest to the oldest, and they were obliged to leave their children behind them, some of whom were newborns.<sup>99</sup> They took the groups of women to different homes, including that of Israel Marquez, where they were machine gunned.<sup>100</sup> In the

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<sup>94</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1660); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1745), e Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

<sup>95</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1660 to 1665); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1745 to 1748); Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1196).

<sup>96</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1574); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1660), and Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1745).

<sup>97</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 65 and 66 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5301 and 5302).

<sup>98</sup> Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1575). See also, Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1661), and Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1746).

<sup>99</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1575). See also, Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1661), and Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1746).

<sup>100</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1575); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990

home of Israel Marquez, 31 clusters of bone fragments were recovered (12 adults, 4 children under 3 years of age, and the remainder impossible to identify), and ashes from a fire.<sup>101</sup> As to the sex, most were from female individuals; however, their identification and the cause of death were indeterminate, although it can be inferred from the ballistic evidence that, before being burned, the individuals were murdered with high-speed firearms.<sup>102</sup>

93. As acknowledged by the State and established by *Tutela Legal del Arzobispado* in its reports, the younger women were taken to the outskirts of the village, especially to "Cerro El Chingo" and "Cerro La Cruz", where members of the army raped them before murdering them.<sup>103</sup>

94. Then, the younger children, who had remained in the house of Alfredo Márquez, were executed, some in the house and others in and outside the convent.<sup>104</sup> At that time, according to Rufina Amaya's testimony, "the screams of a child could be heard who cried and begged for his mother," so "a soldier ordered: '[g]o and kill that bastard'; they did not kill him properly,' and shortly afterwards there was a shot and nothing else was heard."<sup>105</sup> Most of the children were killed inside the convent, a cottage located next to the church, which was then set on fire.<sup>106</sup> More than 95% of the 143 individuals identified were children, with an average age of 6 years old.<sup>107</sup> The people found in the convent died there or their bodies were deposited there when they still had soft tissue.<sup>108</sup> Consequently, it was concluded that at least some individuals were

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(evidence file, tome III, annex 23 to the submission of the case, folio 1661); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1746), and Record of judicial inspection in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1958 and 1959).

<sup>101</sup> Cf. Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folios 4440 and 4488).

<sup>102</sup> Cf. Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folio 4489).

<sup>103</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, Las ejecuciones masivas en el village of El Mozote y otros sitios aledaños*. July 23, 1992, p. 8 (evidence file, tome II, annex 9 to the submission of the case, folio 1470); *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia, San Salvador, El Salvador, 2008*, pp. 57 and 333 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5302 and 5456), and Rufina Amaya, Mark Danner and Carlos Henríquez, "Luciérnagas en El Mozote," San Salvador, 8th ed., 2008, p. 68 (evidence file, tome X, annex 10.1 to the pleadings and motions brief, folio 6526).

<sup>104</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folios 1576 to 1577); Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1662); Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1196); Complaint filed before the Second First Instance Court of San Francisco Gotera by Pedro Chicas Romero on October 26, 1990 (evidence file, tome II, annex 21 to the submission of the case, folio 1581), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 57 and 58 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5302 and 5303). See also, Record of judicial inspection in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1957 and 1958).

<sup>105</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1577).

<sup>106</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2928). See also, Record of judicial inspection in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1957).

<sup>107</sup> Cf. Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, dated December 10, 1992 (evidence file, tome VI, annex 24 to the submission of the case, folio 4022), and Communication of Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, addressed to the Second First Instance Judge of San Francisco Gotera, of December 10, 1992 (evidence file, tome V, annex 23 to the submission of the case, folio 3525).

<sup>108</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2931).

killed in the convent and burned there, owing to “the abundant signs of fire on all floors of the dwelling.”<sup>109</sup>

95. As acknowledged by the State and established by *Tutela Legal del Arzobispado* in its report,<sup>110</sup> the bodies of all those who were killed were piled up in several homes, which were then set on fire by the soldiers. Similarly, they set fire to the church, where there were injured people who were still alive, because screams and cries could be heard.

96. Some survivors of the massacres who had hidden in the woods and other individuals or next of kin indicated that they had gone to El Mozote after the massacre to search for their relatives who lived there, and had found the corpses of children, women and the elderly, many of them charred, butchered or dismembered by animals, and the houses burned down.<sup>111</sup>

97. As established in the Commission’s merits report and acknowledged by the State, at that time it had been determined that approximately 498 people were executed in the village of El Mozote. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

**d) Massacre in the canton of La Joya**

98. The canton of La Joya, in the Meanguera jurisdiction, is a valley with a river called “Las Marías,” approximately three kilometers southwest of the village of El Mozote, in the department of Morazán.<sup>112</sup> To the west lies a high plateau known as “Arada Vieja,” in the village of Los Quebrachos.

99. On December 10, 1981, a large number of helicopters of the Salvadoran Air Force overflew the canton and landed on “Arada Vieja” transporting troops.<sup>113</sup> In the afternoon,

<sup>109</sup> Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2942).

<sup>110</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 58 to 59 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5302 to 5303). See also, Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1576), and Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1660 to 1665).

<sup>111</sup> Cf. Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1658); Victim statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1749 and 1750); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10277); Witness statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on November 27, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1692 and 1693), and Witness statement made by Anastacio Pereira Vigil on June 2, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2021).

<sup>112</sup> Cf. Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1671 to 1672), and Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1695).

<sup>113</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1695); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713); Witness statement made by Rosa Ramírez Hernández before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1717); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 and 1724); Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1752); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1757); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1762); Witness statement



soldiers started firing mortars and guns at the canton.<sup>114</sup> Accordingly, some residents sought hiding places immediately,<sup>115</sup> while others waited until the early morning hours of December 11 to leave in order to hide in the woods or near the Las Marías River;<sup>116</sup> many people decided not to leave the place. The men who went to hide in the woods or to the river believed that their wives and small children, who they left behind at home, would not be harmed.<sup>117</sup>

100. At around 8 a.m. on December 11, 1981, uniformed soldiers entered the canton of La Joya; they proceeded to evict the people from their homes and kill them, and then set fire to the people's homes, possessions and animals.<sup>118</sup> Some survivors could hear the cries and groans of the people who were being murdered.<sup>119</sup>

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made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1767); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1774), and Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5547).

<sup>114</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1695); Witness statement made by Rosa Ramírez Hernández before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1717); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 and 1724); Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1752); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1757); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1762); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1767); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1774), and Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5530).

<sup>115</sup> Cf. Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1774); Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5530), and Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5547).

<sup>116</sup> Cf. Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1762); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1767), and Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1775).

<sup>117</sup> Cf. Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1752 to 1755); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1758 and 1759); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1775), and Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5530).

<sup>118</sup> Cf. Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1671 and 1672); Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1753); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1758); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1763); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1768); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1775); Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII,

101. The survivors of La Joya were forced to flee to avoid the military operation, dragging themselves through the woods and hiding in the nearest caves for many days.<sup>120</sup>

102. In addition, a group of approximately 50 people sought refuge on a hill known as “El Perico”, located about 500 meters from the homes of the canton.<sup>121</sup> From there they were able to observe the smoke columns and listen to the soldiers’ gunshots.<sup>122</sup>

103. After several days, those who had hidden in the woods, the river and the caves and on “El Perico” came down to the village and buried the dead.<sup>123</sup> They found all their homes burned down and destroyed, and most of them decided to seek refuge in Honduras.<sup>124</sup>

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annex 3 to the pleadings and motions brief, folio 5547); Statement made by María del Rosario López Sánchez before the Inter-American Court during the public hearing held on April 23, 2012, and Record of judicial inspection in the canton of “La Joya”, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2159).

<sup>119</sup> Cf. Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713). See also, Statement made by María del Rosario López Sánchez before the Inter-American Court during the public hearing held on April 23, 2012).

<sup>120</sup> Cf. Witness statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on November 27, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1692 and 1693); Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5530 and 5531); Witness statement made by María Amanda Martínez before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1704 and 1705); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1762 to 1765); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1767 to 1770); Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5547 and 5548), and Statement made by María del Rosario López Sánchez before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>121</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1696 and 1697); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1725), and Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10277). See also, Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 to 5525).

<sup>122</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1698); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 to 1728); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 to 5525).

<sup>123</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1698); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 to 1728), and Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713). See also, Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 to 5525).

<sup>124</sup> Cf. Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1698); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 to 1728); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1774 to 1778); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to

104. After the massacre ended, the phrase: "The Atlacatl Battalion was here" could be read on a wall.<sup>125</sup> As acknowledged by the State and established by *Tutela Legal del Arzobispado* in its report,<sup>126</sup> at the end of December 1981, an aircraft flew over the village of San Fernando, in the north of the department of Morazán, dropping flyers informing the inhabitants of the death of all the people of the cantons of La Joya and Cerro Pando and the village of El Mozote.

105. As established in the Commission's merits report and acknowledged by the State, at that time it had been determined that approximately 152 people were executed in the canton of La Joya. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

**e) The massacre in the village of Ranchería**

106. The village of Ranchería, in Guacamaya canton, in the Meanguera jurisdiction, department of Morazán, was located about 1,000 meters northeast of the village of El Mozote and consisted of around 17 homes of peasant families.<sup>127</sup>

107. As acknowledged by the State and established by *Tutela Legal del Arzobispado* in its report, in the early hours of December 12, 1981, the Third Company of the Atlacatl BIRI deployed in that direction, heading toward Ranchería and Los Toriles, where they continued their mass murders of the inhabitants. In this village family groups were killed inside the homes. They began with the home of Vicente Márquez, continued with the home of Catarino Rodríguez,<sup>128</sup> where three families lived, and went family by family for several hours. Many of the homes were set fire to during the slaughter.<sup>129</sup>

108. As acknowledged by the State and established by *Tutela Legal del Arzobispado* in its report,<sup>130</sup> those who were able to escape and were in hiding at the time were able to hear the gunshots, the screams of the people begging not to be killed, and the children crying. Many of these survivors returned to the place in search of their family members and found the corpses, some of them mutilated and with their throats slit.

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the pleadings and motions brief, folios 5522 to 5525), and Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5547 to 5548).

<sup>125</sup> Cf. Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1671); Witness statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on November 27, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1693), and Record of judicial inspection in the canton of "La Joya", jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2159).

<sup>126</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 61 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5304).

<sup>127</sup> Cf. Judicial inspection made in the village of Ranchería, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 15, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2224 to 2228), and Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1668 to 1670).

<sup>128</sup> Cf. Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1668).

<sup>129</sup> Cf. Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1668 to 1670).

<sup>130</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 62 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5305).

109. As established in the Commission's merits report and acknowledged by the State, at that time it had been identified that approximately 56 had been executed in village of Ranchería. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

**f) The massacre in the village of Los Toriles**

110. The village of Los Toriles, in Guacamaya canton, Meanguera jurisdiction, department of Morazán, was located immediately beside the village of Ranchería.

111. At approximately 7 a.m. on December 12, 1981, the killings by family group began.<sup>131</sup> Subsequently, the soldiers proceeded to set fire to and destroy the homes, crops, animals and possessions.<sup>132</sup> Also, as revealed by the exhumations performed by the Argentine Forensic Anthropology Team at four sites, the families were assembled before being machine-gunned by the soldiers and the skeletons were in good condition, because the victims were not burned or piled up, which facilitated their identification.<sup>133</sup>

112. As established in the Commission's merits report and acknowledged by the State, at that time it had been determined that approximately 82 people were executed in village of Los Toriles. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

**g) The massacre in the village of Jocote Amarillo**

113. The village of Jocote Amarillo in Guacamaya canton, in the Meanguera jurisdiction, department of Morazán, was located approximately two kilometers to the south of the village of El Mozote.

114. The military operation and the killings that took place in the other places were already known to the inhabitants of Jocote Amarillo;<sup>134</sup> consequently, many individuals were able to hide in the woods before the soldiers arrived. However, others hid in this place<sup>135</sup> because, as established in the merits report and acknowledged by the State, it was further away and they believed that the soldiers would not go there.

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<sup>131</sup> Cf. Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1701); Victim statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on February 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1730), and Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, *affidavits*, folios 10289 to 10291). See also, Summary of the forensic work from September to December 2001 prepared by the Argentine Forensic Anthropology Team (EAAF) of December 7, 2001 (evidence file, tome V, annex 23 to the submission of the case, folio 3946).

<sup>132</sup> Cf. Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1701 and 1702), and Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, *affidavits*, folio 10289).

<sup>133</sup> Cf. Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folios 4445 to 4452).

<sup>134</sup> Cf. Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715); Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1742), and Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5573).

<sup>135</sup> Cf. Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715), and Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1742).

115. According to the accounts of the survivors, who heard the shots and saw columns of smoke, the soldiers began the killings in Jocote Amarillo between 7 a.m. and 8 a.m. on December 13, 1981.<sup>136</sup> As established in the merits report and acknowledged by the State, the gunfire, and the screams of anguish and pain were constant, and “the appeals for mercy of those who were being killed.” On returning, those who had been able to flee found the corpses of their family members, some of them carbonized, and proceeded to bury them.<sup>137</sup> All the houses had been reduced to ashes.<sup>138</sup>

116. As established in the Commission’s merits report and acknowledged by the State, at that time it had been determined that approximately 23 people were executed in the village of Jocote Amarillo. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

**h) The massacre in Cerro Pando canton and in a cave on Cerro Ortiz**

117. The canton of Cerro Pando, in the municipality of Meanguera, was located about 4 kilometers south of the village of El Mozote, in the department of Morazán.

118. When the soldiers arrived on December 13, 1981, many people were already hiding in the woods.<sup>139</sup> Nevertheless, at 8 a.m., the appeals for mercy of the adults and the screams of the children who had remained in their homes began to be heard as they were killed.<sup>140</sup> Then, the houses were set on fire,<sup>141</sup> so that many of these people were found carbonized by their next of kin or devoured by birds of prey.<sup>142</sup>

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<sup>136</sup> Cf. Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1657); Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715), and Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1741).

<sup>137</sup> Cf. Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715); Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1742); Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1657); Summary of forensic work, village of Jocote Amarillo, Sites 1, 2, 3 and 4, prepared by the Argentine Forensic Anthropology Team (EAAF), of July 13, 2000 (evidence file, tome V, annex 23 to the submission of the case, folios 3719 to 3722), and Record of judicial inspection in the village of Jocote Amarillo, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2301 to 2303).

<sup>138</sup> Cf. Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5573).

<sup>139</sup> Cf. Victim statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2351).

<sup>140</sup> Cf. Victim statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2352), and Witness statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2355 and 2356).

<sup>141</sup> Cf. Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1706).

<sup>142</sup> Cf. Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10287); Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10298); Sworn statement made by Santos Jacobo Chicas Guevara before the *Oficina de Tutela Legal del Arzobispado* on June 20, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5540), and Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1708). See also, Record of judicial inspection in the village of El Barrial, Cerro Pando canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on August 12, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2318).

119. As established in the Commission's merits report and acknowledged by the State, at that time it had been determined that approximately 141 people were executed in the canton of Cerro Pando. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

120. As established by *Tutela Legal del Arzobispado* in its report,<sup>143</sup> and acknowledged by the State, in the context of this massacre, about 20 people sought refuge from the operation in a cave on Cerro Ortiz, in the municipality of El Zapotal. However, they were discovered by the soldiers owing to the cries of a child and, without warning, the soldiers threw a grenade into the cave. Those who were wounded but could still walk abandoned the cave.<sup>144</sup>

121. As established in the Commission's merits report and acknowledged by the State, at that time it had been determined that approximately 15 people were executed in a cave on Cerro Ortiz. This is without prejudice to the determination that will opportunely be made by the Court in this Judgment, based on the criteria described previously for determining victims (*supra* para. 57).

#### **4) The internal and international displacements**

122. The statements in the case file reveal that there were displacements internally<sup>145</sup> and also to the Republic of Honduras<sup>146</sup> prior to the massacres, as a result of the situation in the north of the department of Morazán.

123. In addition, massive movements of people resulted from the massacres in this case owing to the fears of those who survived, the destruction and incineration of their homes, and the elimination of their means of subsistence. The testimony received indicates that the survivors displaced internally<sup>147</sup> and/or left for the Republic of Honduras to seek refuge in Colomoncagua

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<sup>143</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 66 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folio 5307).

<sup>144</sup> Cf. Introduction by María Julia Hernández in: Pedro Linger Gasiglia, *El Mozote. La Masacre 25 años después*. 1st. Ed., Buenos Aires, 2007 (evidence file, tome IX, annex 4 to the pleadings and motions brief, folio 5704).

<sup>145</sup> Cf. Sworn statement made by José Eliseo Claros Romero before the *Oficina de Tutela Legal del Arzobispado* on July 21, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5533); Sworn statement made by José Gregorio Hernández García before the *Oficina de Tutela Legal del Arzobispado* on June 20, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5536); Sworn statement made by Petronila Vigil de Márquez before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5553); Sworn statement made by María Trinidad Díaz Díaz before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5578); Sworn statement made by María Regina Márquez Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5585); Affidavit provided by Sofía Pereira Romero on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10280), and Affidavit provided by Sonia Tobar de Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10284).

<sup>146</sup> Cf. Sworn statement made by José Gervacio Díaz before the *Oficina de Tutela Legal del Arzobispado* on June 28, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5543 and 5544); Sworn statement made by María Ester González Barrera before the *Oficina de Tutela Legal del Arzobispado* on June 29, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5550); Sworn statement made by María Teresa Argueta de Pereira before the *Oficina de Tutela Legal del Arzobispado* on August 8, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5569), and Sworn statement made by María Regina Márquez Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5585 to 5586).

<sup>147</sup> Cf. Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1708); Victim statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on February 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1734); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1712); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 and 5523), and Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folios 10289 and 10290).

camps.<sup>148</sup> Expert witness Yáñez De La Cruz recorded 361 different places to which the survivors had displaced, and that “the average number of places to which they displaced in their flight was three, although there were those who had displaced up to four times.”<sup>149</sup>

124. The testimonies agree in indicating that the internally displaced people and the refugees suffered different forms of discrimination because they came from an area associated with the guerilla.<sup>150</sup>

125. Some of the internally displaced have returned to their places of origin on their own account and others have established themselves in Ciudad Segundo Montes, generally at the end of the armed conflict.<sup>151</sup>

126. The survivors who left for the Republic of Honduras remained in the refugee camps from seven to nine years. It was owing to the measures taken by humanitarian organizations, UNHCR, and other agencies that, between the end of 1989 and February 1990, those who were in Colomoncagua were repatriated, settling in what is today known as Ciudad Segundo Montes, in the department of Morazán.<sup>152</sup>

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<sup>148</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1578); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10277); Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1697); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1724 to 1725); Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1708); Victim statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on February 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1734); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1712); Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1716); Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1742); Sworn statement made by María Erlinda Amaya Márquez before the *Oficina de Tutela Legal del Arzobispado* on June 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5591), and Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10287).

<sup>149</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10526 and 10527).

<sup>150</sup> Cf. Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>151</sup> Cf. Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1708); Victim statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on February 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1734); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1712); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5523), and Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, *affidavits*, folio 10290).

<sup>152</sup> Cf. Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10277); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10287); Sworn statement made by Rufina Amaya Vda. De Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1578); Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1697 and 1698); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1712), and Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1716).

127. According to expert witness Yáñez De La Cruz, the returns took place as follows: "45% returned between 1991 and 2009, 4% in 1991, 27% in 1992, 23% in 1995 and from 4 to 5% from 1996 to 2009." 55% have still not returned; their reasons for not returning are: "78% were unable to do so because they did not have sufficient resources and because they had no one there, [and] 22% did not return because they were afraid."<sup>153</sup>

## **B. Arguments of the Commission and allegations of the parties**

### *1) Arguments of the Inter-American Commission*

128. The Commission considered it proved that, between December 11 and 13, 1981, an operation was conducted, mainly by the Atlacatl BIRI, with the support of other military units including the Salvadoran Air Force, in which successive massacres were perpetrated in seven places in the north of the department of Morazán. The massacres were committed with extreme cruelty, mainly using firearms, but also by beatings with sticks, slitting throats and even setting fire to places in which there were people who were still alive. According to the Commission, approximately one thousand people died in these events, without any indication that would suggest the possibility that the alleged events occurred in the context of a confrontation. The evidence available is consistent with a massive and indiscriminate attack on the civilian population. In addition, many people had been beaten and physically ill-treated before being killed. Owing to the nature of the events, it is not possible to have accurate information on the different acts of torture to which the victims were subjected. However, the Commission considered that just the accounts that refer to violent interrogations on supposed links with the guerrilla and the fact that they had witnessed the murder of their loved ones, their neighbors and friends, allow the conclusion to be reached that those who were killed had been victims of torture and cruel, inhuman and degrading treatment in the moments before their death. In addition, the Commission considered that, owing to the circumstances surrounding the massacre in the village of El Mozote, all those murdered there had been illegally and arbitrarily detained before their death. Consequently, the Commission concluded that the State of El Salvador was responsible for the violation of the rights to life and to personal integrity of the persons extrajudicially executed in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles, Jocote Amarillo, the canton of Cerro Pando and a cave on Cerro Ortiz. Additionally, the Commission argued that the State of El Salvador was responsible for the violation of the right to personal liberty of the victims extrajudicially executed in the village of El Mozote.

129. The Commission also argued that it had been proved that an alarming number of children had been murdered in the massacres of El Mozote and nearby places. Specifically, in the village of El Mozote, a first group of children had been taken with the men to a place where they had been detained and subjected to different acts of torture. Thus, the Commission argued that senior Salvadoran military commanders had not only omitted to adopt the necessary precautions to avoid the loss of the lives of children, but rather, at the highest level, had ordered their murder in order to achieve the goal of annihilating the entire civilian population of places where the guerrilla were perceived to be present. Therefore, the Commission concluded that, in addition to the violations of the rights to life, and to personal integrity and liberty, the State of El Salvador deliberately disregarded its obligation to provide special protection to children established in Article 19 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of all the children who were extrajudicially executed in the massacres perpetrated in the village of El Mozote and nearby places.

130. The Commission also argued that, since many of the young women in the village of El Mozote had been taken to the outskirts of the village, specifically to "Cerro El Chingo" and "Cerro La Cruz" to be raped before their extrajudicial execution, the State of El Salvador was

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<sup>153</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10527).



responsible for the violation of the rights established in Articles 5(1), 5(2) and 11(2) of the Convention, in relation to the obligations established in Article 1(1) of this instrument, to the detriment of an indeterminate number of women who were in the village of El Mozote at the time of the alleged massacre. The Commission also emphasized that the sexual abuse to which detained women are subjected constitutes torture. In this regard, the Commission referred to the complementary nature of Articles 5 and 11 of the American Convention in cases of rape because, in addition to affecting the victim's physical, mental and moral integrity, it violates her dignity, invades one of the most intimate spheres of her life – that of her sexual and physical space – and deprives her of the ability to make autonomous decisions regarding her body.

131. The Commission indicated that several people had survived the massacres of El Mozote and nearby places, who were also next of kin of the victims executed, and that just the loss of their loved ones in circumstances such as those described in this case would allow inferring suffering incompatible with Article 5(1) of the Convention. In addition, the Commission referred to specific circumstances that, owing to the nature of the facts, had been endured by the surviving next of kin during and after the massacres, causing serious effects on the mental and moral integrity of the surviving next of kin. Consequently, the Commission concluded that the State was responsible for the violation of the right to mental and moral integrity established in Article 5(1) of the Convention, in relation to the obligations established in Article 1(1) of this instrument, to the detriment of the surviving next of kin.

132. The Commission claimed that several houses in El Mozote, La Joya, Ranchería, Toriles, Jocote Amarillo and Cerro Pando had been set on fire by the same soldiers when perpetrating the massacres. In addition, in some places, the members of the military units in charge of the operation had stripped the victims of the possessions they were carrying or the belongings found in their homes. Similarly, several survivors declared that, upon returning from their hiding place to look for their next of kin, they found the bodies of the animals that were their means of subsistence. Consequently, the Commission considered that the events described constituted a violation of the right to property established in Article 21(1) and 21(2), in relation to the obligations established in Article 1(1) of this instrument, to the detriment of the executed victims who had been stripped of their belongings, as well as of the survivors who lived in the villages and cantons where the massacres had been committed and whose homes were destroyed or their means of subsistence seized or eliminated.

133. The Commission argued that, as a result of the terror caused among the population, as well as the total destruction of the places where the massacres occurred and the resulting impossibility of continuing to live there, many people left for the Republic of Honduras to seek refuge, returning to El Salvador around the beginning of the 1990s. In this regard, it considered that this situation should be included within the definition of enforced displacement and that, because it occurred as a direct consequence of the massacres, the State was responsible for the violation of the right established in Article 22(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons identified who had taken refuge in the Republic of Honduras.

## 2) *Arguments of the representatives*

134. The representatives argued that the procedural obligation of the State to investigate the violations of the rights to life and to personal integrity of the presumed victims of the alleged massacre was independent of the substantive obligation arising from these provisions. In this regard, they indicated that, despite the gravity of the events, since the date on which the Court had competence to rule on the alleged facts, the State had not taken a single measure on its own initiative to establish the truth of what happened. Accordingly, they asked the Court to declare that the State was responsible for the violation of the rights contained in Articles 4 and 5 of the Convention, in relation to Article 1(1) of this instrument. In their final arguments, the representatives asked the Court to declare the aggravated responsibility of the State for the creation and application of the strategy of "taking the water away from the fish" or "scorched earth"; to declare the State responsible for the violation of the right to life of the victims of the

massacres contained in Article 4 of the Convention, in relation to Articles 1(1) and 19 thereof, for failing to comply with the obligation to both guarantee and respect rights in relation to the executions; and to declare the State responsible for the perpetration of acts of torture and cruel, inhuman or degrading treatment of the victims of the massacre. Lastly, the representatives asked the Court, when delivering its judgment in this case, to "refer to the aggravated responsibility of the State because all the violations committed occurred in the context of a military strategy created and implemented by the State in extreme contradiction of the provisions of the American Convention and the principles that inspire it."

135. In their final arguments the representatives alleged that the rape described constituted acts of torture by the State and, therefore, a violation of the right to personal integrity.

136. The representatives added that both the surviving presumed victims and the victims' next of kin who were not present at the place of the massacre on the day they took place, had encountered absolute inactivity by the authorities who had failed to adopt any measure to clarify the events and also, for many years, they were forced to observe how the perpetrators of the alleged massacre were repeatedly honored by the State. In this regard, the representatives referred to "the feelings of anguish and impotence that all these facts ha[d] caused over the years" to the victims of the case, whose lives had been marked "by the abandonment and contempt of the State that, during the first years following the events, even denied that they had occurred and that, today, still has not investigated them or punished those responsible." In their final arguments, the representatives alleged that the personal integrity of the survivors was violated, because some of them were unable to bury their families for fear of reprisals by the soldiers or owing to the condition of the bodies, and others were never able to recover the remains, which caused an incomplete mourning process. They also argued that the devastation of lands and crops, setting fire to them and destroying them, was a way of eliminating the identity of the victims. Consequently, they asked the Court to declare the State responsible for the violation of the right to integrity of the surviving victims of the massacre and of the next of kin of the executed victims, because they were subjected to profound suffering for years, owing to the different violations committed against them and their relatives.

137. The representatives agreed with the Commission and added that the State was directly responsible for the deprivation of the property of the victims, which is a continuing fact that persists today, because the State has not adopted a single measure to make sure that the victims in this case can recover their possessions. Consequently, they asked the Court to declare the State responsible for the violation of the right to property of all surviving victims of the massacres. In their final arguments, the representatives argued that, in view of the scale of the massacres, it was not possible to establish the possessions that were lost by each victim; however, since the destruction of property and homes was part of the operation's *modus operandi*, they considered that "it can be established that all the victims, both those killed and the survivors, suffered a violation to their right to property." In their final arguments, they argued that the burning down of the victims' homes had also constituted a violation of Article 11 of the Convention, and asked the Court to declare that the State was responsible for the violation of the right to privacy and the rights of the family of the victims of the massacre.

138. The representatives asked the Court to declare that the State was responsible for the violation of the rights contained in Articles 11 and 22 of the American Convention, in relation to failure to comply with the obligations contained in Article 1(1) of this instrument. In this regard, they argue that, in this case, it would correspond to a continuing violation, which would subsist until the presumed victims were able to return to their place of origin or residence, which, in many cases, occurred after June 6, 1995, and, in some cases, had not occurred yet because, in addition to being directly responsible for the displacement of the presumed victims, the State had not taken measures to ensure respect for freedom of residence and movement or to make sure that the victims return to their place of origin. Thus, the representatives considered that, although the State had not directly restricted the freedom of movement and residence of the presumed victims of this case, the impossibility for them to return stemmed from the existence of circumstances created by the State itself, such as the impunity in which the facts remain. In

addition, they indicated that although some programs existed supposedly designed to protect the displaced persons, they were controlled by the same forces responsible for the displacement and required the creation of an official list. Similarly, although some programs existed that were intended to ensure the return of those displaced, they had not been effective. The representatives considered that the Court should take into account the information contained in their pleadings and motions brief, although of a general nature, in order to assess how the displacement affected the victims of the massacres because, in contexts of extreme violence, it is difficult to document the displacement circumstances of each person affected.

139. The representatives also argued that the enforced displacement had given rise to numerous human rights violations, including the violation of the right to privacy and the rights of the family, the violation of the right to integrity, and the violation of the right to freedom of movement. Regarding the right to privacy, they argued that it is intrinsically linked to the life project of the victims, and therefore argued that the enforced displacement had clearly affected the victims' possibility of leading their life autonomously, and had entailed a grave violation of their right to privacy and family life.

### 3) *Arguments of the State*

140. The State did not present any specific legal arguments with regard to the alleged violations, but merely stated, in relation to the alleged violation of the loss of property and destruction of possessions resulting from the events alleged in this case, the displacement of the surviving victims, and the facts relating to the context of violence in which they occurred, that it acknowledged "those facts contained in reliable testimony of surviving victims, as well as those described in official reports [of the] Inter-American Commission on Human Rights, international protection agencies that were or still are part of the United Nations system, as well as those contained in the Report of the Truth Commission of the United Nations, created by the Peace Accords of El Salvador. In addition, the State noted that the representatives had described the general phenomenon of the enforced displacements of the civilian population during the Salvadoran internal armed conflict, and had not been very specific in relation to the displacements that took place as a result of the events denounced in this particular case.

## C. **Considerations of the Court**

141. In light of the State's acknowledgment of responsibility, and considering the gravity of the facts of the instant case, the Court will now examine the alleged international responsibility of El Salvador for the violation of the rights to life,<sup>154</sup> to personal integrity,<sup>155</sup> to personal liberty,<sup>156</sup> to privacy,<sup>157</sup> of the child,<sup>158</sup> to property,<sup>159</sup> and to freedom of movement and

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<sup>154</sup> Article 4.1 of the American Convention establishes that:

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.

<sup>155</sup> The pertinent part of Article 5 of the American Convention indicates that:

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.

<sup>156</sup> The pertinent part of Article 7 of the American Convention establishes that:

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.

<sup>157</sup> Article 11(2) of the Convention indicates that: "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

<sup>158</sup> Article 19 of the American Convention prescribes that: "[e]very 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."

residence,<sup>160</sup> in relation to the obligations to respect and guarantee rights.<sup>161</sup> The Court considers it pertinent to analyze all these alleged violations together because of the complex nature of the circumstances surrounding the massacres perpetrated in this case, which reveal the resulting interrelated violations of different rights, which prevents a separate analysis. Similarly, as it has on other occasions,<sup>162</sup> the Court finds it useful and appropriate when analyzing and interpreting the scope of the provisions of the American Convention in this case in which the facts occurred in the context of a non-international armed conflict, and in keeping with Article 29 of the American Convention, to have recourse to other international treaties, such as the Geneva Conventions of August 12, 1949,<sup>163</sup> and in particular to Article 3 common to the four conventions,<sup>164</sup> Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-international Armed Conflicts of June 8, 1977 (hereinafter "Additional Protocol II) to which the State is a party,<sup>165</sup> and customary international humanitarian law,<sup>166</sup> as complementary instruments and considering their specificity in this matter.

### **1) The human rights violations alleged to the detriment of the persons executed**

142. The Court has established that, in accordance with Article 1(1) of the Convention, States are obliged to respect and ensure the human rights recognized therein. The State's international

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<sup>159</sup> The pertinent parts of Article 21 of the American Convention recognize that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

<sup>160</sup> The pertinent part of Article 22(1) of the Convention establishes that "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

<sup>161</sup> Article 1(1) of the American Convention stipulates that: "[t]he 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."

<sup>162</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 179; *Case of the Mampiripán Massacre v. Colombia. Merits, reparations and costs*, paras. 114, 153, 172 and 191, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 191.

<sup>163</sup> Cf. In particular, the Geneva Convention relative to the protection of civilian persons in times of war, approved on August 12, 1949, by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held at Geneva from 21 April to 12 August 1949, which entered into force on October 21, 1950, and was ratified by El Salvador on June 17, 1953.

<sup>164</sup> Article 3 common to the 1949 Geneva Conventions establishes: "Non-international conflicts: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

<sup>165</sup> El Salvador has been a party to Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts since November 23, 1978.

<sup>166</sup> Cf. International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.

responsibility is based on acts or omissions of any of its branches or organs, irrespective of their rank, that violate the American Convention.<sup>167</sup>

143. Regarding the obligation to respect rights, the Court has stated that the first obligation assumed by States Parties, under the said article, is "to respect the rights and freedoms" recognized in the Convention. Thus, the protection of human rights must necessarily encompass the notion of the restriction of the exercise of the State's powers.<sup>168</sup>

144. With regard to the obligation to ensure rights, the Court has established that it may be complied with in different ways, based on the specific right that the State must ensure and the specific needs for protection.<sup>169</sup> This obligation involves the States' obligation to organize the entire government apparatus and, in general, all the structures through which public power is exercised, so that they are capable of ensuring legally the free and full exercise of human rights.<sup>170</sup> As part of this obligation, the State has the legal obligation to "prevent, reasonably, human rights violations, and to investigate, genuinely using the means available to it, the violations committed within their jurisdiction in order to identify those responsible, impose the pertinent punishments on them, and ensure adequate reparation for the victim."<sup>171</sup> The decisive aspect is to determine "whether a specific violation [...] has taken place with the support or tolerance of the public authorities or if they have acted so that the violation has occurred in the absence of any preventive action or has remained unpunished."<sup>172</sup>

145. The Court has also established that the right to life plays a fundamental role in the American Convention, because it is the essential assumption for the exercise of the other rights. States are obliged to guarantee the creation of the conditions required to ensure that this inalienable right is not violated and, in particular, the obligation to prevent its agents from violating it. Observance of Article 4, in relation to Article 1(1) of the American Convention, not only supposes that no one shall be arbitrarily deprived of his life (negative obligation), but also requires the States to adopt all appropriate measures to protect and preserve the right to life (positive obligation),<sup>173</sup> in keeping with the obligation to ensure the full and free exercise of the rights of all persons under their jurisdiction.<sup>174</sup>

146. This active protection of the right to life by the State involves not only its legislators, but also every State institution and those who should safeguard security, whether these be its police forces or its armed forces. Consequently, States must adopt the necessary measures, not only at a legislative, administrative and judicial level, by the enactment of criminal laws and the establishment of a justice system to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect the individual from the criminal acts of other individuals and to investigate these situations effectively.<sup>175</sup>

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<sup>167</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 79, and *Case of Vélez Restrepo and family members v. Colombia*, para. 125.

<sup>168</sup> Cf. *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of Vélez Restrepo and family members v. Colombia*, para. 126.

<sup>169</sup> Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*, para. 113, and *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 76.

<sup>170</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, para. 166*, and *Case of Vélez Restrepo and family members v. Colombia*, para. 126.

<sup>171</sup> *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of Vélez Restrepo and family members v. Colombia*, para. 186.

<sup>172</sup> *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 173, and *Case of Vélez Restrepo and family members v. Colombia*, para. 186.

<sup>173</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Barrios Family v. Venezuela*, para. 48.

<sup>174</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 120, and *Case of the Barrios Family v. Venezuela*, para. 48.

<sup>175</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, para. 120, and *Case of Escué Zapata v. Colombia*, para. 40.

147. In addition, the American Convention expressly recognizes the right to personal integrity, a juridical right the protection of which is the main purpose of the peremptory prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>176</sup> In its case law, this Court has consistently considered that this prohibition has become *ius cogens*.<sup>177</sup> In this way, an international legal system has been created for the absolute prohibition of all forms of torture, both physical and mental and, regarding the latter, it has been recognized that the threats and the real danger of subjecting a person to severe physical harm produces, in certain circumstances, such moral anguish that it may be considered "mental torture."<sup>178</sup> Added to this, the Court has already established that "[t]he violation of an individual's right to physical and mental integrity is a type of violation that has various levels, ranging from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental consequences of which vary in intensity depending on endogenous and exogenous factors that must be demonstrated in each specific situation."<sup>179</sup>

148. The rights to life and to personal integrity are essential in the Convention. Under Article 27(2) of this treaty, these rights form part of the non-derogable nucleus, because they cannot be suspended in case of war, public danger or other threats to the independence or security of the States Parties.<sup>180</sup> In addition, article 4 of Protocol II Additional to the Geneva Convention indicates that "violence to the life, health and physical or mental well-being of persons [who do not take a direct part or who have ceased to take part in hostilities], in particular murder as well as cruel treatment such as torture, mutilation, or any form of corporal punishment, [... is] and shall remain prohibited at any time and in any place whatsoever." It also emphasizes that it is prohibited to order that there shall be no survivors. Article 13 also specifies the obligation to protect the civilian population and individual civilians unless and for such time as they take a direct part in hostilities, when stating that "they shall enjoy general protection against the dangers arising from military operations" and that "they shall not be the object of attack."

149. As regards Article 7 of the Convention, this Court has stated that it establishes guarantees that represent limits to the exercise of authority by State agents. These limits apply to the State's instruments of control, one of which is detention. The said measure must be in keeping with the guarantees recognized in the Convention, provided that its application is exceptional in nature and respects the principle of the presumption of innocence, and the principles of legality, necessity and proportionality essential in a democratic society.<sup>181</sup> This Court's consistent case law recognizes that when individuals are subjected to deprivation of liberty in the custody of official control agencies, State agents or private individuals acting with their acquiescence or tolerance that practice torture and murder with impunity, represent, in itself, this represents a violation of the obligation of prevention of violations of the right to personal integrity.<sup>182</sup>

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<sup>176</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of the Barrios Family v. Venezuela*, para. 50.

<sup>177</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 95, and *Case of the Barrios Family v. Venezuela*, para. 50.

<sup>178</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits*, para. 102, and *Case of the Barrios Family v. Venezuela*, para. 51.

<sup>179</sup> *Case of Loayza Tamayo v. Peru. Merits*, para. 57, and *Case of the Barrios Family v. Venezuela*, para. 52.

<sup>180</sup> Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of 6 April 6, 2006. Series C No. 147, para. 82, and *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 244.

<sup>181</sup> Cf. *Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 228, and *Case of the Barrios Family v. Venezuela*, para. 53.

<sup>182</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 175, and *Case of the Río Negro Massacres v. Guatemala*, para. 117.

150. The Court reiterates that cases in which children are victims of human rights violations are especially serious,<sup>183</sup> because children are holders of the rights established in the American Convention, and also possess the special measures of protection established in its Article 19, which must be defined according to the particular circumstances of each specific case.<sup>184</sup> The adoption of special measures for the protection of children corresponds to both the State and also the family, the community and the society to which they belong,<sup>185</sup> and these include the measures relating to non-discrimination, the prohibition of torture, and the conditions that must be observed in cases in which children are deprived of liberty.<sup>186</sup>

151. In this case it has been established, and El Salvador has acknowledged (*supra* paras. 17 and 19) that, between December 11 and 13, 1981, the Armed Forces of El Salvador – the Atlacatl Rapid Deployment Infantry Battalion, together with units of the San Miguel Third Infantry Brigade and the San Francisco Gotera Commando Training Center – with the support of the Salvadoran Air Force, conducted a consecutive series of massive, collective and indiscriminate executions of defenseless individuals in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo, and the canton of Cerro Pando and in a cave on Cerro Ortiz, in the context of a supposed counterinsurgency operation that formed part of a “scorched earth” policy planned and executed by the State. Indeed, the facts reveal that the Armed Forces executed every individual they encountered: the elderly, men, women, boys and girls; they killed the animals, destroyed and set fire to the crops and homes, and destroyed, “in particular, [...] anything of community value.”<sup>187</sup>

152. Similarly, the Truth Commission stated that it had found that it had been “fully proved that, on December 11, 1981, units of the Atlacatl BIRI deliberately and systematically killed a group of more than 200 men, women and children in the village of El Mozote, who comprised the entire civilian population that they had found there the previous day and had maintained in their custody since then.”<sup>188</sup> In addition, the Truth Commission concluded that “[i]t has been sufficiently proved that, in the days that preceded and followed the massacre of El Mozote, the military forces that participated in ‘*Operation Rescate*’ massacred the non-combatant civilian population in La Joya canton, in the villages of La Ranchería, Jocote Amarillo and Los Toriles, and in the canton of Cerro Pando.”<sup>189</sup> In all these cases, the Truth Commission indicated that “the troops acted similarly: they killed those they found, men, women and children, and then set fire to the houses in the village. This happened in the canton of La Joya on December 11; in the village of La Ranchería on December 12, and in the village of Jocote Amarillo and the canton of Cerro Pando on December 13.”<sup>190</sup>

153. Notwithstanding the stated purpose of the operation (*supra* para. 83), it was directed deliberately against the civilian or non-combatant population, because although the area affected by the operation was a problematic area with the presence of both the Army and the

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<sup>183</sup> The Inter-American Court has considered that, in general, by “child” is understood “any individual who has not attained 18 years of age.” *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42, and *Case of Furlan and family v. Argentina*. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2012. Series C No. 246, para. 123.

<sup>184</sup> Cf. *Case of Gelman v. Uruguay*, para. 121, and *Case of Furlan and family v. Argentina*, para. 125.

<sup>185</sup> Cf. *Juridical Status and Human Rights of the Child*, para 62, and *Case of Furlan and family v. Argentina*, para. 125.

<sup>186</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, reparations and costs. Judgment of July 8, 2004. Series C No. 110, para. 168, and *Case of the Barrios Family v. Venezuela*, para. 55.

<sup>187</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court of Human Rights during the public hearing held on April 23, 2012.

<sup>188</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1201).

<sup>189</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1201).

<sup>190</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1197).

FMLN, there is clear evidence that, at the time of the facts, no members of the guerrilla or armed persons were present in the said places<sup>191</sup> and, also, taking into account that most of the executed victims were children, women – some of them pregnant – and the elderly. The most recent lists of victims prepared by *Tutela Legal del Arzobispado*, based on the testimony of survivors and family members, contain 1,061 names of presumed victims who were executed; of these, approximately 54% were children, approximately 18% adult women and approximately 10% men and adult women over 60 years of age. Meanwhile, from the exhumations performed at 28 sites, mainly indicated by the survivors and other witnesses, remains have been recovered corresponding to a minimum of 281 individuals, of which approximately 74% correspond to children under 12 years of age.<sup>192</sup> In particular, in Site 1, known as “*El Convento*” in the village of El Mozote, of 143 individuals identified, 136 corresponded to children and adolescents, with an average age of 6 years.<sup>193</sup>

154. This assertion is also corroborated by the forensic reports which concluded that there was no evidence that could support the possibility that the deaths occurred in the context of combat, confrontation or an exchange of gunfire between two bands.<sup>194</sup> In addition, the amount of ballistic evidence found in the places of the executions reveals the indiscriminate and massive way in which people were executed.<sup>195</sup> The surviving witnesses mention repeatedly “the hail of bullets,” “the machine guns,” “the constant gunfire.”<sup>196</sup> Also, many victims had their throats slit

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<sup>191</sup> Juan Bautista Márquez testified before the Inter-American Court that, in the village of El Mozote, “[o]wing to the constant operations, the inhabitants of the place have many problems, because they are accused of supporting the guerrilla; however, this is not true, [because] sometime, out of fear, they gave them food, but they also gave food to the soldiers.” Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10276 and 10277). Genaro Sánchez testified before the judge of the criminal action that “before the events [in La Joya canton he] had not seen the guerrilla.” Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1769). Sotero Guevara Martínez testified before the judge of the criminal action that in La Joya canton “those who carried out the operation did not exchange gunfire with guerrilla groups.” Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1777). Pedro Chicas Romero stated before the *Oficina de Tutela Legal* that, in La Joya canton, “innocent people died and they were not members of the guerrilla; they were villagers; they were people who had nothing to do with that; these people died in their own homes, and the soldiers came to kill them.” Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5531). José Antonio Márquez Claros indicated before the *Oficina de Tutela Legal* that, in the village of El Mozote, “those who suffered were the poor peasants, who were not involved and who were not armed; their only defense was to run away.” Sworn statement made by José Antonio Márquez Claros before the *Oficina de Tutela Legal del Arzobispado* on August 9, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5565). María Erlinda Amaya Márquez indicated before the *Oficina de Tutela Legal* that “even though they were not members of the guerrilla [...] they were the ones [the soldiers] were seeking out.” Sworn statement made by María Erlinda Amaya Márquez before the *Oficina de Tutela Legal del Arzobispado* on June 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5591).

<sup>192</sup> Cf. Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, *affidavits*, folios 10307 and 10308).

<sup>193</sup> Cf. Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, dated December 10, 1992 (evidence file, tome VI, annex 24 submission of the case, folio 4022), and Communication of Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, addressed to the Second First Instance Judge of San Francisco Gotera, of December 10, 1992 (evidence file, tome V, annex 23 to the submission of the case, folio 3525).

<sup>194</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2942).

<sup>195</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2942); Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, dated December 10, 1992 (evidence file, tome VI, annex 24 submission of the case, folio 4022), and Communication of Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, addressed to the Second First Instance Judge of San Francisco Gotera, of December 10, 1992 (evidence file, tome V, annex 23 to the submission of the case, folio 3511).

<sup>196</sup> Cf. Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1657); Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1668 and 1669); Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1671); Witness statement made by Hilario Sánchez Gómez before



or were burned alive (*supra* paras. 95, 96 and 108). The physical evidence of the exhumations confirms the assertions of a massive murder; in other words, a massacre.<sup>197</sup>

155. In sum, it was the State's responsibility to protect the civilian population in the armed conflict,<sup>198</sup> and especially the children,<sup>199</sup> who were in a situation of greater vulnerability and risk of having their rights violated. To the contrary, in the instant case, the State agents acted deliberately, by planning and executing, under the State's structures and facilities, the perpetration of seven successive massacres of defenseless elderly persons, men, women and children, in the context of a systematic plan to eliminate certain sectors of the population who were considered to support, collaborate or belong to the guerrilla, or who were in any way contrary or opposed to the Government.

156. Therefore, the State of El Salvador is responsible for the executions perpetrated by the Salvadoran Armed Forces in the massacres committed from December 11 to 13, 1981, in the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo, and the canton of Cerro Pando and a cave on Cerro Ortiz, in violation of Article 4 of the American Convention, in relation to Article 1(1) of this instrument. In addition, it has been proved that there were a considerable number of children among the executed victims, so that, in their regard, the violations of the right to life also occurred in relation to Article 19 of the Convention. This violation was aggravated with regard to the children, and also to the women who were pregnant.

157. The lists attached to the merits report of the Inter-American Commission show a total of 967 presumed victims who were executed, while the State presented a list of 936 victims of the

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the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1697); Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1701); Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1706); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1711); Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1715); Witness statement made by Rosa Ramírez Hernández before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1717 to 1719); Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1753); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1763); Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1776 and 1777); Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5522); Sworn statement made by Cesar Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5547), and Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>197</sup> Cf. Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick dated December 10, 1992 (evidence file, tome VI, annex 24 submission of the case, folios 4022 to 4023), and Communication of Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick, addressed to the Second First Instance Judge of San Francisco Gotera, of December 10, 1992 (evidence file, tome V, annex 23 to the submission of the case, folio 3525).

<sup>198</sup> The State's general and special obligations to protect the civilian population derived from international humanitarian law, are established, in particular, in Article 3 common to Geneva Conventions of August 12, 1949, and the norms of Protocol II Additional to the 1949 Geneva Conventions and relating to the protection of the victims of non-international armed conflicts.

<sup>199</sup> Article 38 of the Convention on the Rights of the Child stipulates:

[...]

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

[...]

massacre of El Mozote and nearby places (*supra* paras. 20 and 38). For their part, the updated lists presented by the representatives with their final arguments indicate a total of 1,061 presumed victims who were executed. The Court has been able to verify, in application of the previously mentioned criteria (*supra* para. 57), that 440 people were executed by the Salvadoran Armed Forces, a figure that, owing to the circumstances of the case, may change with the implementation of the "Single List of Victims and Next of Kin of Victims of Grave Human Rights Violations during the Massacre of El Mozote" (*infra* paras. 309 and 310). However, the Court places on record that it has evidence to conclude that the number of victims is much greater even though there is insufficient evidence to identify them adequately in these proceedings before it.

158. In the case of the massacre of the village of El Mozote, there is evidence of additional violations, because the facts reveal that the people were detained, illegally and arbitrarily, in the control of the Armed Forces, impeding any possibility that the safeguards for personal liberty established in Article 7 of the American Convention could be brought to bear in their favor. The Court emphasizes that the collective executions did not occur immediately after the detention of the inhabitants and other individuals who had gathered in the village, but during approximately 12 to 24 hours these people were intentionally subjected to intense suffering, by being threatened and intimidated, maintained locked up and guarded for hours, and in these circumstances, interrogated about the presence of members of the guerrilla in the area, without knowing what their final fate would be (*supra* paras. 89 to 94). The Court notes that the facts of this case reveal that this series of acts caused extreme suffering, in addition to the uncertainty of what could happen to them and the profound fear that they could be deprived of their life violently and arbitrarily, as indeed happened, as revealed by the statement of Rufina Amaya, who managed to hide and avoid being executed.

159. The testimony of Rufina Amaya also refers to the cruelty with which the security forces acted, when she recounted that she: "saw that the soldiers had blindfolded all the men, tied their feet and tied their hands behind them, inside the chapel, the doors of which were open; all the men were lying face down on the ground, and [she] also saw the soldiers stood on them and pulled their heads backwards; then the men screamed in pain; afterwards [she] saw that they were lifted off the ground and one by one their heads were cut off, then their bodies and heads were dragged to the convent, where they left the dead in a pile, but as some of the men tried to escape, they were machine-gunned down."<sup>200</sup>

160. The testimony of Rufina Amaya also reveals that the men and adolescents were executed first, then the women and, finally, the youngest children (*supra* paras. 92 and 94). The fact that the women were taken from the places where they had been held deprived of liberty, leaving their children alone, may have caused the children to feel loss, abandonment, intense fear, uncertainty, anguish and pain, which may have varied and intensified depending on the age and the particular circumstances.<sup>201</sup>

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<sup>200</sup> Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1575). See also, Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1660 to 1665).

<sup>201</sup> "Each child reacts differently to the impact of armed conflict. Their response depends on their age, gender, personality type, personal and family history, cultural background and experience, as well as on the nature and duration of the event." United Nations, *The Machel Review 1996-2000, A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-affected Children*, A/55/749, 26 January 2001, p. 28. For example, the different circumstances that can influence the psychosocial impact of violence on children, "include individual factors such as age, sex, personality type, personal and family history and cultural background. Other factors will be linked to the nature of the traumatic events, including their frequency and the length of the exposure. Children who suffer from stress display a wide range of symptoms, including increased separation anxiety and developmental delays, sleep disturbances and nightmares, lack of appetite, withdrawn behaviour, lack of interest in play, and, in younger children, learning difficulties. In older children and adolescents, responses to stress can include anxious or aggressive behavior and depression." United Nations, *Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157, A/51/306*, 26 August 1996, para. 168. Similarly, in the context of fleeing during armed conflicts, "[a]lthough the decision to leave is normally taken by adults,

161. Regarding the other massacres, as it has been proved that the inhabitants of those areas were aware of the operation and some of them had been advised of the violent operation of the military forces by people who had escaped, the Court finds it reasonable that they endured anguish and fear in the moments prior to the arrival of the soldiers, because they could foresee that they would be deprived of their life violently and arbitrarily, and this constituted cruel and inhuman treatment.

162. According to the acknowledgment of the facts made by the State, the acknowledgement of responsibility at the domestic level, and the determinations made by this Court, the events that preceded the execution of the people who were in the village of El Mozote, the cantons of La Joya and Cerro Pando, the villages of Rancheria, Los Toriles and Jocote Amarillo, and the cave on Cerro Ortiz, entailed their physical, mental and moral suffering, and this violated their right to personal integrity recognized in Article 5(1) of the American Convention, which in turn constituted cruel, inhuman or degrading treatment, contrary to Article 5(2) of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the executed victims. Also, as it has been proved that there were children among the executed victims, the Court concludes that the violations of the right to integrity to their detriment occurred also in relation to Article 19 of the Convention.

163. In addition, based on the State's acceptance of the facts, the Court considers that, in this case, it is reasonable to grant probative value to the series of indications derived from the case file that allow it to infer the truth of the rape of the young women perpetrated by the soldiers in the village of El Mozote. First, as a result of its investigations, the reports of *Tutela Legal del Arzobispado* indicated that, during the course of the operation in El Mozote, many young women had been raped before they were killed, mainly on "Cerro La Cruz" and "Cerro El Chingo."<sup>202</sup> Furthermore, Rufina Amaya's testimony indicates that, before the massacres, the soldiers had camped out in "Cerro La Cruz" and "Cerro El Chingo,"<sup>203</sup> and this is corroborated by the results of the judicial inspections in these places that revealed the existence of trenches.<sup>204</sup> Rufina Amaya also stated that, on December 12, 1981, she heard women's screams coming from "Cerro El Chingo" crying out "Oh, oh, don't kill us."<sup>205</sup> In addition, during her participation in the judicial inspection conducted in El Mozote, she indicated that when she was able to hide behind some bushes, she was able to see that in the house of Israel Márquez "the soldiers were raping and killing a group of women."<sup>206</sup> The exhumations at this site indicated that the remains belonged mainly to women.<sup>207</sup> In addition, when filing a complaint, Pedro Chicas indicated that "the same soldiers took the young women to [Cerro] El Chingo and [Cerro] La Cruz, in the

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even the youngest children recognize what is happening and can sense their parents' uncertainty and fear." United Nations, *Impact of Armed Conflict on Children*, *supra*, para. 67.

<sup>202</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 57 and 333 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5302 and 5456). See also, Sworn statement made by Wilson Valeriano Guevara before the *Oficina de Tutela Legal del Arzobispado* on March 13, 1992 (file of proceedings before the Commission, tome II, annex 20 to the submission of the case, folio 830), and Sworn statement made by José Antonio Márquez Claros before the *Oficina de Tutela Legal del Arzobispado* on August 9, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5566).

<sup>203</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folios 1572 to 1573).

<sup>204</sup> Cf. Judicial inspection made on "Cerro El Chingo", village of El Mozote, jurisdiction of Meanguera, department of Morazán on June 3, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2025 and 2026), and Judicial inspection made on "Cerro La Cruz", village of El Mozote, jurisdiction of Meanguera, department of Morazán, on June 10, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2072).

<sup>205</sup> Cf. Sworn statement made by Rufina Amaya Vda. de Márquez before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1577).

<sup>206</sup> Judicial inspection made in the canton of El Mozote, jurisdiction of Meanguera, department of on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1996).

<sup>207</sup> Cf. Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folio 4489).

village of El Mozote, where they raped them and then murdered them.”<sup>208</sup> Furthermore, even though it was not included among the proven facts in the merits report, *Tutela Legal del Arzobispado* determined in its report<sup>209</sup> that rape had also been committed in the canton of La Joya, and the State must investigate this.

164. In this regard, the Court reiterates that it is evident that rape is a particular type of violence that is generally characterized by occurring in the absence of anyone other than the victim and the aggressor or aggressors.<sup>210</sup> The Court underscores the context in which the rape acknowledged by the State was perpetrated; that is, during a military operation in which the women were under the complete control of State agents and in a situation of absolute defenselessness. Moreover, reaching a different conclusion would allow the State to shield itself behind the situation of impunity in the criminal investigation of the events of this case, in order to waive its responsibility for the violation of Article 5 of the Convention.<sup>211</sup>

165. The Court considers that the severe suffering of the victim is inherent in rape and that, in general, like torture, rape seeks, among other aspects, to intimidate, degrade, humiliate, punish or control the person who endures it.<sup>212</sup> In order to characterize a rape as torture, it is necessary to analyze the intent, the severity of the suffering and the purpose of the act, taking into consideration the specific circumstances of each case.<sup>213</sup> Thus, several international bodies have recognized that, during armed conflicts, women and children face specific situations that affect their human rights, such as rape, which is frequently used as a symbolic means of humiliating the opposing party or as a means of punishment and repression.<sup>214</sup> The use of the State’s power to violate the rights of women in an internal conflict, in addition to affecting them directly, may be intended to produce an effect on society, and send a message or teach a lesson.<sup>215</sup> In particular, rape constitutes a paradigmatic form of violence against women, the consequences of which even exceed the person who is the victim.<sup>216</sup>

166. Regarding the alleged violation of Article 11 of the American Convention, based on the same facts, the Court has already stipulated that the content of this article includes, among other elements, the protection of privacy.<sup>217</sup> The concept of privacy is a broad term that cannot

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<sup>208</sup> Complaint filed before the Second First Instance Court of San Francisco Gotera of Pedro Chicas Romero on October 26, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1650).

<sup>209</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 57 and 93 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5304 and 5320). See also, Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713).

<sup>210</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 100, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 89.

<sup>211</sup> Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 97, and *Case of Rosendo Cantú et al. v. Mexico*, para. 104.

<sup>212</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 127, and *Case of Rosendo Cantú et al. v. Mexico*, para. 117.

<sup>213</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico*, paras. 110 and 112.

<sup>214</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, paras. 223 and 224. See also, Committee for the Elimination of Discrimination against Women, General recommendation 19 “Violence against women,” U.N. Doc. HRI/GEN/1/Rev.1 at 84, 29 January 1992, para. 16; Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radica Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 2000/45, “Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000).” U.N. Doc. E/CN.4/2001/73, 23 January 2001.

<sup>215</sup> Cf. *Case of del Penal Miguel Castro Castro v. Peru*, para. 224.

<sup>216</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 119, and *Case of Rosendo Cantú et al. v. Mexico*, para. 109.

<sup>217</sup> Cf. *Case of the Ituango Massacres v. Colombia*, para. 193, and *Case of the Río Negro Massacres v. Guatemala*, para. 133.

be defined exhaustively,<sup>218</sup> but comprises, among other protected spheres, sexual life<sup>219</sup> and the right to establish and develop relationships with other human beings.<sup>220</sup> The Court considers that the rape perpetrated against the young women in the village of El Mozote violated essential values and aspects of their private lives, meant an interference in their sexual life, and annulled their right to make free decisions with regard to with whom they wished to have sexual relations, thus they completely lost control over their most personal and intimate decisions, and over their basic bodily functions.<sup>221</sup>

167. Based on the foregoing, the Court finds that the rape to which the women in the village of El Mozote were subjected while under the control of military agents, constituted a violation of Article 5(2) of the American Convention, as well as of Article 11(2) of the Convention, in relation to Article 1(1) of this instrument, even though the Court does not have sufficient evidence to individualized the women who were prejudiced by this violation, investigation of which corresponds to the domestic courts.

168. Lastly, as has been proved (*supra* paras. 89, 94, 95, 100, 107, 111, 115 and 118), soldiers stripped the victims of their possessions, set fire to their homes, destroyed and burned their crops and killed their animals, so that the operation of the Armed Forces consisted in a sequence of events that simultaneously affected a series of rights, including the right to property. Consequently, the Court concludes that the State violated Article 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the victims executed in the massacres or of their next of kin.

## **2) The alleged human rights violations to the detriment of the survivors**

169. In this section the Court will analyze the different violations suffered by the survivors of the massacres, considering the specific circumstances of the situations they endured.

170. The statements received by the Court<sup>222</sup> consistently allow it to verify that the personal integrity of the surviving victims of the village of El Mozote, the canton of La Joya, the village of

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<sup>218</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 129, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 162.

<sup>219</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 129, and *Case of the Río Negro Massacres v. Guatemala*, para. 133.

<sup>220</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 129, and *Case of Atala Riffo and daughters v. Chile*, para. 162.

<sup>221</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 129, and *Case of Rosendo Cantú et al. v. Mexico*, para. 119.

<sup>222</sup> Cf. Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012; Statement made by María del Rosario López Sánchez before the Inter-American Court during the public hearing held on April 23, 2012; Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10277); Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folios 10289 and 10290); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10286 and 10287); Witness statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on November 27, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1692 to 1693); Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1697); Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1701 to 1702); Witness statement made by María Amanda Martínez before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1704 to 1705); Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1706 to 1707); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1712); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1757 to 1759); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1767 to 1769); Witness statement made by

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

171. Similarly, the evidence presented reveals specific situations that illustrate the way in which some of the surviving victims were affected. Rufina Amaya stated that, from where she was hiding, she was able to hear "the children screaming that they were being killed", and among them she "made out the screams of her children who cried out: 'Mama Rufina, they are killing us, they are choking us, they are stabbing us'; [...] later [she] realized that they had been killed."<sup>223</sup> Juan Bautista Márquez Argueta explained that, in the place where he was hiding with his family, "several bombs were dropped, which affected his two-month old son, Jesús Salvador, because, owing to the bombardment – in other words, the sound of the bombs – he became ill and died the next day, [and] they had to carry his body with them for two days, because they were unable to bury him."<sup>224</sup> Juan Antonio Pereira Vigil indicated that he had chosen "to leave his home and hide about half a block away in a field of sisal, and was spotted by the soldiers of the Atlacatl battalion; therefore [...he] moved around among the sisal and, from there, was able to observe how the soldiers entered his home and took out his family[,], organized them into groups, and then heard the volley of bullets and the explosion of grenades [..., later] he proceeded to bury the remains of the members of his family."<sup>225</sup> Rosendo Hernández Amaya<sup>226</sup> and Domingo Vigil Amaya<sup>227</sup> both stated that on December 13, 1981, they left their homes at 7 a.m. and 8 a.m., respectively, to attend to their crops, leaving their wives and children at home; shortly after 8 a.m. they heard shots and saw a large column of smoke in the direction of their

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Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1774 to 1777); Witness statement made by Remigio Márquez before the Second First Instance Court of San Francisco Gotera el July 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2299 to 2300); Sworn statement made by Rufina Amaya before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1578); Sworn statement made by Cesar Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5547 to 5548), and Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1668 to 1670).

<sup>223</sup> Sworn statement made by Rufina Amaya before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folio 1576). See also, Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1662).

<sup>224</sup> Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10276).

<sup>225</sup> Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10289).

<sup>226</sup> Cf. Witness statement made by Rosendo Hernández Amaya before the Second First Instance Court of San Francisco Gotera on July 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2300 to 2301).

<sup>227</sup> Cf. Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on July 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2301 to 2302).

homes, and hid in fear. Later they returned to their homes, found their wives and children dead and had to bury them. Rosendo Hernández Amaya was unable to find one of his children. Alejandro Hernández Argueta recounted that, at the age of 11, he was living in the village of Jocote Amarillo when the massacre took place, and he managed to survive because, when his mother saw that the soldiers had arrived, she told him to leave with his brother, who he lost while trying to return home. After all the action of the soldiers had ceased, he searched for his mother and, being unable to find her, he returned to his home which “was already in flames [because] all the homes had been set on fire.” Finally, he found “three of his siblings dead; on finding them, [he] spoke to [his] oldest brother, Santos, but Santos did not answer him, and next to him was [their] four-month old brother, and [he] lifted him up but he was already stiff [...]. He ran out of the house crying.” Then he waited to see if anyone would come to the house and at about 7 p.m. his father arrived; he “was happy because [he] hadn’t been able to find anybody to be with, because it’s not the same being with other people as being with your family.” The following morning his father went to bury their other family members, and “found his mother underneath the house, just below where his brothers were.”<sup>228</sup>

172. All things considered, the massacres had a significant psychological impact on the survivors and they have suffered profound grief and anguish as a direct result of the particular circumstances of the massacres, and also present mental and physical problems.<sup>229</sup> The said circumstances include having heard the cries for help and, in some cases, having witnessed the acts of cruelty with which their family members were executed, as well as the fear caused by the extreme violence that characterized the massacres. In addition, the Court considers it especially serious that some of them had to gather up the bodies of their loved ones, which were burned and/or in an advanced state of decomposition and, in some case, incomplete, in order to bury them, without being able to give them proper burial in accordance with their traditions, values or beliefs.<sup>230</sup>

173. Furthermore, the case file reveals that, in some cases, the survivors took different measures, such as the search for justice, taking part in the proceedings before the domestic and/or the international jurisdiction (*supra* para. 32 and *infra* paras. 211, 212 and 227). It has also been proven that the lack of effective investigations in order to elucidate the facts and the impunity in which the facts of this case remain have caused the surviving victims to feel fear, vulnerability and insecurity.<sup>231</sup> The Court finds that it is clear that the circumstances described reflect the profound suffering that the surviving victims have endured, which has persisted for more than 30 years owing to the impunity in which the events remain; events that took place in

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<sup>228</sup> Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5573 to 5574).

<sup>229</sup> Cf. Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10549).

<sup>230</sup> Cf. *Case of the Ituango Massacres v. Colombia*, para. 260.

<sup>231</sup> Cf. Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5524); Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5530 to 5531); Sworn statement made by Santos Jacobo Chicas Guevara before the *Oficina de Tutela Legal del Arzobispado* on June 20, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5540); Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5548); Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5574 to 5575); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10278); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10288); Affidavit provided by Juan Antonio Pereira Vigil on April 1, 2012 (evidence file, tome XVII, *affidavits*, folios 10290 to 10291); Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012; Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012, and Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10537).

the context of a State "scorched earth" policy designed to achieve the total destruction of the communities.

174. The facts of this case allow it to be concluded that the violation of the personal integrity of the survivors has been constituted by the situations and circumstances they experienced before, during and after the massacres, as well as by the general context in which the events occurred, resulting in violations that continue over time while the factors of impunity that have been verified persist. Based on all the foregoing considerations, the Court concludes that the said acts entailed cruel, inhuman or degrading treatment, contrary to Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the surviving victims.

175. As has been proved, the Armed Forces set fire to the homes, stripped the victims of their possessions, destroyed and burned their crops, and killed their animals, which entailed the definitive loss of the victims' property and the destruction of their homes. Also, the Report of the Truth Commission for El Salvador determined that in the village of El Mozote "[a]fter exterminating the entire population, the soldiers set the buildings on fire,"<sup>232</sup> and that, in all cases, "the troops acted in the same way: they killed those they encountered, men, women and children, and then set fire to the people's homes."<sup>233</sup>

176. The testimony received by the Court in this case reveals the violation of the right to property of the victims who survived the massacres. In this regard, Juan Bautista Marquez Argueta declared that, in the village of El Mozote, "the army went through the entire area [where] it set fire to crops and killed domestic animals, all of this to ensure that nothing was left for the population to use as a means of survival."<sup>234</sup> Antonia Guevara Díaz stated that "about ten soldiers came to her home [in Cerro Pando], and in a threatening and violent manner demanded that they leave the house and go away immediately, warning them that, if they did not, they would be murdered. [...She] left immediately with her immediate family, and the only belongings she could take with her were a mat and a blanket, losing all the other belongings such as the basic grains they had grown all year long, the animals and personal items, because the soldiers [...] set fire to the house."<sup>235</sup> Juan Antonio Pereira Vigil stated that, in the village of Los Toriles, he "lost all the livestock, horses, chickens, pigs, and the basic grains that were in the silos; [his] crops were set fire to, his house was sacked, leaving only rubble, and many personal items were removed by the soldiers of the Atlacatl battalion."<sup>236</sup> María del Rosario López Sánchez indicated that in La Joya "[a]ll the homes of the survivors [and of those] who died there were set on fire, including [her own]."<sup>237</sup>

177. The case file also contains various statements made before the Second First Instance Court of San Francisco Gotera, which also refer to the violation of the right to property. Pedro Chicas Romero indicated that, on December 10, 1981, "the soldiers entered the villages of Mozote and La Joya, and that, on December 11, they massacred all the people, set fire to their homes, and killed their animals, livestock, pigs and hens,"<sup>238</sup> leaving in one house a note that

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<sup>232</sup> Cf. Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folios 1196 and 1197).

<sup>233</sup> Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1197).

<sup>234</sup> Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10276 to 10277).

<sup>235</sup> Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10286).

<sup>236</sup> Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, affidavits, folio 10289).

<sup>237</sup> Statement made by María del Rosario López Sánchez before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>238</sup> Witness statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on July 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2159).



read "the Atlacatl Battalion was here."<sup>239</sup> Hilario Sánchez Gómez, whose home was in the village of El Potrero, in the canton of La Joya, stated that, after he had been in hiding for six days on the hill known as El Perico, and when "everything was calm, some of those who had been on the hill went down to the village where they lived, but found all their homes destroyed by fire";<sup>240</sup> he also "found [his] home destroyed by fire, as well as his corn crop."<sup>241</sup> María Amanda Martínez stated that, in the village of La Joya, "they murdered the neighbors who remained in their homes [...], and they also killed the domestic animals (pigs, cats, hens, etc.)."<sup>242</sup> Bernardino Guevara Chicas, whose home was in the canton of Cerro Pando, testified that the soldiers arrived at his house "and one of them told him to vacate the house immediately and that if he didn't obey, he would be shot with a bazooka"; therefore, he "chose to leave with his family [and went] to a friend's house [...] and soon after he started walking [he] turned to look at [his] house which was already in flames."<sup>243</sup> Rosa Ramirez Hernández indicated that, in El Mozote, she "saw the remains of children [and] adults, burned, inside the homes, and the homes were also burned down"; she also saw "that the soldiers were setting fire to the houses in La Joya with cans of fuel."<sup>244</sup> Irma Ramos Márquez, who had a house in the village of La Ranchería, stated that she saw that the "house of Vicente Márquez was in flames" and that "they killed six [of her] cows."<sup>245</sup>

178. Similarly, several sworn statements made before the *Oficina de Tutela Legal del Arzobispado* confirm the said violations. Rufina Amaya testified that, in the village of El Mozote, the soldiers of the Atlacatl BIRI "made everyone leave their homes and the village store [...] made them all lie face down on the ground [...]; then the soldiers told them that they were going to search them, removing their rings, chains, money and other items they had on them. When the soldiers had finished stealing everything that the people had with them, they ordered everyone to shut themselves in their homes and kept watch over them." The following day, "when [the soldiers had] finished killing all the adults, [...] they set fire to the chapel, and the homes of Isidra Claros, José María Márquez and Israel Márquez, [which] were full of dead people." Then, on December 12, 1981, she "saw smoke rising from the houses in the cantons of La Joya [and] Cerro Pando." That same day, "the soldiers set off for the canton of Guacamaya, the village of Jocote Amarillo [...], and then at about 3 p.m., the soldiers returned with animals such as hens, cows and pigs from that place, perhaps for food."<sup>246</sup> Alejandro Hernández Argueta recounted that, at the age of 11, he was living in the village of Jocote Amarillo when the massacre took place and that, being unable to find his mother, he went to his home which "was already in flames, [because] all the homes had been set on fire."<sup>247</sup>

179. The Court's case law has developed a broad definition of property that covers, among others aspects, the use and enjoyment of property, defined as material items that can be

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<sup>239</sup> Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1671).

<sup>240</sup> Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1697).

<sup>241</sup> Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1725).

<sup>242</sup> Witness statement made by María Amanda Martínez before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1704).

<sup>243</sup> Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1706 to 1707).

<sup>244</sup> Witness statement made by Rosa Ramirez Hernández before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1719).

<sup>245</sup> Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1668).

<sup>246</sup> Sworn statement made by Rufina Amaya before the *Oficina de Tutela Legal del Arzobispado* on October 10, 1990 (evidence file, tome II, annex 20 to the submission of the case, folios 1574, 1576 and 1577).

<sup>247</sup> Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex to the pleadings and motions brief, folio 5573).

acquired, as well as any right that may form part of an individual's personal wealth.<sup>248</sup> This concept comprises all movable and immovable property, tangible or intangible assets, and any other intangible object that may have a value.<sup>249</sup> In addition, under Article 21 of the American Convention, the Court has protected acquired rights, understood as rights that have been incorporated into an individual's personal wealth.<sup>250</sup> In addition, Articles 13 (Protection of the civilian population) and 14 (Protection of objects indispensable to the survival of the civilian population) of Protocol II Additional to the Geneva Conventions prohibit, respectively, "[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population," as well as "to attack, destroy, remove or render useless for that purpose objects indispensable to the survival of the civilian population."

180. The right to property is a human right and, in this case, its violation is especially serious and significant, not only because of the loss of tangible assets, but also because of the loss of the most basic living conditions and of every social reference point of the people who lived in these villages. As expert witness María Sol Yáñez de la Cruz underscored, "[n]ot only was the civilian population exterminated, but also the whole symbolic and social tissue. They destroyed homes and significant objects. They stripped the people of their clothes, the children's toys, and their family photographs; they removed and destroyed everything that was important to them. They killed or took the animals; they all recount that they took the cows, the hens; they took my cows, they killed two bulls: a loss of both material and affective significance in the peasant universe. Scorched earth is a type of violation and stigmatization by soldiers, created by the perpetrators. The scale of the horror perpetrated there was aimed at annihilating the area, with all its inhabitants, to vacate the territory, to expel them from the area."<sup>251</sup> Furthermore, "[i]t was a rationale of extermination, of total destruction of the social mechanisms. [...] The massacre disintegrated the collective identity, by leaving a social vacuum where the community had once carried out its rituals, its affective exchanges, the context and the framework in which they knew they were part of a community."<sup>252</sup>

181. Based on all the above, the Court concludes that the State violated the right to property recognized in Article 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the surviving victims.

182. In view of the fact that the representatives alleged the violation of Article 11(2) of the Convention based on the same facts, the Court reiterates its case law regarding the possibility for the presumed victims or their representatives to invoke rights other than those included in the Commission's merits report, provided that they relate to the facts contained in this document.<sup>253</sup> The Court also recalls that Article 11(2) of the Convention recognizes that there is a sphere of privacy that must remain exempt and immune from abusive or arbitrary invasion or aggression by third parties or the public authorities. Thus, the home and private and family life are intrinsically related, because the home becomes a space in which private and family life can be lived freely.<sup>254</sup> The Court considers that the destruction and arson by the Armed Forces of the

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<sup>248</sup> Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*. Judgment of February 6, 2001. Series C No. 74, para. 122, and *Case of Furlan and family v. Argentina*, para. 220

<sup>249</sup> Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*, para. 122, and *Case of the Barrios Family v. Venezuela*, para. 148.

<sup>250</sup> Cf. *Case of the Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 102, and *Case of Furlan and family v. Argentina*, para. 220.

<sup>251</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10520 to 10521).

<sup>252</sup> Expert opinions on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10525).

<sup>253</sup> Cf. *Case of the Barrios Family v. Venezuela*, para. 32, and *Case of Vélez Restrepo and family members v. Colombia*, para. 47.

<sup>254</sup> Cf. *Case of the Ituango Massacres v. Colombia*, paras. 193 and 194, and *Case of the Barrios Family v. Venezuela*, para. 140.

homes of the inhabitants of the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo and the canton of Cerro Pando, as well as the possessions that were inside them, in addition to being a violation of the use and enjoyment of property, also constitute an abusive and arbitrary interference in their private life and home. The victims who lost their homes also lost the place where they lived their private life. Consequently, the Court finds that the Salvadoran State failed to comply with the prohibition of arbitrary or abusive interference with private life and home.

183. The facts in this case also reveal that those who survived the massacres were forced to leave their usual place of residence, because of both the State's acts and its omissions. In other words, owing to the acts of State agents when perpetrating the massacres that terrorized the population and left the people, most of them peasants and housewives (*supra* para. 81), without their homes and without the essential means for their subsistence, as well as because of the lack of State protection suffered by the civilian population in the areas associated with the guerrilla that placed them in a situation of vulnerability in the presence of military operations. Thus, "the display of cruel and excessive violence under a plan designed to terrorize,"<sup>255</sup> in addition to causing the mass displacement of the inhabitants, also eliminated the possible means of subsistence, and the few survivors had no way of continuing their lives in those places, leaving them abandoned and uninhabited. This situation continued for a long time without the public authorities providing assistance to the civilian population.

184. Juan Bautista Márquez explained that, "as they could no longer endure the hunger, thirst, sleepless nights and discomfort, because they were wearing the same clothes without being able to wash, and hiding in the woods, [he] managed to evade the soldiers and leave the area, crossing the border of El Salvador into Honduras."<sup>256</sup> María del Rosario López stated that the canton of La Joya "became deserted; the other members of [her] family had moved to Colomoncagua, Republic of Honduras."<sup>257</sup> Hilario Sánchez Gómez recounted that he "went back down to his house, but found it burned down, together with all his crops, and finding himself alone, he decided to seek refuge in the Republic of Honduras."<sup>258</sup> Antonia Guevara Díaz testified that, "in addition to [the] frustration of not being able to do absolutely anything to obtain justice, the death of [her] family members changed [her] life completely [...] and [that of her] family, [because] they were [obliged] to leave their homes with their belongings and to live in overcrowded conditions with hundreds of families from different parts of the country in the Colomoncagua refugee camp[, in the Republic of Honduras]."<sup>259</sup>

185. Some of the testimonies reveal that, in the course of the internal and international displacement, the victims endured situations of discrimination owing to their status as displaced persons, and because they were associated with the guerrilla, as well as precarious living conditions.<sup>260</sup> In this regard, according to expert witness Yáñez de la Cruz, "during their flight

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<sup>255</sup> Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>256</sup> Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10276 to 10279).

<sup>257</sup> Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5522).

<sup>258</sup> Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1725), and Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1697).

<sup>259</sup> Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10287).

<sup>260</sup> Expert witness Yáñez De La Cruz stated that those who were displaced "suffered stigmatization and ill-treatment when they were asked where they came from; they were called members of the guerrilla, thieves, and they lived in extreme poverty without any type of psychosocial support or the protection of any institution." Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10530). For example, María del Rosario López Sánchez declared that "following the massacre in Jocoaitique and owing to the threats of the Armed Forces, [she] lived in Jocoaitique for around eight months and, from there, [she] went to Gualindo Abajo; the displaced affected [her] greatly, because the Gotera people

they were stigmatized because it was thought that something had happened to them because they were members of the guerrilla; people said this, and therefore no one wanted them. In the Honduran refugee camps, it was said that they had been re-victimized [...]; moreover, those who were in the camp and then moved to the city were faced with another difficulty, because the codes of conduct that help you live in the camp are no use in the city.”<sup>261</sup>

186. Article 22(1) of the Convention recognizes the right to freedom of movement and residence. In this regard, the Court has considered that this article protects the right not to be forcibly displaced within a State Party,<sup>262</sup> and not to be obliged to leave the territory of the State in which a person is living legally. In addition, the Court has repeatedly indicated that freedom of movement is an essential condition for the free development of a person.<sup>263</sup> Similarly, in its General Comment No. 27, the Human Rights Committee of the United Nation has indicated in relation to the content of this right, that it consists, *inter alia*, in that: (a) everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence, which includes protection against all forms of forced internal displacement; and (b) the right to enter one’s own country and remain there.<sup>264</sup>

187. In sum, in the Court’s opinion, the testimony received indicates situations characterized as enforced displacement that correspond, above all, to internal displacement;<sup>265</sup> in other words, displacement within the State’s own territory that, in some cases, eventually took the victims to other countries. The evidence indicates that most of those who crossed the border in search of international protection or refuge<sup>266</sup> went to the Republic of Honduras, and remained mainly in the Colomoncagua refugee camps.

188. In addition, in agreement with the international community, this Court reaffirms that the obligation of States to guarantee the protection of the rights of displaced persons involves not only the duty to adopt measures of prevention, but also to provide the necessary conditions for them to return in safety and in dignity<sup>267</sup> to their usual place of residence or for their voluntary resettlement in another part of the country. To this end, their full participation in the planning and implementation of their return or reintegration must be guaranteed.<sup>268</sup>

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were mostly relatives of soldiers and despised those who were displaced and called them ‘refugees,’ but [she] told them, ‘we are not refugees, but rather displaced people, because we are in El Salvador, and we are not here because we want to be, but because we are forced, because we cannot live there any longer.’” Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5523 to 5524). Juan Bautista Márquez Argueta recalled that he was in Colomoncagua for “around eight years, even suffering discrimination from some Hondurans and members of that country’s army.” Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10277).

<sup>261</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>262</sup> *Cf. Case of the Mapiripán Massacre v. Colombia*, para. 188, and *Case of the Río Negro Massacres v. Guatemala*, para. 172.

<sup>263</sup> *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 110, and *Case of Vélez Restrepo and family members v. Colombia*, para. 220.

<sup>264</sup> *Cf. Case of the Moiwana Community v. Suriname*, para. 110, and *Case of the Barrios Family v. Venezuela*, para. 162.

<sup>265</sup> For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. *Cf. United Nations Guiding Principles on Internal Displacements*, U.N. Doc. E/CN.4/1998/53/Add.2 11 February 1998, para. 2.

<sup>266</sup> In this regard, see the Cartagena Declaration on Refugees adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and humanitarian problems,” held in Cartagena, Colombia, from November 19 to 22, 1984.

<sup>267</sup> *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 149.

<sup>268</sup> *Cf. Case of Chitay Nech et al. v. Guatemala*, para. 149.

189. The testimony provided indicates that the Colomoncagua refugees returned to El Salvador starting at the beginning of 1989 as a result of the actions of international agencies, and many of them were resettled in the community of Segundo Montes. Antonia Guevara Díaz recounted that they remained in Colomoncagua until February 1989, returning to the village of San Luis with the help of the Red Cross, to then return to Cerro Pando, “not having returned in previous years because of the internal armed conflict, the insecurity that this represented for [her] and [her] family because they were accused of being part of the guerrilla at that time; [she declares] that they returned to the place from where they had been forcibly displaced owing to the guarantees provided by the International Red Cross and because life in the refugee camp was difficult, as they survived with what they received from this organization, and did not have the means to grow their own food.”<sup>269</sup> Juan Bautista Márquez Argueta recounted that, owing to the measures taken by the humanitarian agencies, UNHCR, and other institutions, in February 1990, all of those who were in the Colomoncagua refugee camps were repatriated, and returned to the department of Morazán, to the place known today as the city of Segundo Montes.” Regarding his personal situation, he indicated that he had “tried to go and see the lands that he owned and that he had abandoned during the massacre, was able to identify them, and little by little started restoring them in order to sow crops on them, and [he] left the place where [he] had been taken; this was about a year after arriving there, and was able to build a little house with better materials; nevertheless, today [he has] problems because [he does] not have documents that safeguard [his] property, because the deeds were private and were lost during the massacre, and there was nothing left of what had been [his] house, not even the rubble.”<sup>270</sup> María Erlinda Amaya Márquez remembered that “[t]he year of the massacre, all the crops were lost because they had to flee and leave them behind. After the massacre everything in [her] life changed; nowadays [she does] not even have a beehive; [she] had to start production in her vegetable garden all over again in order to survive. [...] She] went to Colomoncagua [...], and remained there until after the war when the time came to [return. She] did not want to return; at one time [she] wanted to return because [she] thought that [she] could find [her] children, but it was useless because they were already dead.”<sup>271</sup>

190. Some internally displaced persons have returned to their places of origin on their own account, while others settled in the Segundo Montes community, generally when the armed conflict ended. In this regard, expert witness Yáñez de la Cruz explained that the victims who had returned did so “starting in 1991 [to] 1992, when the war was over, and they go back to a place that is no longer the same place; even if they go back to the place where they used to live, [now] it is charred; everyone says this is no longer the place, and they have to go somewhere else.”<sup>272</sup> María del Rosario López Sánchez stated that “they started repopulating La Joya in 1995, some people returned and others live in San Luis, in Segundo Montes.”<sup>273</sup> Juan Antonio Pereira Vigil narrated that, in 1992, he returned to El Mozote on his own account; there he rented while he rebuilt his house and worked on his own land in the village of Los Toriles; “being near his own land he felt better because he was where he belonged [...].” He stated that he “longed to return to his land, but since it was a war zone it was not possible to live there;

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<sup>269</sup> Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10288).

<sup>270</sup> Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10277 to 10278), and Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1657 and 1659).

<sup>271</sup> Sworn statement made by María Erlinda Amaya Márquez before the *Oficina de Tutela Legal del Arzobispado* on June 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5590).

<sup>272</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>273</sup> Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5522 to 5523).

however, from the village of Mazala, Joateca jurisdiction, he visited his land to see in what condition it was."<sup>274</sup>

191. In this regard, the State did not provide any information on the measures it had adopted to ensure the conditions for the return of both the internally displaced people and those who had been obliged to go to Honduras in search of refuge. Moreover, although the State had contested their credibility (*supra* para. 17), the different reports provided by the representatives all confirm that, in 1985, the National Commission for Assistance to Displaced Persons in El Salvador (CONADES) and the National Commission for the Restoration of Areas (CONARA) were both operating, together with other initiatives of the State itself, the Church, or international and non-governmental organizations, to provide opportunities for repatriation, resettlement and assistance to the displaced. At the same time, these reports mention two issues that were a factor in preventing many people from seeking assistance or fearing to ask for help from the State programs; on the one hand, that CONADES and CONARA were controlled by or had connections to the army<sup>275</sup> and, on the other hand, that CONADES operated under a registration system,<sup>276</sup> by which access to certain information was required that "was extremely sensitive" in the context of the Salvadoran internal armed conflict.<sup>277</sup>

192. The lack of evidence to contest the ineffectiveness of the State programs, together with the testimony of those displaced as a result of the massacres, allow the Court to conclude that the State has not adopted sufficient and effective measures to guarantee to the persons forcibly displaced as a result of the massacres of El Mozote and nearby places a dignified and safe return to their usual places of residence, or voluntarily resettlement in another part of the country.

193. In the instant case, and as can be inferred from the testimony received, it has been proved that situations of mass displacement occurred caused precisely by the armed conflict and the lack of protection suffered by the civilian population because it was equated with the guerrilla and also, in the instant case, as a direct consequence of the massacres that occurred between December 11 and 13, 1981, and the accompanying circumstances, which have also been verified, of this being part of a State scorched earth policy; all of which meant that the survivors were obliged to flee their country, seeing their life, safety or freedom threatened by the generalized and indiscriminate violence. The Court concludes that the State is responsible for the conduct of its agents that caused the enforced displacement internally and to the Republic of Honduras. In addition, the State did not provide the conditions or means that would allow the survivors to return in a dignified and safe manner. As this Court has established previously, the lack of an effective investigation of acts of violence can encourage or perpetuate enforced displacement.<sup>278</sup> Consequently, the Court finds that, in this case, the freedom of movement and

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<sup>274</sup> Affidavit provided by Juan Antonio Pereira Vigil on April 2, 2012 (evidence file, tome XVII, *affidavits*, folios 10289 to 10291).

<sup>275</sup> Cf. *New Issues in Refugee Research*. International Center for Research on Women, Working paper No. 25: Conflict, Displacement and reintegration: household survey evidence from El Salvador, July 2000 (evidence file, tome X, annex 9 to the pleadings and motions brief, folio 6476); *Uprooted: The displaced people of Central America*, British Refugee Council Publication, March 1986 (evidence file, tome XI, annex 19 to the pleadings and motions brief, folios 7031 s 7032); U.S. Committee for Refugees. *Aiding the Desplazados of El Salvador: The complexity of Humanitarian Assistance* (evidence file, tome XIII, annex 27 to the pleadings and motions brief, folios 8653, 8654, 8657 and 8658), and *Lawyers Committee for International Human Rights and Americas Watch, El Salvador's other victims: the war on the displaced* (evidence file, tome XIV, annex 28 to the pleadings and motions brief, folios 8747 and 8768). Similarly, Expert opinion provided by affidavit by Father David Blanchard on April 15, 2012 (evidence file, tome XVII, *affidavits*, folios 10346 to 10347).

<sup>276</sup> Cf. *Uprooted: The displaced people of Central America*, British Refugee Council Publication, March 1986 (evidence file, tome XI, annex 19 to the pleadings and motions brief, folio 7032), and *Lawyers Committee for International Human Rights and Americas Watch, El Salvador's other victims: the war on the displaced* (evidence file, tome XIV, annex 28 to the pleadings and motions brief, folios 8747, 8797 and 8798).

<sup>277</sup> Cf. Expert opinion provided by affidavit by Father David Blanchard on April 15, 2012 (evidence file, tome XVII, *affidavits*, folios 10346 to 10347).

<sup>278</sup> Cf. *Case of the Barrios Family v. Venezuela*, para. 165, and *Case of Vélez Restrepo and family members v. Colombia*, para. 220.

residence of the survivors of the massacres was limited by severe *de facto* restrictions, originating from the State's acts and omissions, in violation of Article 22(1) of the Convention.

194. These surviving victims who were displaced from their place of origin, "lost the community and affective ties on which their identity was rooted, in addition to their possessions," which led to "forced changes in the social structure, which entail[ed] ruptures, losses, pain, and much suffering."<sup>279</sup> In addition, the Court considers that, in this case, the displacement of the children who survived the massacres is especially significant. In addition, to the impact mentioned, as expert witness Yáñez de la Cruz explained, "they found that both their father and mother had been killed, or one of them, and also they had to flee [and] everything is suffering."<sup>280</sup> It has also been confirmed that the displaced surviving victims have endured a much greater impact on their health and well-being as a result of "the complete breakdown of the cultural network in northern Morazán, of the creation of a state of total anomie, and of the complete destruction of a culture."<sup>281</sup>

195. In sum, the Court observes that the situation of enforced displacement internally and to the Republic of Honduras that the survivors endured cannot be separated from the other violations that have been declared. Indeed, the displacement originates from the violations suffered during the massacres, not only as a result of the violations of the right to life (*supra* paras. 151 to 157), to personal integrity (*supra* paras. 159 to 165 and 170 to 174), and to personal liberty (*supra* para. 158), but also due to the destruction of livestock, crops and homes, in violation of the right to property (*supra* paras. 168 and 175 to 181), and to the arbitrary or abusive interference in private life and the home (Article 11(2) of the Convention) (*supra* paras. 168 and 182). Moreover, since it has been proven that there were children among the surviving victims, the Court concludes that the violations to their detriment also occur in relation to Article 19 of the Convention.

196. Finally, the Court notes that the representatives argued the joint violation of Articles 11(2) and 22 of the Convention in relation to both those who were displaced within the country and those who crossed the border. In particular, they maintained that the enforced displacement gave rise to numerous human rights violations, including the violation of the right to private and family life, the violation of the right to integrity and the violation of the right to freedom of movement. Regarding the right to privacy, they argued that it is intrinsically linked to the life project of the victims. Consequently, they argued that the enforced displacement had evidently affected the possibility for the victims to lead their lives independently. In other words, they were unable to live their life as they would have done if the massacres and the subsequent situation that kept them far from their place of origin or residence had not occurred. Their living conditions were seriously affected, by living without their family members who were murdered, without their means of subsistence, and away from their environment and their social relations; hence, their life project was profoundly affected. Consequently, the representatives considered that the enforced displacement of the surviving victims of the massacres had entailed a serious violation of their right to private and family life. In this regard, the Court considers that it is not necessary to rule on this argument as it refers to the same facts that have already been analyzed in light of other treaty-based obligations. Nevertheless, they will be taken into account, as appropriate, when ordering the reparations.

### **3) The alleged human rights violations to the detriment of the next of kin of those executed**

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<sup>279</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10548 to 10550).

<sup>280</sup> Expert opinion provided by María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>281</sup> Cf. Expert opinion provided by affidavit by Father David Scott Blanchard on April 15, 2012 (evidence file, tome XVII, affidavits, folio 10333).

197. Regarding the next of kin of the victims who were executed, in its most recent case law in cases of massacres, the Court has reiterated that the next of kin of the victims of certain grave human rights violations, such as massacres, can, in turn, be victims of violations to their personal integrity.<sup>282</sup> Also, in this type of case, the Court has considered that the right to mental and moral integrity of the victims' next of kin has been violated owing to the additional suffering and anguish they have experienced as a result of the subsequent acts or omissions of the State authorities in relation to those facts,<sup>283</sup> and due to the absence of effective remedies.<sup>284</sup> The Court has considered that "conducting an effective investigation is a fundamental and determinant element for the protection of certain rights that are violated or annulled by such situations."<sup>285</sup>

198. The evidence presented reveals that there is a group of next of kin of the executed victims who, at the time, were not present in the places where the massacres that this case refers to occurred and, when they returned, they tried to find their relatives, but only found their mortal remains. The Court considers it especially serious that some of them had to gather up the bodies of their loved ones that were charred and/or in an advanced state of decomposition and, in some cases, incomplete, in order to bury them, without being able to give them a burial in accordance with their traditions, values or beliefs.<sup>286</sup>

199. Among other statements in the case file, José Pablo Díaz Portillo, who was 12 years old at the time, testified that, about two months after the massacre, he went to the canton of Cerro Pando, where he lived with the members of his family, "and found such a disaster that it was difficult to control [him]self, because [he] saw many dead people who were disintegrating, torn apart by wild animals; walking around the nearby places [he only found] dead people, but was able to find some family members who had been murdered, who he was able to identify because they were in the place they lived." There he identified the remains of his brother together with his seven children and his cousin with her three children; "all the bodies were scattered and decomposed," but he did not bury them because he continued searching to see if anyone was alive. Days later he returned to the place of the massacre with his father, who had survived it, "and they tried to bury the members of their family, but it was difficult to recognize them and to gather up the human remains, because there were only bones and pieces that the wild animals had eaten; in the end, they dug a hole and buried the remains they could find together."<sup>287</sup> José Cruz Vigil stated that, he was not in the place where the massacre took place, but that his sister with her three children and his brother with his six children lived, in Los Toriles and Jocote Amarillo, respectively, and they all died in the massacre. Two weeks later he went to look for his brother, finding only his remains, which he buried.<sup>288</sup>

200. It is also evident from the case file that, in some cases, the next of kin of the executed victims have been involved in different actions such as the search for justice, taking part in the proceedings before the international jurisdiction (*supra* para. 32). Similarly, it has been verified that the lack of effective investigations in order to elucidate the facts and end the impunity in which the facts of this case remain have resulted in the next of kin of the executed victims

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<sup>282</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 146, and *Case of the Río Negro Massacres v. Guatemala*, para. 240.

<sup>283</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, paras. 114 to 116, and *Case of the Río Negro Massacres v. Guatemala*, para. 240..

<sup>284</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, paras. 113 to 115, and *Case of the Río Negro Massacres v. Guatemala*, para. 240.

<sup>285</sup> *Case of the Pueblo Bello Massacre v. Colombia*, para. 145, and *Case of the Río Negro Massacres v. Guatemala*, para. 240.

<sup>286</sup> Cf. *Case of the Ituango Massacres v. Colombia*, para. 260

<sup>287</sup> Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10298).

<sup>288</sup> Cf. Sworn statement made by José Cruz Vigil del Cid before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5558 to 5559).



continuing to feel fear, vulnerability and insecurity.<sup>289</sup> The circumstances described reveal the profound suffering that the next of kin of the executed victims have experienced and that this has continued for more than 30 years as a result of the impunity in which the facts remain.

201. Based on all the foregoing considerations, the Court concludes that such acts entailed cruel, inhuman and degrading treatment, contrary to Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims who were executed.

202. Finally, as has been proved,<sup>290</sup> soldiers proceeded to set fire to the houses, destroy and burn the inhabitants' crops, and kill the animals; consequently, the Court concludes that the State violated to right to property recognized in Articles 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims executed in the massacres.

#### **4) Conclusion**

203. As a result of all the above, and based on the inherent nature of massacres, which entail a complex violation of rights recognized in the American Convention (*supra* para. 141), the Court concludes that the State of El Salvador is responsible for the violation of Articles 4, 5(1), 5(2), 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, and, additionally, in relation to Article 19 with regard to the children, to the detriment of the victims who were executed, listed in Annex "A." In addition, the State is responsible for the violation of Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the victims executed in the village of El Mozote.

204. The State is also responsible for the violation of Articles 5(2) and 11(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the women who were victims of rape in the village of El Mozote.

205. In addition, the State is responsible for the violation of Articles 5(1), 5(2), 11(2), 21(1) and 21(2) of the American Convention, in relation to Article 1(1) thereof, and additionally in relation to Article 19 with regard to the children, to the detriment of the victims who survived the massacres, listed in Annex "B."

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<sup>289</sup> Cf. Sworn statement made by José Eliseo Claros Romero before the *Oficina de Tutela Legal del Arzobispado* on July 21, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5534); Sworn statement made by José Gervacio Díaz before the *Oficina de Tutela Legal del Arzobispado* on June 28, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5545); Sworn statement made by José Cruz Vigil del Cid before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5559); Sworn statement made by María Regina Márquez Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5586 to 5588); Sworn statement made by María Elena Vigil before the *Oficina de Tutela Legal del Arzobispado* on July 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5594); Affidavit provided by Sofía Romero Pereira on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10282); Affidavit provided by Eduardo Concepción Argueta Márquez on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10293); Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10299); Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012, and Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10537).

<sup>290</sup> Sofía Romero Pereira indicated that, in the villages of El Mozote and Los Toriles, in addition to losing their loved ones, "they lost all the basic grains that they had in their silos, the pigs, the cows, the horses," also "the crops [and] all the domestic items and the house itself was completely burned down; in other words, only the land remained." Affidavit provided by Sofía Romero Pereira on April 2, 2012 (evidence file, tome XVII, *affidavits*, folio 10281). José Pablo Díaz Portillo stated that, about two months after the massacre in Cerro Pando canton, he found the homes of his relatives burned down. Cf. Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10298).

206. The State is also responsible for the violation of Articles 5(1), 5(2), 21(1) and 21(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victims who were executed, listed in Annex "C."

207. Lastly, the State is responsible for the violation of Article 22(1) of the Convention, in relation to Article 1(1) of this instrument, and additionally in relation to Article 19 with regard to the children, to the detriment of the persons who were forcibly displaced within El Salvador and to the Republic of Honduras, listed in Annex "D." Regarding the victims of this violation, the Commission indicated that, regarding the people who were displaced from their place of residence and had to leave the country to seek refuge in the Republic of Honduras, "it is believed that the real number of victims greatly exceeds the few people individualized by the evidence in the case file." The representatives indicated that, in a context of extreme violence in which enforced displacement was constant, added to the scale of the massacre and the absence of official records on the origin and destination of the people, it was very difficult to document the specific circumstances of displacement of each individual affected. In this Judgment, the Court has described the problems encountered in fully identifying all the survivors and the next of kin of the victims, and this makes it impossible to know with certainty how many survivors were displaced in this case. Consequently, the Court can only assess this situation with regard to those who have proved this condition in these proceedings (*supra* para. 57). Nevertheless, the Court places on record that it has sufficient evidence to conclude that there must have been many other individuals who experienced this situation and, regarding whom, there is no evidence to identify them adequately in these proceedings.

208. To conclude, the Court considers that, in this case, the international responsibility of the State is aggravated owing to the context in which the facts of the massacres of El Mozote and nearby places were perpetrated, which relates to a period of extreme violence during the Salvadoran internal armed conflict that responded to a State policy characterized by military counterinsurgency operations, such as "scorched-earth" operations, intended to achieve the massive and indiscriminate destruction of the villages that were suspected of being linked to the guerrillas. The foregoing, by implementing the concept of "taking the water away from the fish" (*supra* para. 68). Thus, as has been proved, once the extrajudicial executions had been concluded, the soldiers proceeded to set fire to the people's homes, belongings and crops and to kill their animals, which signified the permanent loss of the victims' possessions and the destruction of their homes and means of subsistence, causing the enforced displacement from those places of the survivors. As has been established, entire family units were destroyed, and due to the very nature of the massacres, this altered the dynamics of the surviving next of kin and profoundly affected the community's social tissue. Based on the preservation of the historical memory and the urgent need to prevent similar events from happening again, the Court emphasizes that the massacres of El Mozote and nearby places undoubtedly constitute an exponential example of this State policy, given the scale of the operation and the number of executed victims recorded.<sup>291</sup> In addition, as will be analyzed below, since that time and to date, there have been no effective judicial mechanisms to investigate the grave human rights violations perpetrated, or to prosecute and, as appropriate, punish those responsible. All this results in the aggravated international responsibility of the respondent State.

#### VIII

#### **RIGHTS TO JUDICIAL GUARANTEES, TO JUDICIAL PROTECTION AND TO FREEDOM OF THOUGHT AND EXPRESSION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS AND THE RESPONSIBILITY TO ADOPT PROVISIONS OF DOMESTIC LAW AND ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE AND 7(B) OF THE CONVENTION OF BELÉM DO PARÁ**

209. The Court will now analyze the criminal proceedings initiated with regard to the facts of this case as a result of the complaint filed on October 26, 1990, in order to determine whether this has constituted an effective remedy to guarantee the rights of access to justice, to know the

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<sup>291</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1101).

truth, and to reparation for the surviving victims and the next of kin of the victims who were executed. To this end, the Court finds it relevant, first, to establish the facts, to then recall the grounds for the obligation to investigate facts such as those of the instant case, and then to address the factual and legal obstacles that have prevented compliance with this obligation, creating a situation of total impunity that still continues.<sup>292</sup>

#### **A. The investigation of the facts of this case**

210. The evidence reveals that, owing to the internal armed conflict that was underway, the fear and distrust of State institutions, the surviving victims and the next of kin of the victims who were executed did not denounce the facts of this case before the corresponding instances until October 1990.<sup>293</sup>

##### **1) Opening of the investigations and measures taken**

211. The initial complaint was filed on October 26, 1990, by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera, denouncing the events that occurred on December 10 and 11, 1981, in the village of El Mozote, on December 11 in the canton of La Joya, on December 12 in the villages of Rancheria and Los Toriles, and on December 13 in the village of Jocote Amarillo and in the cantons of Guacamaya and Cerro Pando.<sup>294</sup> That same day he ratified his complaint before the said Court.<sup>295</sup>

212. Following the initial complaint filed on October 26, 1990, by Pedro Chicas Romero, between October 30, 1990, and May 8, 1991, the Second First Instance Court of San Francisco Gotera received the statements of 12 survivors of the massacres, either as victims or witnesses.<sup>296</sup> With these statements, it was considered that sufficient evidence had been

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<sup>292</sup> The Court has defined impunity as: "the absence of any investigation, pursuit, capture, prosecution and punishment of those responsible for violations of the human rights protected by the American Convention". *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary objections*. Judgment of January 25, 1996. Series C No. 23, para. 173, and *Case of Contreras et al. v. El Salvador*, footnote 193.

<sup>293</sup> Cf. Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5524); Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5530 to 5531); Sworn statement made by Santos Jacobo Chicas Guevara before the *Oficina de Tutela Legal del Arzobispado* on June 20, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5540); Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5548); Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5574 to 5575); Affidavit provided by Juan Bautista Márquez Argueta on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10278); Affidavit provided by Antonia Guevara Díaz on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10288); Affidavit provided by Juan Antonio Pereira Vigil on April 1, 2012 (evidence file, tome XVII, affidavits, folios 10290 to 10291); Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012; Sworn statement made by José Eliseo Claros Romero before the *Oficina de Tutela Legal del Arzobispado* on July 21, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5534); Sworn statement made by José Gervacio Díaz before the *Oficina de Tutela Legal del Arzobispado* on June 28, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5545); Sworn statement made by José Cruz Vigil del Cid before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5559); Sworn statement made by María Regina Márquez Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5586 to 5588); Sworn statement made by María Elena Vigil before the *Oficina de Tutela Legal del Arzobispado* on July 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5594); Affidavit provided by Sofía Romero Pereira on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10282); Affidavit provided by Eduardo Concepción Argueta Márquez on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10293), and Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, affidavits, folio 10299).

<sup>294</sup> Cf. Complaint filed before the Second First Instance Court of San Francisco Gotera by Pedro Chicas Romero on October 26, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1649 to 1652).

<sup>295</sup> Cf. Victim statement made by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera on October 26, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1654).

<sup>296</sup> Cf. Witness statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1657 to 1659);

produced and, therefore, reception of testimonial evidence was suspended.<sup>297</sup>

213. On November 3, 1990, the special prosecutor assigned to the proceedings asked the trial judge to order a series of probative elements, including an inspection and exhumation, and to issue a communication to the President of the Republic and Commander-in-Chief of the Armed Forces in order obtain the names of the commanders and officers who were in charge of the military operation in the places where the scene of the crime was located.<sup>298</sup>

214. On November 9, 1990, the request of the prosecutor assigned to the case that a communication be issued to the Executive in order to obtain information on the commanders and officers in charge of the operations was denied, with the argument that "it has not been established in this case that it was members of the National Army who participated in the criminal act under investigation, and that the green uniform is used by both members of the National Army and members of the FMLN; in addition, it is not sufficient evidence that the witnesses and victims say that the soldiers told them that they were members of the Atlacatl Battalion, because this assertion could also have been made by members of terrorist groups pretending to be soldiers of the National Army."<sup>299</sup> However, in the same decision, and despite having declared the prosecutor's request inadmissible, the Second Court ordered the issue of "a communication to the Commander-in-Chief of the Armed Forces requesting him to inform this

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Witness statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on October 30, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1660 to 1665); Witness statement made by Irma Ramos Márquez before the Second First Instance Court of San Francisco Gotera on October 31, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1668 to 1670); Witness statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on November 28, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1695 to 1698); Witness statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1701 to 1703); Witness statement made by María Amanda Martínez before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1704 to 1705); Witness statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on January 23, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1706 to 1709); Witness statement made by Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on January 24, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1711 to 1713); Witness statement made by Domingo Vigil Amaya before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1715 to 1716); Witness statement made by Rosa Ramírez Hernández before the Second First Instance Court of San Francisco Gotera on January 30, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1717 to 1720); Victim statement made by Hilario Sánchez Gómez before the Second First Instance Court of San Francisco Gotera on February 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1723 to 1728); Victim statement made by María Teófila Pereira Argueta before the Second First Instance Court of San Francisco Gotera on February 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1730 to 1732); Victim statement made by Bernardino Guevara Chicas before the Second First Instance Court of San Francisco Gotera on February 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1734 to 1736); Victim statement made by Vigil Amaya before the Second First Instance Court of San Francisco Gotera on March 5, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1741 to 1743); Victim statement made by Rufina Amaya before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1745 to 1748); Victim statement made by Juan Bautista Márquez before the Second First Instance Court of San Francisco Gotera on March 11, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1749 to 1751); Victim statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 14, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1752 to 1755); Witness statement made by Eustaquio Martínez Vigil before the Second First Instance Court of San Francisco Gotera on March 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1757 to 1760); Victim statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 4, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1762 to 1765); Witness statement made by Genaro Sánchez before the Second First Instance Court of San Francisco Gotera on April 10, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1767 to 1770), and Witness statement made by Sotero Guevara Martínez before the Second First Instance Court of San Francisco Gotera on May 7, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1774 to 1778).

<sup>297</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on May 8, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1779).

<sup>298</sup> Cf. Brief of the Special Prosecutor accredited to case No. 238, addressed to the Second First Instance Judge, of November 3, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1676 to 1678).

<sup>299</sup> Decision issued by the Second First Instance Court of San Francisco Gotera on November 9, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1679).

court which military unit of the National Army conducted military operations in December 1981 in the municipality of Meanguera, and specifically in the canton of El Mozote and neighboring places; if, in fact, any operation had been conducted there."<sup>300</sup> However, it was not until June 19, 1991, that the Second Court issued a communication to the President of the Republic and Commander-in-Chief of the Armed Forces requesting a report with the names of the commanders and officers who were in charge of an operation carried out on December 10, 1981, in the places where the events occurred.<sup>301</sup> Subsequently, on November 28, 1991,<sup>302</sup> January 9, 1992,<sup>303</sup> and June 19, 1992,<sup>304</sup> the request for the report was reiterated. There is no evidence of a response to the first request. In response to the request of January 9, on May 19, 1992, the Minister of the Presidency advised that "no information of any kind had been found relating to a supposed military operation conducted on December 10, 1981, in the municipality of Meanguera, department of Morazán."<sup>305</sup> Similarly, in response to the request of June 19, 1992, on July 21 that year, the Minister of the Presidency reiterated that "on revising the log of military operations of the Ministry of Defense, no military orders were found to conduct military operations in December 1981, in the municipality of Meanguera, department of Morazán, or information of any type related to the supposed military operation."<sup>306</sup>

215. In addition, on November 9, 1990, the Second Court ordered several measures to be taken, including the inspection of the site of the facts and exhumation of the corpses.<sup>307</sup> Nevertheless, it was not until June 19, 1991, that a date of July 23 that year was established for the said measure.<sup>308</sup> In this regard, the Second Court sent to a note to the Director of the "Dr. Roberto Masferrer" Institute of Forensic Medicine requesting his collaboration to perform the exhumations and autopsies.<sup>309</sup> In response, the Director of this Institute informed the Court that it was not possible to participate because more notice was required in order to prepare an exhumation; that the Court should contact the International Red Cross, and that the exhumation

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<sup>300</sup> Decision issued by the Second First Instance Court of San Francisco Gotera on November 9, 1990 (evidence file, tome III, annex 23 to the submission of the case, folio 1679).

<sup>301</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on June 19, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1781), and Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the President of the Republic and Commander-in-Chief of the Armed Forces, of June 19, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1782).

<sup>302</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 28, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1801), and Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the President of the Republic and Commander-in-Chief of the Armed Forces, of November 28, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1802).

<sup>303</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on January 8, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1804), and Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the President of the Republic and Commander-in-Chief of the Armed Forces, of January 9, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1805).

<sup>304</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on June 19, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2115), and Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the President of the Republic and Commander-in-Chief of the Armed Forces, of June 26, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2117).

<sup>305</sup> Communication of the Ministry of the Presidency, addressed to the Second First Instance Judge of San Francisco Gotera, of May 19, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2031).

<sup>306</sup> Communication of the Ministry of the Presidency, addressed to the Second First Instance Judge of San Francisco Gotera, of July 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2273).

<sup>307</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 9, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1679 to 1680).

<sup>308</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on June 19, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1781).

<sup>309</sup> Cf. Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Director of the Institute of Forensic Medicine, of June 19, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1783).

schedule was full that week.<sup>310</sup> Consequently, the said measures were suspended until a future date<sup>311</sup> (*infra* para. 230).

216. No measures were taken between July 19 and November 19, 1991.

217. On November 20, 1991, the trial judge, “[b]efore proceeding with the exhumations requested by the prosecution,” and “being aware [...] that the areas where the corpses are supposedly located is one of the most problematic areas in the Republic, and that it has been declared that the area is mined,” which signified “a serious risk” for the different authorities and other persons who would attend this procedure, decided to request: the Minister of Defense to provide information, as soon as possible, “on the conditions of the place where the events referred to in this case occurred, in relation to a risk of mines or confrontations and whether the security agencies can provide adequate protection.” In addition, he asked the national and international Red Cross to provide the necessary protection to comply with the exhumations and the Director of the Institute of Forensic Medicine to take the necessary measures to provide the medical and paramedical personnel and scientific experts required to comply with the measures.<sup>312</sup> Thus, the trial judge exchanged communications with the Director of the Institute of Forensic Medicine on November 25 and December 19, 1991,<sup>313</sup> with the Executive Director of the ICRC on November 25, 1991,<sup>314</sup> with the Minister of Defense on November 25, 1991, and January 9, 1992,<sup>315</sup> and with the Head of the Executive Unit of the Criminal Investigations Commission on November 25, 1991.<sup>316</sup>

218. On November 25, 1991 the prosecution indicated that “[t]he area where the measures ordered must be carried out [...] is known to be mined and, also, that it is a problematic area owing to the armed confrontations that occur there” and requested, among other matters, that “a communication be sent to the Ministry of Defense and Public Security requesting that it proceed “to sweep the mines” in the area.”<sup>317</sup> In response, on November 28, 1991, the trial judge declared the prosecution’s request inadmissible, confirming the decision of November 20, 1991<sup>318</sup> (*supra* para. 218).

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<sup>310</sup> Cf. Communication of the Director of the Institute of Forensic Medicine, addressed to the Second First Instance Judge of San Francisco Gotera, of July 16, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1785).

<sup>311</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on July 18, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1786).

<sup>312</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 20, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1787 to 1788).

<sup>313</sup> Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Director of the Institute of Forensic Medicine, of November 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1792), and Communication of the Director of the Institute of Forensic Medicine addressed to the Second First Instance Court of San Francisco Gotera on December 9, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1803).

<sup>314</sup> Cf. Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Executive Director of the International Committee of the Red Cross, of November 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1796).

<sup>315</sup> Cf. Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Minister of Defense, of November 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1794), and Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Minister of Defense, of January 9, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1806).

<sup>316</sup> Cf. Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Head of the Executive Unit of the Criminal Investigation Commission, of November 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1793).

<sup>317</sup> Communication of the Office of the Prosecutor General of the Republic of El Salvador of November 25, 1991 (evidence file, tome III, annex 23 to the submission of the case, folios 1798 to 1799).

<sup>318</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 28, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1801).

219. On December 13, 1991, the Minister of Defense and Public Security advised that the cantons and villages mentioned, "have been places where, since the beginning of the ongoing armed conflict, terrorist criminals, who have mined certain sectors of those areas that only they know, were and are present and, therefore during several military incursions, members of the Armed Forces have been injured after stepping on those explosive artifacts. Only FMLN supporters, guided by members of this Front, have been able to pass through those places without problems." In addition, he explained that "currently the security conditions are not favorable for taking the said measures, clarifying that, at the court's request, the Armed Forces are able to conduct a military operation to expel any possible terrorists who are in the place in question and to clear the land of the terrorist mines and obstacles to be found there."<sup>319</sup>

220. In this regard, on January 23, 1992, the prosecution indicated that it left it to the judge to decide the court orders that should be issued in order to take the necessary measures to continue the proceedings.<sup>320</sup> The following day, the trial judge ordered that a communication be sent to the Director of the National Geographic Institute requesting "photographs or topographic maps of the areas where the events of the [criminal case] supposedly occurred."<sup>321</sup> This communication was not issued by the Judge until February 7, 1992.<sup>322</sup> In a letter of February 11, 1992, the Director of this Institute responded to the judge's request, sending a map of the department of Morazán.<sup>323</sup> On March 13, 1992, the trial judge again asked the said Director for a map of the department of Morazán, because the one sent previously had been "given to the Institute of Forensic Medicine [... t]o be used for the same purposes."<sup>324</sup>

221. On March 25, 1992, the Chief Military Observer and Commander of the Military Division of the United Nations Observer Mission in El Salvador (ONUSAL) certified that, on March 7 that year, members of the National Army for Democracy (END/FMLN), accompanied by two military observers, conducted a search for possible mines placed during the conflict in the area of El Mozote, and concluded that all the said mines had been removed and that, consequently, the area was totally free of these artifacts.<sup>325</sup> The trial judge received this information on March 27, 1992, from both ONUSAL and the National Army for Democracy (END/FMLN), the latter clarifying that the "units of the END ha[d] not placed minefields in those sectors."<sup>326</sup>

222. On April 1, 1992, the trial judge requested the Director of the Institute of Forensic Medicine to forward the list of personnel who would collaborate in the exhumations.<sup>327</sup> In

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<sup>319</sup> Communication of the Ministry of Defense and Public Security of December 13, 1991 (evidence file, tome III, annex 23 to the submission of the case, folio 1807)

<sup>320</sup> Cf. Communication of the special agent, in representative of the Prosecutor General of the Republic of El Salvador, of January 23, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1810).

<sup>321</sup> Decision of the Second First Instance Court of San Francisco de Gotera of January 24, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1812)

<sup>322</sup> Cf. Communication of the Second First Instance Judge of San Francisco Gotera, addressed to the Director General of the National Geographic Institute, of February 7, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1813).

<sup>323</sup> Cf. Communication of the Director General of the National Geographic Institute, addressed to the Second First Instance Court of San Francisco Gotera, of February 11, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1814).

<sup>324</sup> Communication of the Second First Instance Judge of San Francisco de Gotera, addressed to the Director of the National Geographic Institute, of March 13, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1819).

<sup>325</sup> Cf. Attestation of the Chief Military Observer and Commander of the Military Division of the United Nations Observer Mission in El Salvador (ONUSAL) of March 25, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1820).

<sup>326</sup> Attestation of the Chief Military Observer and Commander of the Military Division of the United Nations Observer Mission in El Salvador (ONUSAL) of March 25, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1820), and Communication of the National Army for Democracy, Third Military Region, of March 18, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1822).

<sup>327</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1843).

response, on April 29, 1992, the Institute of Forensic Medicine forwarded the list of medical and paramedical personnel in charge of performing the autopsies.<sup>328</sup>

223. In a letter of March 30, 1992, the Director of the Institute of Legal Medicine forwarded to the judge in the case a photocopy of the university degrees of Mercedes Celina Doretti, Patricia Bernardi and Luis Bernardo Fondebrider, which had been provided by *Tutela Legal del Arzobispado*. In addition, he advised that the team of the Institute of Forensic Medicine was ready to perform the necessary autopsies and laboratory tests.<sup>329</sup> On April 1, 1992, the trial judge requested the authentication of these degrees in keeping with Salvadoran law, "so that they could participate legally as supplementary expert witnesses."<sup>330</sup> On April 22, 1992, the judge confirmed receipt of the authenticated degrees,<sup>331</sup> and established April 29, 1992, as the date for the appointment and swearing in of these expert witnesses.<sup>332</sup> On April 28, 1992, a "Delegation of the Communities of Northern [Morazán], accompanied by journalists and hundreds of persons" requested a hearing with the trial judge so that he could explain why the proceedings "were not advanc[ing] procedurally" as well as "the reasons why the Argentine anthropologists proposed by *Tutela Legal* had not been sworn in."<sup>333</sup> The hearing was granted the same day.<sup>334</sup> On April 29, 1992, the trial judge appointed the above-mentioned professionals as supplementary expert witnesses so that they could act as "Technical Cooperators" during the exhumations. That same day Mercedes Doretti and Patricia Bernardi were sworn in.<sup>335</sup> On April 30, 1992, expert witness Mercedes Celina Doretti submitted the "Suggested work plan," to the trial judge, who indicated that it had been delivered to the Director of the Institute of Forensic Medicine on February 7, 1992.<sup>336</sup> On October 13, 1992, Luis Bernardo Fondebrider was sworn in.<sup>337</sup>

224. In a press communiqué of April 8, 1992, the *Oficina de Tutela Legal del Arzobispado* denounced irregularities that, in its opinion, had been committed in the investigations up to that moment. Among the irregularities, it denounced that the trial judge "[o]n May 8, 1991, when the testimonial evidence in the proceedings abundantly confirmed the responsibility of the Armed Forces in the murders, [...] suspended the examination of witnesses temporarily, indicating that he would devote himself to taking measures to verify the *corpus delicti*, such as the inspection of the scene of the events, exhumations and autopsies of the corpses of the victims. These measures had been ordered in the proceedings since November 9, 1990; however, [at that] date they ha[d] not been taken, despite their importance. Meanwhile, the suspension of the examination of witnesses had continued without any legal reason that [would]

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<sup>328</sup> Cf. Brief of the "Dr. Roberto Masferrer" Institute of Forensic Medicine filed before the Second First Instance Court of San Francisco Gotera on April 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1880 to 1884).

<sup>329</sup> Cf. Communication of the Director of the Institute of Forensic Medicine, addressed to Second First Instance Judge of San Francisco Gotera, of March 30, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1824).

<sup>330</sup> Decision issued by the Second First Instance Court of San Francisco Gotera on April 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1843).

<sup>331</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 22, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1869).

<sup>332</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 22, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1870).

<sup>333</sup> Decision issued by the Second First Instance Court of San Francisco Gotera on April 28, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1873).

<sup>334</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 28, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1873).

<sup>335</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1877 to 1879).

<sup>336</sup> Cf. Communication of Mercedes Celina Doretti, addressed to the Second First Instance Judge of San Francisco Gotera, of April 30, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1886 to 1887).

<sup>337</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on October 13, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2416).



justify this attitude." The judge had refused to provide the members of the EAAF with a date for the inspection and exhumation, giving "credibility to the rumors of minefields in the area of El Mozote, even though the inhabitants of the place who travelled about the said area had indicated that this was false, and this had been verified by the national and foreign press that had visited the place," and "the tracking and search for mines" carried out on March 7, 1992, in which it was established that "the area was totally free of mines"; and that no response at all had been received to the requests made to the President of the Republic for "the list of soldiers and officers who participated in the military operation during which the massacre of El Mozote took place."<sup>338</sup> On April 27, 1992, a communiqué of the Communities of Northern Morazán denounced, among other matters, the judge's refusal to "swear in the foreign forensic experts" and "to set a date to begin the inspection and exhumation of the osseous remains of the massacre of El Mozote," as well as "the passivity of the Office of the Prosecutor General in the face of all the irregularities and obstructions in the trial regarding the massacre."<sup>339</sup> The following day, a communication addressed to the Second Court by the *Patronato para el Desarrollo de las Comunidades de Morazán y San Miguel* (PADECOMSM), the *Comunidades Eclesiales de Base de El Salvador* (CEBES), the *Ciudad Segundo Montes*, and the *Movimiento Comunal de Mujeres de Morazán*, inhabitants and organizations of northern Morazán, denounced similar facts and circumstances.<sup>340</sup>

225. Subsequently, in communications of April 30 and May 29, 1992, the National Army for Democracy (END/FMLN) informed the trial court that on April 23, and May 8, 26 and 27, 1992, a team of explosive experts, together with a deputy commander of the Third Military Region of the END, accompanied by two ONUSAL officials, had visited the area of the canton of La Joya, the village of Jocote Amarillo, the villages of Los Toriles and Ranchería, and the cantons of Cerro Pando and Guacamaya, "in order to confirm that there are no minefields" in those places.<sup>341</sup>

226. On May 5, 1992 the Second Court decided to summon the Mayor of Meanguera and the persons who had testified previously so that they could indicate the "exact location of the individual and common graves where the corpses resulting from these acts of violence are buried."<sup>342</sup> These statements were taken on May 14, 1992.<sup>343</sup>

227. On May 7, 1992 the Second Court issued a decision requiring the legal inspection of the places where "it is said that the acts of violence under investigation allegedly occurred," and establishing the order in which the places would be inspected, with the respective timetable. In addition, it established that various authorities, media and international agencies should be

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<sup>338</sup> Communiqué of the *Oficina de Tutela Legal del Arzobispado* of April 8, 1992 (evidence file, tome II, annex 11 to the submission of the case, folios 1545 to 1548).

<sup>339</sup> Communiqué of the Organizations of the North of Morazán concerning the stagnation and obstruction of the trial of the Massacre of "El Mozote" dated April 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1874).

<sup>340</sup> Cf. Communication of the Communities of Morazán and San Miguel (PADECOMSM), the *Comunidades Eclesiales de Base de El Salvador* (CEBES), the *Ciudad Segundo Montes*, and the *Movimiento Comunal de Mujeres de Morazán*, addressed to the Second First Instance Judge of San Francisco Gotera, of April 28, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1875).

<sup>341</sup> Cf. Communication of the National Army for Democracy, Third Military Region of April 30, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1910); Communication of the National Army for Democracy, Third Military Region of May 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2065 to 2066); Communication of the National Army for Democracy, Third Military Region of May 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2067 to 2068), and Communication of the National Army for Democracy, Third Military Region of May 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2069 to 2070).

<sup>342</sup> Decision issued by the Second First Instance Court of San Francisco Gotera on May 5, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1904).

<sup>343</sup> Cf. Statements made by Bernardino Guevara Chicas, Domingo Vigil Amaya, Juan Bautista Márquez, María Teófila Pereira Argueta, Irma Ramos Márquez, Rufina Amaya, Pedro Chicas, Sotero Guevara Martínez, Rosa Ramírez Hernández, Hilario Sánchez Gómez, Genaro Sánchez, María Amanda Martínez, Eustaquio Martínez Vigil and Lucila Romero Martínez before the Second First Instance Court of San Francisco Gotera on May 14, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1927 to 1940).

invited.<sup>344</sup> On May 26, 1992 the Forensic Technical Unit of the Criminal Investigations Commission designated experts and a photographer to take part in the inspections,<sup>345</sup> and they were sworn in the following day.<sup>346</sup> The first inspections were made on May 27, 1992, in the village of El Mozote. Subsequently, on June 3, 10 and 17, 1992, inspections were conducted, respectively, on "Cerro El Chingo," on "Cerro La Cruz" and in the canton of "La Joya." The latter was suspended and only resumed on July 1 that year, and this led to a delay in the rest of the inspections ordered by the trial judge. Subsequently, on July 8, 15, 22 and 29, and August 12, 1992, inspections were made in the canton of "Guacamaya," in the villages of "Ranchería," "Los Toriles" and "Jocote Amarillo" and, finally, in the canton of "Cerro Pando," respectively.<sup>347</sup> In addition, the trial judge received two statements on June 2,<sup>348</sup> and two more on August 21, 1992.<sup>349</sup>

228. During the inspections made in El Mozote, La Joya, Ranchería and Cerro Pando skeletal remains were found, which were collected by the experts of the Criminal Investigation Commission and forwarded to the Institute of Forensic Medicine.<sup>350</sup>

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<sup>344</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on May 7, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1908)

<sup>345</sup> Cf. Communication of the Head of the Forensic Technical Unit of the Criminal Investigation Commission of May 26, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 1951).

<sup>346</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1952 to 1955).

<sup>347</sup> Cf. Judicial inspection made in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on May 27, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 1956 to 1962); Judicial inspection made on "Cerro El Chingo," village of El Mozote, jurisdiction of Meanguera, department of Morazán, on June 3, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2025 to 2026); Judicial inspection made on "Cerro La Cruz", village of El Mozote, jurisdiction of Meanguera, department of Morazán, on June 10, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2072 to 2073); Judicial inspection made in the village of El Potrero, La Joya canton, jurisdiction of Meanguera, department of Morazán, on June 17, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2107 to 2111); Judicial inspection made in La Joya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2158 to 2162); Judicial inspection made in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 8, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2201 to 2202); Judicial inspection made in the village of Ranchería, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 15, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2224 to 2228); Judicial inspection made in the village of Los Toriles, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 22, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2267 to 2272); Judicial inspection made in the village of Jocote Amarillo, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, el July 29, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2299 to 2303), and Judicial inspection made in the village of El Barrial, Cerro Pando canton, of the jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on August 12, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2317 to 2324).

<sup>348</sup> Cf. Witness statement made by Desiderio Márquez before the Second First Instance Court of San Francisco Gotera on June 2, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2015 to 2019); Victim statement made by Raquel Romero Claros Viuda de Claros before the Second First Instance Court of San Francisco Gotera on June 2, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2015 to 2019), and Witness statement made by Anastacio Pereira Vigil before the Second First Instance Court of San Francisco Gotera on June 2, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2020 to 2022).

<sup>349</sup> Cf. Victim statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 2, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2351 to 2353), and Witness statement made by Lidia Chicas Mejía before the Second First Instance Court of San Francisco Gotera on August 21, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2355 to 2356).

<sup>350</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on June 15, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2062); Procedure carried out in the village of El Mozote, jurisdiction of Meanguera, department of Morazán, on June 17, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2106); Communication of the Institute of Forensic Medicine, addressed to the Second First Instance Judge of San Francisco Gotera, of June 19, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2114); Judicial inspection made in La Joya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 1, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2161); Judicial inspection made in the village of Ranchería, in Guacamaya canton, jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on July 15, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2225 to 2226); Decision issued by the Second First Instance Court of San Francisco Gotera on July 16, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2232), and Judicial inspection made in the village

229. From August of 1992 to September 1993 – date on which the decision to dismiss the case was issued in application of the Law of General Amnesty for the Consolidation of Peace (*infra* para. 276) – no investigation measure was taken, apart from the exhumations.

## **2) The exhumations performed with the support of foreign experts**

230. On July 20, 1992, the Director of the Institute of Forensic Medicine informed the trial judge that, since the Truth Commission was now installed in the country, it was appropriate to proceed with the exhumation and to take the pertinent judicial and expert measures. To this end, he considered that the trial judge should request the Supreme Court of Justice and the Ministry of Foreign Affairs to take the necessary steps before the Governments of Argentina, the United Kingdom of Great Britain and Northern Ireland, and the United States of America to obtain their collaboration to appoint a forensic or physical anthropologist to act as a collaborator, so that “the actions of the Salvadoran Judiciary and its auxiliary bodies and collaborators are seen to be totally transparent.”<sup>351</sup> In response, on July 28, 1992, the trial judge asked the Supreme Court of Justice to take this measure.<sup>352</sup> On September 9, 1992, the trial judge authorized the first exhumations on October 13, 1992, “[e]ven though the request was still pending made” to the Supreme Court of Justice.<sup>353</sup> On September 30, 1992, the trial judge received a communication that the Truth Commission had sent to the President of the Supreme Court of Justice in which he requested that, “[w]ithout prejudice to the authority to appoint other specialized experts,” it considered necessary the presence, among others, of the professionals Clyde Collins Snow, Patricia Bernardi, Mercedes Doretti and Luis Bernardo Fondebrider,<sup>354</sup> these last three experts already named before the trial judge (*supra* para. 223). After the information from the Governments of the United States of American, the United Kingdom of Great Britain and Ireland, and Argentina had been received,<sup>355</sup> on November 30 and December 9, 1992, Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick were designated subsidiary experts to act as Technical Collaborators,<sup>356</sup> and the trial judge informed them of their appointment.<sup>357</sup> From October 13 to November 17, 1992, excavations and exhumations were performed at the place called Site I, known as “the Convent” in the

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of El Barrial, Cerro Pando canton, de la jurisdiction of Meanguera, district of Jocoaitique, department of Morazán, on August 12, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2319).

<sup>351</sup> Communication of the Institute of Forensic Medicine, addressed to the Second First Instance Judge of San Francisco Gotera, on July 17, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2234).

<sup>352</sup> Cf. Letter rogatory of the Second First Instance Court of San Francisco Gotera, addressed to the Supreme Court of Justice, on July 28, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2277 to 2278).

<sup>353</sup> Decision issued by the Second First Instance Court of San Francisco Gotera of September 9, 1992 (evidence file, tome III, annex 23 to the submission of the case, folio 2359).

<sup>354</sup> Cf. Note of the Truth Commission, addressed to the Second First Instance Judge of San Francisco Gotera, of September 30, 1992 (evidence file, tome III, annex 23 to the submission of the case, folios 2386 to 2389).

<sup>355</sup> Cf. Nota No. 002319 of October 28, 1992, Note No. 002246 of October 19, 1992, and Note AJ/No 12588 of October 19, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2507 to 2512); Decision issued by the Second First Instance Court of San Francisco Gotera on October 27, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2531 to 2532); Communication of November 30, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2860), and Notes of December 9 and 10, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2903 and 2904).

<sup>356</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 30, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2861 to 2862); Decision issued by the Second First Instance Court of San Francisco Gotera on November 30, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2865), and Decision issued by the Second First Instance Court of San Francisco Gotera on December 9, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2905).

<sup>357</sup> Cf. Notification of the Second First Instance Court of San Francisco Gotera of November 30, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2863); Decision issued by the Second First Instance Court of San Francisco Gotera on November 30, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2866), and Decision issued by the Second First Instance Court of San Francisco Gotera on December 9, 1992 (evidence file, tome IV, annex 23 to the submission of the case, folio 2906).

village of El Mozote.<sup>358</sup> Two reports were prepared with the conclusions on these exhumations: one by the Argentine Forensic Anthropology Team (EAAF)<sup>359</sup> and the other by the experts Robert H. Kirschner, Clyde C. Snow, Douglas D. Scott and John J. Fitzpatrick,<sup>360</sup> the latter in their capacity as consultants to the Truth Commission for El Salvador.

231. The conclusions of the Argentine Forensic Anthropology Team on the exhumation work carried out from October 13 to November 17, 1992, at Site 1, known as "the Convent" in the village of El Mozote included: (a) all the skeletons recovered, and the evidence related to them, were deposited during one temporal event, constituting a common, primary and simultaneous burial; (b) it was not possible to establish with certainty whether all the victims were alive when placed in the convent, but it can be concluded that at least some of them were shot while inside the building, and this could have been lethal; (c) 245 spent cartridges were recovered, of which 244 corresponded to the same type of ammunition; only one corresponded to another type of ammunition; (d) 117 individual skeletons were recovered on site, 67 of these skeletons had bullet fragments associated with them; (e) the fire greatly damaged the osseous remains, the clothing and personal effects of the victims; (f) approximately 85% of the 117 victims were children under 12 years of age; (g) the events investigated did not occur after 1981; (h) after the gunfire, one or more explosive and/or incendiary artifacts were thrown into the building, and (i) all this information would indicate a massive crime, and no evidence was found that could support the possibility of a confrontation between two bands.<sup>361</sup>

232. Meanwhile, the report of the expert witnesses Robert H. Kirschner, Clyde C. Snow, Douglas D. Scott and John J. Fitzpatrick presents the following conclusions: (a) as a result of the damage caused by the fire, the weight of the roof tiles and the walls of the building caused more damage to the skeletons. It is probable that some very small children (less than one year old) were totally cremated (based on a lower number than expected of such children); however it is not possible to determine their number; (b) 245 cartridges recovered were studied; of these 184 had recognizable marks indicating that the ammunition was manufactured by the Government of the United States of America in Lake City, Missouri. All the bullets except one appear to have been shot with M16 rifles, also manufactured in the United States of America. 24 different firearms were identified, which means that at least 24 people were firing them – at least 11 people fired their weapons inside the building and at least 13 people fired their weapons from outside the building,<sup>362</sup> and (c) the skeletons reveal signs of serious injuries resulting from high-speed bullets and the post-mortem damage resulting from crushing and the fire or heat. In addition, the presence of 143 skeletons was identified: 136 children and adolescents and 7 adults. The average age of the children was around 6 years old. There were six women aged 21 to 40 years, one of whom was in the third trimester of pregnancy, and one man of around 50 years of age. In this regard, the report indicates that a total of 120 case numbers were assigned to the remains exhumed. However, when the skeletons were examined in the laboratory, it was determined that several of them were mingled with the remains of other persons; in those cases, the secondary groups that could be clearly identified were classified as separate individuals. The inclusion of these new individuals expanded the total to 143 cases.<sup>363</sup>

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<sup>358</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2927 to 2928).

<sup>359</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2927 to 2943).

<sup>360</sup> Cf. Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick of December 10, 1992 (evidence file, tome VI, annex 24 submission of the case, folios 4022 to 4027).

<sup>361</sup> Cf. Archeological report, Village of El Mozote, Site 1, prepared by the Argentine Forensic Anthropology Team (EAAF), December 1992 (evidence file, tome IV, annex 23 to the submission of the case, folios 2927 to 2943).

<sup>362</sup> Cf. Report on weapon identification at the site of the executions in El Mozote prepared by Douglas D. Scott (evidence file, tome VI, annex 25 to the submission of the case, folio 4031).

<sup>363</sup> Cf. Report on the forensic investigation in the village of El Mozote, Site 1, prepared by Clyde C. Snow, Robert H. Kirschner, Douglas D. Scott and John J. Fitzpatrick of December 10, 1992 (evidence file, tome VI, annex 24 submission of the case, folios 4022 to 4025).

233. Continuing the practice of the exhumations performed in the village of El Mozote, the Institute of Forensic Medicine appointed the experts Roger Haglar and Charles Lee Cecil who, on January 6, 1993, were sworn in as technical collaborators. The evidence in the case file indicates that, from January 6 to 29, 1993, the judicial procedures were carried out for "excavating, sifting the earth and cleaning" the so-called Site 2 "La Tumba" [the Tomb] and Site 3 "El Pozo" [The Well], known as the "house of Sofía Márquez" and the "house of Benita Díaz" in village of El Mozote.<sup>364</sup> On March 24, 1993, the trial judge forwarded to the Director of the Institute of Forensic Medicine "ten boxes containing osseous remains found at site 2," together with the inventory corresponding to Sites 2 and 3.<sup>365</sup>

234. Following the decision to dismiss the case (*infra* para. 276), the *Oficina de Tutela Legal del Arzobispado* supported new measures to exhume the victims before the Second First Instance Court of San Francisco Gotera. Consequently, the different judges in charge of the case authorized the performance of exhumations in 2000,<sup>366</sup> 2001,<sup>367</sup> 2003<sup>368</sup> and 2004,<sup>369</sup> only so that, once the remains had been recovered and the identification analysis performed, their return to the next of kin would be authorized, for burial where the latter considered appropriate. Consequently, the Argentine Forensic Anthropology Team was able to resume its forensic work.<sup>370</sup> The said tasks were supervised by members of the Argentine Forensic Anthropology Team, with the collaboration of the forensic medicine team of the Institutes of Forensic Medicine of El Salvador, Santa Tecla and San Miguel, and by the expert Clyde Snow.<sup>371</sup>

235. The archaeological excavation work was carried out from April 6 until May 25, 2000, in the canton of La Joya and in the village of Jocote Amarillo. The La Joya sites were named Site 1, Site 2b, Site 4, Site 5, Site 16 and Site 17 and, in Jocote Amarillo, Site 1, Site 2, Site 3 Grave A, Site 3 Grave B, Site 3 Grave C, and Site 4. Based on the exhumations performed, the Argentine Forensic Anthropology Team presented the following results: (a) a total of 37 individuals were recovered, of whom 14 were adults, 23 children under 14 years of age, and the remains of one fetus of approximately six months. Within the group of adults, three were men and 11 were

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<sup>364</sup> Cf. Communication of the Director of the Institute of Forensic Medicine, addressed to the Second First Instance Court, on January 4, 1993 (evidence file, tome V, annex 3 to the submission of the case, folio 3409); Decision issued by the Second First Instance Court of San Francisco Gotera on January 6, 1993 (evidence file, tome V, annex 23 to the submission of the case, folio 3422); Decision issued by the Second First Instance Court of San Francisco Gotera on January 6, 1993 (evidence file, tome V, annex 23 to the submission of the case, folio 3423), and Judicial procedures carried out from January 6 to 29, 1993 (evidence file, tome V, annex 23 to the submission of the case, folios 3424 to 3496).

<sup>365</sup> Cf. Note of the Second First Instance Court of San Francisco Gotera, addressed to the Director of the Institute of Forensic Medicine, of March 24, 1993 (evidence file, tome V, annex 23 to the submission of the case, folio 3611).

<sup>366</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on April 5, 2000 (evidence file, tome V, annex 23 to the submission of the case, folios 3655 to 3656).

<sup>367</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on September 19, 2001 (evidence file, tome V, annex 23 to the submission of the case, folios 3857 to 3858).

<sup>368</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on October 17, 2003 (evidence file, tome V, annex 23 to the submission of the case, folios 3920 to 3922).

<sup>369</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on October 24, 2004 (evidence file, tome V, annex 23 to the submission of the case, folios 3963 to 3964).

<sup>370</sup> Expert report provided by affidavit by Mercedes Doretti, Luis Fondebrider and Silvana Turner received on April 18, 2012 (evidence file, tome XVII, folio 10312).

<sup>371</sup> Cf. Summary of forensic work prepared by the Argentine Forensic Anthropology Team (EAAF), Case of El Mozote, April-June 2000 (evidence file, tome VI, annex 27 to the submission of the case, folio 4122); Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folios 4410 to 4411), and Final report of the Argentine Forensic Anthropology Team (EAAF) on the forensic investigations in the case of El Mozote in 2003 (evidence file, tome VII, annex 29 to the submission of the case, folios 4990 to 4991). See also, Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, affidavits, folio 10303), and *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 283 and 284 (evidence file, tome VIII, annex 2 to the pleadings and motions brief, folios 5431 to 5432).

women. The men were from 40 to 60 years of age at the time of death. The adult women were between 20 and 85 years of age at the time of death; (b) in most of the cases studied, the injuries found were sufficient in number of shots and lethal areas affected to have caused the death of these persons; (c) a total of 96 pieces of ballistic evidence was recovered; (d) it was difficult to identify the children in the common graves individually; because, being children, their bones and teeth did not have significant identification features to differentiate them. No skeletal remains were found at Site 1 in La Joya, or in Sites 2 and 3 Grave B in Jocote Amarillo.<sup>372</sup>

236. In 2001, the exhumation work extended from October 1 until November 2, 2001, at Site 2 in the village of El Mozote, Site 1, Site 2, Site 3 and Site 4 in Los Toriles, and Site 1A in the canton of La Joya. Regarding Site 2, known as the "house of Israel Márquez" in the village of El Mozote, due to the extensive damage caused by the fire, it was not possible to individualize the skeletons of the people murdered there or to establish any kind of relationship between the fragments. Therefore, the objective of the laboratory analysis was to determine the minimum number of individuals (MNI). Thus, based on the dental pieces found, a total of 12 adults and 4 sub-adults was estimated. Additionally, a total of 95 pieces of ballistic evidence were recovered. In the village of Los Toriles, a total of 25 skeletons were exhumed; of these, 17 were recovered complete in four common graves and in eight cases the skeletons recovered were incomplete. In 15 cases, the skeletons were male and in 10 they were female. According to the conclusions of the Argentine Forensic Anthropology Team, the injuries found were sufficient as regards the number of shots and lethal areas affected to have caused the death of the individuals. Also, two bullet fragments were found at Site 1, 21 bullets at Site 2, and 33 pieces of ballistic evidence at Site 3. At Site 1A of La Joya canton, three human skeletons were found in a common grave and three spent cartridges and a bullet fragment.<sup>373</sup>

237. In 2003, the forensic work was conducted from October 23 to December 10, 2003. The work was carried out at Site 1, Graves A and B in the village of Poza Honda of Cerro Pando, at Site 1, Site 2 and Site 3 of the village of Ranchería, Site 3 and Site 4 of the village of El Mozote, and Site 5 of the village of Los Toriles. During the exhumations the skeletal remains of a minimum of 57 individuals were recovered, including 10 males, 11 females, two probably females, and 21 of indeterminate sex. Of these, 26 were adults, 9 sub-adults, 9 children/sub-adults, 10 children, 2 infants, and 9 of indeterminate age. The identification of the children was problematic, given the state of conservation and the place from which they were recovered (highly eroded and mixed in with a mass of bones in most cases), and because the teeth and bones of children do not have characteristics that aid in their identification. In addition, 172 pieces of ballistic evidence were recovered.<sup>374</sup>

238. The exhumation work in 2004 was conducted from October 21 to November 3 at Site 5 and Site 6 in the village of El Mozote. Considering the total number of natural dental pieces found at Site 5, the minimum number of individuals recovered was three. It was concluded that there were no human skeletons at Site 6. A total of 69 pieces of ballistic evidence were recovered at the two sites.<sup>375</sup>

239. In order to identify the remains recovered from the 2000 to 2003 exhumations, a list was prepared of the individuals whose remains should have been found at the sites of the exhumations, based on the information provided by the witnesses and the evidence recovered.

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<sup>372</sup> Cf. Summary of forensic work prepared by the Argentine Forensic Anthropology Team (EAAF), Case of El Mozote, April-June 2000 (evidence file, tome VI, annex 27 to the submission of the case, folios 4122 to 4125).

<sup>373</sup> Cf. Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folios 4412 to 4413, 4426 to 4427, 4441, 4447, 4449 to 4450, 4453 to 4454).

<sup>374</sup> Cf. Final report of the Argentine Forensic Anthropology Team (EAAF) on the forensic investigations in the case of El Mozote in 2003 (evidence file, tome VII, annex 29 to the submission of the case, folios 4989 to 4991, 5023 to 5024 and 5033).

<sup>375</sup> Cf. Final report of the Argentine Forensic Anthropology Team (EAAF) on the forensic investigations in the case of El Mozote in 2004 (evidence file, tome V, annex 23 to the submission of the case, folios 3987, 3994, 3996 and 3998).

Interviews were organized to gather *pre-mortem* information, and this was compared in the laboratory *a posteriori*. Unfortunately, no testimonial evidence was available to compare the results in order to identify the skeletons recovered from the exhumations performed in 2004.<sup>376</sup>

240. Regarding the exhumations over the 2000-2004 period, “many victims were identified competently and their remains returned to the direct family or to the community (in the case of those who were not identified) so that they could conduct their Christian burial”<sup>377</sup> (*supra* para. 234).

241. On the thirteenth anniversary of the massacres of El Mozote and nearby places, on November 23, 1994, Juan Bautista Márquez, Raquel Romero widow of Claros, and Rufina Amaya asked the trial judge to return the osseous remains exhumed at the sites in the village of El Mozote, in order to give them Christian burial and to commemorate the suffering of those who died during the massacre with religious ceremonies.<sup>378</sup> In response, the judge authorized the return of the human remains found at Sites 1, 2 and 3, known as “The Convent”, “house of Sofía Márquez” and “house of Benita Díaz.”<sup>379</sup> Subsequently, the evidence reveals that, on several occasions, the trial judge ordered the return of the osseous remains found during the different exhumations performed at the request of their next of kin and/or of *Tutela Legal del Arzobispado*.<sup>380</sup>

## **B. The obligation to investigate the facts of this case**

242. The Court has established that, in keeping with the American Convention on Human Rights, States Parties are obliged to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of the due process of law (Article 8(1)), all within the general obligation of the States to guarantee the free and full exercise of the rights recognized in the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>381</sup> The Court has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next

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<sup>376</sup> Cf. Summary of forensic work prepared by the Argentine Forensic Anthropology Team (EAAF), Case of El Mozote, April-June 2000 (evidence file, tome VI, annex 27 to the submission of the case, folio 4124); Report of the Argentine Forensic Anthropology Team (EAAF) on the exhumation work performed in 2001 (evidence file, tome VI, annex 28 to the submission of the case, folios 4415 to 4416); Final report of the Argentine Forensic Anthropology Team (EAAF) on the forensic investigations in the case of El Mozote in 2003 (evidence file, tome VII, annex 29 to the submission of the case, folio 5023), and Final report of the Argentine Forensic Anthropology Team (EAAF) on the forensic investigations in the case of El Mozote in 2004 (evidence file, tome V, annex 23 to the submission of the case, folio 3995).

<sup>377</sup> *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, p. 416 (evidence file, tome VIII, annex II to the pleading and motions brief, folio 5498).

<sup>378</sup> Cf. *Tutela Legal del Arzobispado de San Salvador, El Mozote. Lucha por la verdad y la justicia: Masacre a la Inocencia*, San Salvador, El Salvador, 2008, pp. 276 to 277 (evidence file, tome VIII, annex II to the pleadings and motions brief, folio 5428), and Brief of November 23, 1994, filed before the Second First Instance Court of San Francisco Gotera (evidence file, tome V, annex 23 to the submission of the case, folios 3620 to 3623).

<sup>379</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 29, 1994 (evidence file, tome V, annex 23 to the submission of the case, folio 3624).

<sup>380</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on August 31, 2000 (evidence file, tome V, annex 23 to the submission of the case, folio 3704); Decision issued by the Second First Instance Court of San Francisco Gotera on December 8, 2000 (evidence file, tome V, annex 23 to the submission of the case, folio 3725); Decision issued by the Second First Instance Court of San Francisco Gotera on June 22, 2000 (evidence file, tome V, annex 23 to the submission of the case, folio 3774); Decision issued by the Second First Instance Court of San Francisco Gotera on June 22, 2000 (evidence file, tome V, annex 23 to the submission of the case, folio 3777); Decision issued by the Second First Instance Court of San Francisco Gotera of December 7, 2001 (evidence file, tome V, annex 23 to the submission of the case, folio 3879); Decision issued by the Second First Instance Court of San Francisco Gotera on December 12, 2003 (evidence file, tome V, annex 23 to the submission of the case, folio 3931), and Decision issued by the Second First Instance Court of San Francisco Gotera on December 10, 2004 (evidence file, tome VI, annex 23 to the submission of the case, folio 4004).

<sup>381</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Río Negro Massacres v. Guatemala*, para. 191.

of kin that everything necessary is done to discover the truth about what happened and to investigate, prosecute and punish, as appropriate, those eventually found responsible.<sup>382</sup>

243. The obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights recognized in the Convention.<sup>383</sup> Since its first judgment, the Court has emphasized the importance of the State's obligation to investigate and to punish human rights violations.<sup>384</sup> Thus, in cases where it has been established that extrajudicial executions have occurred, it is essential that States conduct an effective investigation into the violation of the right to life recognized in Article 4 of the Convention and determine the responsibilities of all the perpetrators and participants, especially when State agents are involved.<sup>385</sup> Similarly, the obligation to ensure the rights recognized in Articles 5(1) and 5(2) of the American Convention entails the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment,<sup>386</sup> which is reinforced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture,<sup>387</sup> which require the State to "take [...] effective measures to prevent and punish torture within their jurisdiction." In cases of violence against women, the general obligations established in the American Convention are complemented and enhanced by those derived from the Convention of Belém do Pará, Article 7(b) of which specifically requires that States Parties apply due diligence to prevent, punish and eradicate violence against women.<sup>388</sup> Likewise, there is an obligation to conduct an effective investigation in certain cases of enforced displacement.<sup>389</sup>

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<sup>382</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 260.

<sup>383</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 166, and *Case of the Río Negro Massacres v. Guatemala*, para. 190.

<sup>384</sup> Cf. *Case of Velásquez Rodríguez. Merits*, para. 166

<sup>385</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 156, and *Case of Vargas Areco v. Paraguay. Merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 76.

<sup>386</sup> Cf. *Case of Ximenes Lopes v. Brazil*, para. 147, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 230.

<sup>387</sup> Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes that:

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

While, Article 6 stipulates that:

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

And, Article 8 establishes that:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

<sup>388</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, para. 193, and *Case of Rosendo Cantú et al. v. Mexico*, para. 177.

<sup>389</sup> Cf. *Case of Chitay Nech et al. v. Guatemala*, para. 149.



244. However, the obligation to investigate, as a fundamental and conditioning element for the protection of certain violated rights, acquires a particular and determining importance and intensity in view of the severity of the crimes committed and the nature of the rights violated,<sup>390</sup> as in cases of grave human rights violations that occur as part of a systematic pattern or practice applied or tolerated by the State<sup>391</sup> or in contexts of massive, systematic or generalized attacks on any sector of the population,<sup>392</sup> because the urgent need to prevent the repetition of such events depends, to a great extent, on avoiding their impunity and meeting the expectations of the victims and society as a whole to know the truth about what happened.<sup>393</sup> The elimination of impunity, by all legal means available, is fundamental for the eradication of extrajudicial executions, torture and other grave human rights violations.<sup>394</sup>

245. It has been proved and acknowledged by the State that the facts of the instant case refer, among other matters, to mass extrajudicial executions, acts of torture and of violence against women, as well as enforced displacement, committed in the context of the internal armed conflict in El Salvador and as part of a planned State policy against the civilian population living in areas associated with the guerrilla.

246. The Court notes that, under the American Convention, in force at the time of the massacre, the State had the obligation to investigate all the facts with due diligence, an obligation that remains in force. This obligation was reaffirmed by the State when depositing the instrument ratifying the Inter-American Convention to Prevent and Punish Torture on December 5, 1994, and subsequently, when depositing the instrument ratifying the Convention of Belém do Pará on January 26, 1996; therefore, the State should have ensured compliance with them as of those dates,<sup>395</sup> even though they had not been adopted by the State when the massacres took place.

247. Owing to its importance, in the instant case the obligation to investigate cannot be fulfilled randomly, but must be conducted in keeping with the standards established by the international norms and case law that characterize investigations of grave human rights violations. This entails, first, creating an adequate domestic regulatory framework and/or organizing the system for the administration of justice in a way that its operation ensures that serious, impartial and effective investigations are conducted *ex officio*, without delay.<sup>396</sup>

248. The duty to investigate is an obligation of means and not of results that must be assumed by the State as its inherent legal duty and not as a simple formality preordained to be ineffective, or merely as a measure taken by private interests that depends on the procedural initiative of the victims, their next of kin, or the private submission of evidence.<sup>397</sup>

249. Similarly, this obligation entails the removal of all obstacles *de jure* and *de facto* that prevent the investigation and prosecution of the facts and, as appropriate, the punishment of all

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<sup>390</sup> Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 110, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 220.

<sup>391</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 82, and *Case of Contreras et al. v. El Salvador, para. 127*.

<sup>392</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 94 to 96 and 98 to 99, and *Case of Manuel Cepeda Vargas v. Colombia, para. 42*.

<sup>393</sup> Cf. *Case of Vargas Areco v. Paraguay, para. 81*, and *Case of Escué Zapata v. Colombia, para. 75*.

<sup>394</sup> Cf. *Case of Vargas Areco v. Paraguay, para. 81*, and *Case of Escué Zapata v. Colombia, para. 75*.

<sup>395</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru, para. 377*, and *Case of the Las Dos Erres Massacre v. Guatemala, para. 137*.

<sup>396</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, para. 110*, and *Case of Manuel Cepeda Vargas v. Colombia, para. 117*.

<sup>397</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, para. 177*, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 129..

those responsible for the violations declared, as well as the search for the truth. Indeed, if the State apparatus acts in such a way that the violation goes unpunished and it does not restore to the victims, insofar as possible, all their rights, it can be said that it has failed to comply with its obligation to guarantee the free and full exercise of these rights to the persons subject to its jurisdiction.<sup>398</sup> The concept underlying this consideration is that a trial conducted to its completion and that fulfills its purpose is the clearest signal of zero tolerance for grave human rights violations, contributes to the reparation of the victims, and shows society that justice has been done.<sup>399</sup>

### C. Obligation to open an investigation *ex officio*

250. The Commission indicated that the Salvadoran authorities had not opened an investigation of the massacres *ex officio*, which meant that, from December 13, 1981, until October 26, 1990, the date on which Pedro Chicas Romero filed a complaint, no official inquiry into the events was conducted. Thus, the investigations into the massacres began nine years after they occurred and as a result of a complaint filed by a survivor and not on the initiative of the State of El Salvador. According to the Commission this failure to act cannot be justified by the lack of public knowledge about the facts, because there is evidence that, as early as 1982, the international media had reported the massacres. Consequently, it considered that the absence of an investigation *ex officio* by the State into the massacres constituted in itself a violation of the rights established in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the victims' next of kin. The representatives asked that the Court declare the State responsible for not having opened an immediate investigation into the events *ex officio*, so that, owing to the delay in the start of the investigations, information was lost that was essential to clarify the facts.

251. In this case it has been proved that, in January 1982, the possible occurrence of a massacre perpetrated by the Armed Forces was made public, without the corresponding authorities undertaking any kind of investigation. To the contrary, as established, the Salvadoran authorities systematically denied and concealed the facts (*supra* paras. 73 to 77). In this regard, the Truth Commission emphasized that both the Minister of Defense and the Joint Chiefs of Staff at the time were aware "of the occurrence of the massacre and failed to undertake any investigation."<sup>400</sup> It was not until 1990, when most of the forcibly displaced survivors returned to El Salvador, that one of the survivors was able to file a complaint. This means that for nine years the State failed to open an investigation. Thus, the initial complaint was filed on October 26, 1990, by Pedro Chicas Romero before the Second First Instance Court of San Francisco Gotera.<sup>401</sup> In other words, for nine years the State failed to open an investigation that would ensure that the evidence allowing what happened to be determined was obtained promptly and preserved.

252. Consequently, the Court concludes that, at least since 1982, the State should have initiated *ex officio* and without delay a serious, impartial and effective investigation into all the facts of the massacre related to the violation of the right to life and also to other specific violations against personal integrity, such as the supposed torture and acts of violence against women from a gender perspective and in accordance with Articles 8(1) and 25(1) of the Convention, and the specific obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Convention of Belém do Pará.

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<sup>398</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 176, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 140.

<sup>399</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, twenty-first considering paragraph, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* nota 18, para. 153.

<sup>400</sup> Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1202).

<sup>401</sup> Cf. Complaint filed before the Second First Instance Court of San Francisco Gotera by Pedro Chicas Romero on October 26, 1990 (evidence file, tome III, annex 23 to the submission of the case, folios 1649 to 1652).

#### **D. Lack of due diligence in the criminal investigation**

253. The Commission indicated that, on reading the entire case file of the Second First Instance Court of San Francisco Gotera, it had identified a number of omissions and irregularities that had obstructed the elucidation of what happened, the identification of those responsible and the possibilities of returning the remains to the victims' next of kin after a thorough study to identify them. These omissions and irregularities included: the Second Court did not summon any State authority to testify that could provide information about the military operation and that could refer to the events described by the witnesses; faced with the lack of response from the President of the Republic to the communications sent to obtain official information on the operations and perpetrators, the Second Court did not use any coercive measures to ensure the prompt presentation of information to advance the investigations; following the Ministry of Defense's response concerning the inexistence of any military operation, the Second Court had not make any effort to reiterate the demand for information, to use other mechanisms such as judicial inspections of military facilities, or to summon Government authorities who were in office at the time of the facts to testify; there is no evidence of any measures taken by the Second Court to obtain information on the names of the soldiers who had given statements to the *Oficina de Tutela Legal del Arzobispado* and, if appropriate, summon them to testify so that they could throw light on the facts; there is no evidence that steps were taken to follow up on the exhumation procedures or to comply with the recommendations of the Truth Commission and the Argentine Forensic Anthropology Team; rather, the Second Court decided to terminate the exhumation procedures once the amnesty law was approved; the Second Court did not use the necessary measures to protect the osseous remains found for their subsequent identification and return to the next of kin and, regarding the decision to suspend the investigations of September 27, 1993, the Second Court transferred to the witnesses or victims who had come forward to testify the burden of proof of both the crime and the participation of the perpetrators of the massacre, without assuming the investigation as its own legal obligation and, consequently, without evaluating all available information and exhausting all means at its disposal to investigate the facts properly and in a diligent manner. The Commission considered that these elements were sufficient to conclude that the supposed lack of urgency and diligence in the investigations conducted by the Second Court, and its ineffectiveness to clarify the facts and to identify those responsible, constituted a violation of the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, as well as of the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém Do Pará, to the detriment of the next of kin of the victims. The Commission also concluded that the failure to continue the investigations has extended to date and constituted a violation of the said articles.

254. The representatives argued that the State of El Salvador was responsible for incurring in an unjustified delay in the investigation of the facts of the massacres of El Mozote and nearby places. In this regard, they indicated that, less than three years had elapsed when, on September 1, 1993, the trial judge applied the Amnesty Law to the case. Thereafter, seven years passed without any procedural activity and, subsequently, the only steps taken to date were taken by *Tutela Legal del Arzobispado*, most of which were aimed at the recovery of the remains, because the authorities had not responded to the requests to continue the investigation into what occurred and for the eventual punishment of those responsible. Thus, 21 years have elapsed since the investigation was opened and, to date, no one has been prosecuted and punished for the grave facts that are alleged. Consequently, the representatives considered that it was evident that the delay in the investigation of the facts resulted from the State's absolute unwillingness. In this regard, the representatives affirmed that, since November 26, 2006, the victims' representatives in the domestic proceedings had filed before the competent court a series of requests that had not been decided on the following aspects: to declare the inapplicability of the Amnesty Law, to continue the criminal proceedings, to request the President of the Republic for information held by the Salvadoran Armed Forces, to inspect the archives of this military institution, to order the preventive detention of the accused Armed

Forces officers, and to negotiate the extradition of one of the accused officers. In addition, the proceedings had been characterized by long periods of inactivity. Consequently, the representatives asked the Court to declare that the State of El Salvador had incurred in unjustified delay in the investigation of the facts concerning the massacres of El Mozote and nearby places and, thus, had violated the rights contained in Articles 8 and 25 of the American Convention.

255. The Court observes that both the representatives and the Commission have indicated that, during the course of the investigations, State authorities incurred in a series of acts or omissions that have constituted a lack of due diligence and a denial of justice. The Court has verified that an assessment of the judicial case file and other documents in the body of evidence lead to the conclusion that, during the three years that the investigation remained open prior to the dismissal of the case in application of the Law of General Amnesty for the Consolidation of Peace, a series of factual obstacles arose that have prevented the effective investigation, prosecution and punishment, as appropriate, of those responsible.

256. First, the evidence in the instant case reveals that, although the testimony of some victims and witnesses was presented to the court (*supra* para. 212), judicial inspections and exhumations were performed (*supra* paras. 227 and 230 to 238), and an official communication was sent to the President and to the Minister of National Defense (*supra* para. 214), which confirms some investigative activity by the authorities responsible for conducting the investigations, all the measures that should have been taken in order to identify the possible authors of the events and, if appropriate, bring charges against them were not taken. In other words, the State was not diligent in gathering evidence that could identify those involved. The Court observes that, according to the proven facts, at least 1,000 to 1,500 soldiers took part in the perpetration of the massacres (*supra* para. 84), without counting other perpetrators, masterminds or participants. In addition, no measures were taken to inspect newspaper archives that might have provided information on those who participated in the military operations carried out in the place and on the date of the events, and did not incorporate into the investigations the corresponding sections of the report of the Truth Commission for El Salvador that indicate the names of some of the soldiers who took part in the operations.<sup>402</sup> Indeed, both the March 1993 report of the Truth Commission<sup>403</sup> and the investigations conducted by *Tutela Legal del Arzobispado*, which were made public in 1992,<sup>404</sup> copies of which were provided to the case by *Tutela Legal del Arzobispado* in 2006,<sup>405</sup> named the military units that participated in the operations, and also provided the names of some of the authorities in charge of them, permitting a list of participants in the massacres to be established, especially those that were in decision-making positions; however, this information was not used in any line of investigation and no member of the Armed Forces was indicted and summoned to testify.

257. In cases such as this, the Court has considered that the authorities in charge of the investigation have the obligation to ensure that, during the course of the investigation, they assess the systematic patterns that permitted the perpetration of grave human rights violations.<sup>406</sup> In order to guarantee its effectiveness, the investigation must be conducted taking into account the complexity of this type of event, which occurred within the framework of

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<sup>402</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 2011 to 2018 and 2023).

<sup>403</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1196 to 1197 and 1201).

<sup>404</sup> Cf. Report of *Tutela Legal del Arzobispado* entitled "Ejecución Masiva de Personas (arbitrarias and sumarias) en los caseríos El Mozote, Ranchería and Jocote Amarillo del cantón Guacamaya, en los cantones La Joya y Cerro Pando, del Municipio de Meanguera y en caserío Los Toriles del Municipio Arambala, todos del Departamento de Morazán por tropas del BIRI Atlacatl durante operativo militar - los días 11, 12 and 13 de diciembre 1981; hechos conocidos como 'Masacre de El Mozote'" of July 23, 1992 (evidence file, tome II, annex 9 to the submission of the case, folios 1463 to 1535).

<sup>405</sup> Cf. Brief of the *Oficina de Tutela Legal del Arzobispado de San Salvador* of November 23, 2006 (evidence file, tome XI, annex 17.1 to the pleadings and motions brief, folios 6929 to 6999).

<sup>406</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 156, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

counterinsurgency operations by the Armed Forces, and the structure in which the persons who are probably involved were inserted, thus avoiding omissions in the collection of evidence and in following logical lines of investigation.<sup>407</sup> In this regard, the Court considers that State authorities are obliged to collaborate in the collection of evidence in order to achieve the objectives of the investigation and must abstain from actions that entail obstructions to the progress of the investigative process.<sup>408</sup> It is also essential that the organs responsible for the investigations be provided, formally and substantially, with the adequate and necessary authority and guarantees to obtain access to the pertinent documentation and information to investigate the facts denounced and obtain indications or evidence of the location of the victims.<sup>409</sup> The State cannot shield itself behind lack of evidence of the existence of the documents requested; but rather, it must justify the refusal to provide them, demonstrating that it has taken all available measures to verify that the information requested does not exist.<sup>410</sup> Thus, in the case of human rights violations the Court has already indicated that "State authorities cannot shield themselves behind mechanisms such as State secrets or the confidentiality of information, or by reasons of public interest or national security, in order not to provide the information required by the judicial or administrative authorities responsible for the pending investigation or proceedings."<sup>411</sup>

258. Second, the Court observes that although the trial judge ordered the inspection of the scene of the events and the exhumation of the corpses on November 9, 1990, it was not until June 19, 1991, that the judge established the date for this measure that, finally, was not carried out due to insufficient time to prepare for it according to the letter from the Director of the Institute for Forensic Medicine (*supra* para. 215). Subsequently, it was not possible to perform the required exhumations owing to the supposed existence of mines in the area where the measure ordered was to be carried out. This situation persisted until May 5, 1992, when the trial judge ordered that the measures should continue (*supra* paras. 217 to 226). Finally, it was only on May 27, 1992, that the inspections of the places where the events occurred took place, and on September 9, 1992, that the first exhumations were authorized, which were performed from October 13 to November 17, 1992 (*supra* paras. 227 and 230). In other words, even though Pedro Chicas Romero's initial complaint was filed on October 26, 1990, it was only on October 13, 1992, that the first exhumations were performed. Thus, for almost two years no exhumation work was performed owing to the lack of experts in this area and the supposed existence of mines; situations which were used to justify the inactivity of the judicial authority.

259. According to the internal reports of *Tutela Legal del Arzobispado*, in a meeting between this organization and the trial judge on March 27, 1992, the latter stated that "he had received orders from above to delay the investigation or to bring it to a standstill"; these orders came from the President of the Republic, the President of the Supreme Court of Justice, the Prosecutor General, and even the Minister of Defense at the time. These orders were, *inter alia*, that he should not establish a date for the exhumations.<sup>412</sup> Also, in a press communiqué of April 8, 1992, *Tutela Legal del Arzobispado* denounced irregularities that it believed were being committed in the investigations up until that time. These irregularities included that the trial judge had refused "to indicate [to the members of the Argentine Forensic Anthropology Team] a date for the inspection and exhumation, [giving] credibility to the rumors of minefields in the

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<sup>407</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, para. 166, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

<sup>408</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

<sup>409</sup> Cf. *Case of Tiu Tojín v. Guatemala*, para. 77, and *Case of Contreras et al. v. El Salvador*, para. 145.

<sup>410</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 211, and *Case of Contreras et al. v. El Salvador*, para. 177.

<sup>411</sup> *Case of Myrna Mack Chang v. Guatemala*, para. 180, and *Case of Contreras et al. v. El Salvador*, para. 171.

<sup>412</sup> Cf. Internal reports of the *Oficina de Tutela Legal del Arzobispado* of March 27 and July 29, 1992 (evidence file, tome II, annex 10 to the submission of the case, folios 1537 to 1543).

area of El Mozote," rumors that were denied by both the inhabitants of the place and the national and foreign press that visited the area.<sup>413</sup>

260. In addition, the Report of the Truth Commission described how the President of the Supreme Court of Justice of El Salvador at the time had indicated, during a visit made by the members of the Truth Commission on June 16, 1992, "that the exhumation that the trial judge had ordered would show that in El Mozote 'only dead members of the guerrilla are buried,'"<sup>414</sup> and concluded that the said justice "ha[d] interfered unduly and negatively with biased political criteria in the judicial proceedings underway in the case."<sup>415</sup>

261. In this regard, the experts Mercedes Doretti, Luis Fondebrider and Silvana Turner from the Argentine Forensic Anthropology Team indicated that the main obstacles to the forensic work were encountered during 1991 and 1992, a period during which deliberate obstructions to their appointment could be observed, at a time when El Salvador lacked experts in the area of forensic anthropology and archaeology. Subsequently, after waiting the country for three months, and at the request of local communities and *Tutela Legal* among others, two members of the Argentine Forensic Anthropology Team were appointed by the acting judge, but without a date to begin the exhumations. Finally, the Argentine Forensic Anthropology Team left the country, awaiting a decision in the case.<sup>416</sup> In this regard, expert witness Tal Linda Ileen Simmons stated that the fact that the first exhumations were started 11 years after the events, owing to obstruction by the Government of El Salvador, had direct repercussions on the condition of the human remains and on the related evidence found by the Argentine Forensic Anthropology Team in these cases, and on the possibility of determining the identity of the remains that were exhumed.<sup>417</sup>

262. Consequently, this Court considers that the State delayed and obstructed the start of the exhumation work, which relates to both the collection of evidence and to the possibility of returning the remains to the next of kin so that they can close their mourning process. The Court reiterates that the passage of time has a directly proportionate relationship to the constraint – and, in some cases, the impossibility – of obtaining evidence and/or testimony, making it difficult to carry out probative procedures in order to clarify the events that are being investigated,<sup>418</sup> to identify the possible authors and participants, and to determine eventual criminal responsibilities.

263. Third, the Court notes that the final dismissal of the case "in favor of any person who had belonged to the Atlacatl Battalion at the time of the events" took place without any person having been identified or formally indicted in the proceedings, and in application of the Law of General Amnesty for the Consolidation of Peace, thwarting any hope of the victims that a determination would be made of the facts and, as appropriate, the corresponding criminal responsibilities, within a reasonable time.

264. When the final dismissal of the case was decided on September 1, 1993, the *Oficina de Tutela Legal del Arzobispado* initiated new procedures for the exhumation of the victims before the Court handling the case, which authorized exhumations in 2000, 2001, 2003 and 2004,

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<sup>413</sup> Cf. Press communiqué issued by the *Oficina de Tutela Legal del Arzobispado* on April 8, 1992 (evidence file, tome III, annex 11 to the submission of the case, folios 1545 to 1549).

<sup>414</sup> Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1201).

<sup>415</sup> Report of the Truth Commission for El Salvador, *From madness to hope: the 12-year war in El Salvador, 1992-1993* (evidence file, tome II, annex 1 to the submission of the case, folio 1202).

<sup>416</sup> Cf. Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, affidavits, folio 10311).

<sup>417</sup> Cf. Expert opinion provided by affidavit by Tal Linda Ileen Simmons received on April 18, 2012 (evidence file, tome XVII, affidavits, folios 10407 to 10408).

<sup>418</sup> Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Contreras et al. v. El Salvador*, para. 145.

although there is no record of any exhumation procedure that was carried out on the initiative of the State authorities themselves; in other words, the omissive attitude of the State persisted after 1993.

### **E. The Law of General Amnesty for the Consolidation of Peace and its application to this case**

265. The Court will now proceed to describe the relevant facts and analyze whether or not the Law of General Amnesty for the Consolidation of Peace enacted by the Legislative Assembly of the Republic of El Salvador in 1993 is compatible with the rights recognized in Article 1(1), 2,<sup>419</sup> 8(1)<sup>420</sup> and 25<sup>421</sup> of the American Convention to which the State of El Salvador is a party or, as appropriate, whether the law can maintain its legal effects in relation to the serious human rights violations and the grave breaches of international humanitarian law committed during the internal armed conflict, taking into consideration the specific circumstances that surrounded the enactment of this law in El Salvador.

#### **1) The facts relating to the peace process and the Law of General Amnesty for the Consolidation of Peace**

##### *a) The internal armed conflict and the peace negotiation process*

266. The peace negotiation process began when the five Central American Presidents requested the intervention of the Secretary-General of the United Nations, asking him to use his good offices in order to achieve peace in the Central American region, and this was ratified by Resolution 637 (1989) of 27 July 1989, of the United Nations Security Council.<sup>422</sup>

267. In October 1989, the Secretary-General of the United Nations informed the General Assembly and the Security Council about the Agreement signed in Mexico City on September 15 between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN) endeavoring to initiate a process of dialogue in order to end the armed conflict in El Salvador by political means.<sup>423</sup> In December 1989, the Government of the then President Alfredo Cristiani and the FMLN, separately, requested the Secretary-General to assist them in the effort to obtain peace.<sup>424</sup>

268. Consequently, the Secretary-General encouraged the negotiation process that had been created under his good offices in order to achieve "agreement on a cease to the armed confrontation and of any act that did not respect the rights of the civilian population" of El

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<sup>419</sup> Article 2 of the American Convention establishes that: "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

<sup>420</sup> Article 8(1) of the American Convention stipulates that: "[e]very 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."

<sup>421</sup> Article 25(1) of the American Convention indicates that: "[e]veryone 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."

<sup>422</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5805).

<sup>423</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5805)

<sup>424</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5805)

Salvador.<sup>425</sup> The framework for this process was established in the Geneva Accord of April 4, 1990, following which the parties drew up a general agenda and a timetable for the negotiation process that were accorded in Caracas, Venezuela, on May 21, 1990.<sup>426</sup>

269. On July 26, 1990, in San José, Costa Rica, the parties signed the first agreement in the negotiation process relating to absolute respect for human rights,<sup>427</sup> in which they agreed that “[a]ll necessary actions and measures shall be taken immediately to avoid any type of acts or practices that violate the life, integrity, safety and liberty of the individual, [as well as] to eliminate any practice of disappearances and kidnappings. Priority shall be given to the investigation of any cases of this nature that might occur, as well as to the identification and punishment of those found guilty.”<sup>428</sup> This agreement was also the basis for the creation of the United Nations Observer Mission in El Salvador (ONUSAL), by Security Council resolution 693 of 20 May 1991, which was installed on July 26, 1991, in order to verify the political agreements reached by the parties to the internal conflict.<sup>429</sup>

270. The Mexico agreements of April 27, 1991, proposed constitutional reforms for the Armed Forces in relation to the judicial system and human rights, as well as regarding the electoral system. In addition, in these agreements the parties established the Truth Commission for El Salvador,<sup>430</sup> with the mandate to investigate “grave acts of violence that had occurred since 1980, whose impact on society demands, with the utmost urgency, that the public may know the truth,”<sup>431</sup> and to prepare a final report with its conclusions and recommendations of a legal, political or administrative nature, which could concern specific cases or be of a more general nature. The parties undertook to comply with the Truth Commission’s recommendations.<sup>432</sup>

271. Subsequently, “the Nueva York agreement opened the way to obtaining the final peace,”<sup>433</sup> the negotiations culminating during the evening of December 31, 1991, with the signature of the Act of New York in which the parties acknowledged that they had reached agreement on all pending aspects and undertook to establish a cease to the armed confrontation.

272. The final peace agreement that ended the 12-year armed conflict was signed on January 16, 1992, at Chapultepec Castle in Mexico City, D.F. The El Salvador Peace Accord reaffirmed the need to overcome impunity, by establishing that:

The parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the Armed Forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Truth Commission for consideration and resolution. All of this shall be without prejudice to the principle, which the

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<sup>425</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5811).

<sup>426</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5806).

<sup>427</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folios 5806 to 5807).

<sup>428</sup> United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5818).

<sup>429</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folios 5806 to 5807).

<sup>430</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5808).

<sup>431</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1081).

<sup>432</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5808).

<sup>433</sup> United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5809).



Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible.<sup>434</sup>

273. On July 13, 1992, the Truth Commission began its activities, taking into consideration, on the one hand, "the singular importance that could be attributed to the events to be investigated, their characteristics and repercussion, as well as the social upheaval to which they gave rise" and, on the other hand, "the need to create confidence in the positive changes that the peace process promotes and to accelerate the path towards national reconciliation."<sup>435</sup> Based on these criteria, the Truth Commission investigated two types of cases: (a) individual cases or acts that, owing to their particular characteristics, deeply affected Salvadoran society and/or international society," and (b) a series of individual cases of similar characteristics that reveal a systematic pattern of violence or ill-treatment and that, taken as a whole, also profoundly affected Salvadoran society, especially because their purpose was to influence certain sectors of that society by intimidation."<sup>436</sup> In its report published on March 15, 1993, the Truth Commission described the patterns of violence during the armed conflict of both State agents and members of the FMLN, and included approximately 30 cases to illustrate them.<sup>437</sup>

*b) The National Reconciliation Law and the Law of General Amnesty for the Consolidation of Peace*

274. On January 23, 1992, after the signature of the Chapultepec Peace Accords on January 16, 1992, the Legislative Assembly of the Republic of El Salvador issued Legislative Decree No. 147 entitled "Law for National Reconciliation." Article 1 of this decree established that: "[a]mnesty shall be granted to all persons who participated as direct or indirect perpetrators or as accomplices in ordinary political crimes, related ordinary crimes, or ordinary crimes committed by at least 20 persons, prior to January 1, 1992, with the exception, in any case, of the crime of kidnapping established in article 220 of the Criminal Code."<sup>438</sup> In addition, article 6 of the law contained a clause indicating that: "[t]his amnesty shall not apply to persons who, according to the Truth Commission, participated in grave acts of violence that occurred after January 1, 1980, whose impact on society urgently requires that the public may know the truth, irrespective of the sector to which they belong."<sup>439</sup>

275. On March 20, 1993, five days after the presentation of the Truth Commission's report, the Legislative Assembly enacted the so-called "Law of General Amnesty for the Consolidation of Peace" (hereinafter "Amnesty Law"), by Legislative Decree No. 486 published on March 22 that year.<sup>440</sup> The text of this decree established:

Art. 1. Full, absolute, and unconditional amnesty shall be granted to all those who participated in any way in committing political crimes, or related ordinary crimes, or ordinary crimes committed prior to October 22, 1987, in which no fewer than 20 persons were involved, whether or not such persons have been convicted or have had proceedings initiated against them, and this amnesty shall apply to all persons who have participated as direct or indirect perpetrators or as accomplices in such criminal acts.

<sup>434</sup> United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5865).

<sup>435</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1087).

<sup>436</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1088).

<sup>437</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1074 to 1287).

<sup>438</sup> National Reconciliation Law. Legislative Decree No. 147, published on January 23, 1992 (evidence file, tome II, annex 5 to the submission of the case, folios 1407 to 1411).

<sup>439</sup> National Reconciliation Law. Legislative Decree No. 147, published on January 23, 1992 (evidence file, tome II, annex 5 to the submission of the case, folios 1407 to 1411).

<sup>440</sup> Article 1 of the Law of General Amnesty for the Consolidation of Peace. Legislative Decree No. 486, published on March 22, 1993 (evidence file, tome II, annex 6 to the submission of the case, folios 1413 to 1416).

The amnesty shall also apply to those persons referred to in article 6 of the National Reconciliation Law contained in Legislative Decree No. 147 of January 23, 1992, published in Official Gazette No. 14 volume 314 of that date.

Art. 2. For the effects of this law, in addition to those specified in article 151 of the Criminal Code, political crimes shall also be understood to include those included in articles 400 to 411 and 460 to 479 of that Code, and crimes committed owing to or as a result of the armed conflict, regardless of status, militancy, affiliation or political ideology.

Art. 3. The amnesty shall not apply to:

- a) Anyone who, individually or collectively, has participated in the perpetration of crimes defined in the second paragraph of article 400 of the Criminal Code, when they were committed for profit, whether or not a prison sentence is being served for such acts; and
- b) Anyone who, individually or collectively, has participated in the perpetration of crimes of kidnapping and extortion defined in articles 220 and 257 of the Criminal Code, and those included in the Law regulating Drug-related Activities, whether or not proceedings have been initiated against them, or they are serving a prison sentence for any of these crimes, whether or not related to political crimes.

Art. 4. The amnesty granted by this law shall have the following effects:

- a) In the case of anyone who has been sentenced to imprisonment, the judge or court executing the sentence shall decree *ex officio* the immediate release of those convicted, without need for bail; the same procedure shall be applied by the Court that is hearing a case, even when the sentence is not final;
- b) In the case of anyone sentenced to imprisonment *in absentia*, the competent judge or court shall *ex officio* suspend the arrest warrants against them, without need for bail;
- c) In the case of anyone with a pending case who has been indicted, the competent Judge shall decree *ex officio* the dismissal of the case, without any restrictions, in favor of the accused based on the extinction of the criminal action, ordering his or her immediate release;
- ch) In the case of anyone who has not yet been submitted to any proceedings, this decree shall apply so that, whenever proceedings are opened against them for the crimes included in this amnesty, he or she can raise the plea of the extinction of the criminal action and request the dismissal of the proceedings; in the event of their capture, they shall be brought before the competent judge who shall order their release;
- d) Anyone who is not covered in the preceding subparagraphs and who, on their own initiative or for any other reason, wishes to benefit from this amnesty, may appear before the respective first instance judge who, after having examined the request, shall issue an attestation with the reasons why the rights that correspond to the applicant as a citizen cannot be restricted, and
- e) The amnesty granted by this law extinguishes civil responsibility in all cases.

Art. 5. Notwithstanding the provisions of subparagraphs (a), (b) and (c) of the preceding article, anyone who has been prosecuted and wishes to obtain the benefits of this law shall make a written request, either in person or through a legal representative, or shall appear before the first instance judges, asking them to order the corresponding dismissal of the proceedings; if appropriate, the competent judge shall order the dismissal, which shall be without restrictions and without the need for bail.

The requests may also be presented before the justices of the peace, departmental governors, municipal mayors and consuls accredited abroad, who shall immediately forward them to the corresponding first instance judge, to be processed as appropriate.

The competent Judge shall impose a fine of one thousand to five thousand colones on any of the officials indicated in this article who do not comply with this obligation, following the procedure established in article 718 of the Code of Criminal Procedure

Art. 6. Any provision contrary to this law is hereby annulled, especially article 6 and the last subparagraph of article 7 of the National Reconciliation Law, as well as the authentic interpretation of the first provision cited, which are contained, respectively, in Decree No. 147 of January 23, 1992, published in Official Gazette No. 14, Volume 314 of the same date, and Decree No. 164 of February 6 of the same year, published in Official Gazette No. 26, Volume 314 of February 10, 1992.

Art. 7. This decree shall enter into force eight days after its publication in the Official Gazette.

*c) The decision of the Second First Instance Court of San Francisco Gotera to dismiss the proceedings*

276. On September 1, 1993, the Second First Instance Court of San Francisco Gotera issued a decision to dismiss the proceedings. In this decision, it indicated that, "the EXHUMATIONS performed have not been able to establish the identity of each deceased person, or the *corpus delictus*, although it is true that [119 corpses] were found and heaps of human remains deteriorated by the passage of time and the nature of the soil where they were found interred; and, in the absence of any witness or victim to identify the skeletons of the respective corpses." In addition, it indicated that "[r]egarding the PARTICIPATION of the perpetrators and

masterminds who have been accused of this crime, it has been indicated in the instance case that this refers to members of the Armed Forces or of the Atlacatl Battalion, collectively, without individualizing specific individuals; in other words, no individuals on active service have been mentioned in relation to this event and based on the LAW OF GENERAL AMNESTY FOR THE CONSOLIDATION OF PEACE, [...] these proceedings are DISMISSED in favor of any persons who may have belonged to the Atlacatl Battalion at the time the events occurred, for the massacre that took place and THUS THIS CASE SHALL BE CLOSED."<sup>441</sup>

*d) Decisions of the Constitutional Chamber of the Supreme Court of Justice*

277. On May 20, 1993, the Constitutional Chamber of the Supreme Court of Justice of the Republic of El Salvador declared inadmissible the request to review the constitutionality of the Law of General Amnesty for the Consolidation of Peace, considering that the amnesty constituted an "eminently political act."<sup>442</sup>

278. Subsequently, based on two actions for unconstitutionality filed against articles 1 and 4 of the Law of General Amnesty for the Consolidation of Peace, on September 26, 2000, the Constitutional Chamber of the Supreme Court of Justice declared the constitutionality of the said articles on the grounds that "these provisions admit an interpretation in keeping with the Constitution,"<sup>443</sup> which must be considered by the judge in each specific case in order to determine whether the application of the Amnesty Law was unconstitutional.<sup>444</sup> The Constitutional Chamber interpreted that article 1 of the Amnesty Law "is applicable only in cases in which the said amnesty does not impede the protection of the conservation and defense of the rights of the victim or his or her next of kin; in other words, in the case of crimes the investigation of which does not seek the reparation of a fundamental right."<sup>445</sup>

*e) Requests to re-open the proceedings*

279. In a brief of November 23, 2006, a private action was filed before the Second First Instance Court of San Francisco Gotera against five members of the Armed Forces of El Salvador and five members of the Atlacatl BIRI for the crimes of murder, aggravated violence, aggravated deprivation of liberty, violation of privacy, robbery, aggravated damage, depredations bearing specific punishments, acts of terrorism and preparatory acts of terrorism, requesting that formal notification be made of the judgment that applied the Amnesty Law; that the decision to dismiss the proceedings be revoked, and that a decision be issued to continue with the preliminary criminal proceedings, as well as various probative measures, based on the judgment of September 26, 2000, of the Constitutional Chamber of the Supreme Court of Justice.<sup>446</sup> On November 30, 2006, the Second Court admitted the complaint, indicating that "in view of the scale, importance and relevance of the case, it will proceed to make an exhaustive examination of it, following which it will issue a ruling"; it requested the original case file from the Supreme Court of Justice, and it asked the representatives to indicate whether any proceedings existed in

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<sup>441</sup> Decision to dismiss the proceedings issued by the Second First Instance Court of San Francisco Gotera on September 1, 1993 (evidence file, tome V, annex 23 to the submission of the case, folios 3615 to 3616).

<sup>442</sup> Decision issued by the Constitutional Chamber of the Supreme Court of Justice on May 20, 1993, case file 10-93 (evidence file, tome II, annex 7 to the submission of the case, folios 1418 to 1423).

<sup>443</sup> Decision issued by the Constitutional Chamber of the Supreme Court of Justice on September 26, 2000, in case files 24-97 and 21-98 (evidence file, tome II, annex 8 to the submission of the case, folio 1461).

<sup>444</sup> Cf. Decision issued by the Constitutional Chamber of the Supreme Court of Justice on September 26, 2000, in case files 24-97 and 21-98 (evidence file, tome II, annex 8 to the submission of the case, folios 1425 to 1461).

<sup>445</sup> Decision issued by the Constitutional Chamber of the Supreme Court of Justice on September 26, 2000, in case files 24-97 and 21-98 (evidence file, tome II, annex 8 to the submission of the case, folio 1460).

<sup>446</sup> Cf. Brief of the *Oficina de Tutela Legal del Arzobispado de San Salvador* of November 23, 2006 (evidence file, tome XI, annex 17.1 to the pleadings and motions brief, folios 6929 to 6999).

this regard before the international courts.<sup>447</sup> This request was answered on April 16, 2007.<sup>448</sup> On August 13, 2007, *Tutela Legal del Arzobispado* reiterated its request to re-open the proceedings, without obtaining a response from the authority,<sup>449</sup> it advised that, in its most recent briefs, neither the investigations nor the specific measures requested to clarify the truth had been undertaken.

280. On February 4, 2009, the Second Court issued a decision "deciding, in part, the complaint of [November 23, 2006]," in which it declared inadmissible the request regarding the notification of the judgment that applied the Amnesty Law.<sup>450</sup> On February 9, 2009, *Tutela Legal del Arzobispado* presented a request to annul the decision of February 4, 2009.<sup>451</sup> Since then, no other relevant measure has been taken in the proceedings.

## **2) Arguments of the Commission and of the parties**

281. Regarding the decision to dismiss the proceedings of September 27, 1993, issued by the Second Court, the Commission considered that the Law of General Amnesty for the Consolidation of Peace and its application in this case were incompatible with the international obligations of the State of El Salvador under the American Convention. In this regard, it maintained that the facts of the case were characterized by extreme gravity and constituted crimes against humanity, the impunity of which was explicitly contrary the Convention. Thus, it concluded emphatically that the Amnesty Law lacked judicial effects and could not continue to be an obstacle for the investigation of the massacres of El Mozote and nearby places, or for the identification and punishment of those responsible. Regarding the decision of the Constitutional Chamber of the Supreme Court of Justice of October 2, 2000, the Commission considered that, even though it had opened up a possibility, at the discretion of each judge, to continue the investigations in certain cases, such as this one, in which the Amnesty Law had been applied, this decision did not rectify the grave effects that the law had had and would continue to have on the expectations of truth, justice and reparation of the victims' next of kin and of Salvadoran society. In addition, it considered that the text of this law, by permitting the inclusion of grave human rights violations, was *per se* incompatible with the American Convention and, therefore, the law must be derogated or its effects eliminated. Similarly, the Commission stated that judges, prosecutors and other authorities were abiding by the general understanding that the Amnesty Law excluded the possibility of establishing the criminal responsibility of the perpetrators of human rights violations during the armed conflict. Therefore, the Commission concluded that, both the validity and the application of the Law of General Amnesty for the Consolidation of Peace in the instant case constituted a violation of the rights established in Articles 8(1) and 25(1), in relation to the obligations established in Articles 1(1) and 2 of this instrument, to the detriment of the victims' next of kin.

282. The representatives argued that the Salvadoran State was responsible for not investigating the facts of the massacres of El Mozote and nearby places seriously and effectively owing to the application of the Law of General Amnesty for the Consolidation of Peace. In addition, the representatives indicated that the Constitutional Chamber of the Supreme Court of Justice of El Salvador itself had established, since 2001, that the said law was not applicable to grave human rights violations. However, even though it was evident to the representatives that the instant case referred to grave human rights violations, the Office of the Prosecutor General

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<sup>447</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on November 30, 2006 (evidence file, tome XI, annex 17.2 to the pleadings and motions brief, folios 7001 to 7002).

<sup>448</sup> Cf. Brief of the *Oficina de Tutela Legal del Arzobispado de San Salvador* of April 16, 2007 (evidence file, tome XI, annex 17.3 to the pleadings and motions brief, folios 7004 to 7008).

<sup>449</sup> Cf. Request to re-open the proceedings filed by *Tutela Legal del Arzobispado* on August 13, 2007 (evidence file, tome XI, annex 17.4 to the pleadings and motions brief, folios 7010 to 7011).

<sup>450</sup> Cf. Decision issued by the Second First Instance Court of San Francisco Gotera on February 4, 2009 (evidence file, tome XI, annex 17.5 to the pleadings and motions brief, folios 7013 to 7018).

<sup>451</sup> Cf. Request for annulment of the decision filed by *Tutela Legal del Arzobispado* on February 9, 2009 (evidence file, tome XI, annex 17.6 to the pleadings and motions brief, folios 7020 to 7024).

had not requested the non-application of the Amnesty Law to this case, and the trial judge had failed to decide that it was not applicable, even though an explicit request in this regard had been made in 2006. Consequently, to date, almost 30 years after these grave facts occurred, they remain in the most absolute impunity and, even today, the Amnesty Law continues to obstruct the determination of what happened and the punishment of those responsible. Consequently, the representatives asked the Court to declare the State responsible for the violation of the rights of the surviving victims and the victims' next of kin to judicial guarantees and to judicial protection, contained in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belem do Pará.

### 3) Considerations of the Court

283. In the cases of *Gomes Lund v. Brazil* and *Gelman v. Uruguay*,<sup>452</sup> decided by this Court within the sphere of its jurisdictional competence, the Court has already described and developed at length how this Court,<sup>453</sup> the Inter-American Commission on Human Rights,<sup>454</sup> the organs of the United Nations,<sup>455</sup> other regional organizations for the protection of human rights,<sup>456</sup> and other courts of international criminal law<sup>457</sup> have ruled on the incompatibility of

<sup>452</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, paras. 147 to 182, and *Case of Gelman v. Uruguay*, paras. 195 to 229.

<sup>453</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, paras. 41 to 44; *Case of Almonacid Arellano et al. v. Chile*, paras. 105 to 114; *Case of La Cantuta v. Peru*, paras. 152 and 168; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 147, and *Case of Gelman v. Uruguay*, para. 195.

<sup>454</sup> Cf. IACHR. Report No. 28/92, Cases 10,147; 10,181; 10,240; 10,262; 10,309 and 10,311. Argentina, of October 2, 1992, paras. 40 and 41; IACHR. Report No. 34/96, Cases 11,228; 11,229; 11,231, and 11,282. Chile, of October 15, 1996, para. 70; IACHR. Report No. 36/96. Chile, of October 15, 1996, para. 71; IACHR. Report No. 1/99, Case of 10,480. El Salvador, of January 27, 1999, paras. 107 and 121; IACHR. Report No. 8/00, Case 11,378. Haiti, of February 24, 2000, paras. 35 and 36; IACHR. Report No. 20/99, Case 11,317. Peru, of February 23, 1999, paras. 159 and 160; IACHR. Report No. 55/99, Cases 10,815; 10,905; 10,981; 10,995; 11,042 and 11,136. Peru, of April 13, 1999, para. 140; IACHR. Report No. 44/00, Case 10,820. Peru, of April 13, 2000, para. 68; IACHR. Report No. 47/00, Case 10,908. Peru, April 13, 2000, para. 76, and Report No. 29/92. Cases 10,029, 10,036 and 10,145. Uruguay, of October 2, 1992, paras. 50 and 51.

<sup>455</sup> In this regard, see revised final report of the United Nations Special Rapporteur on the question of the impunity of perpetrators of human rights violations (civil and political), prepared by Louis Joinet pursuant to decision 1996/116 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. U.N. Doc. E/CN.4/Sub.2/1997/20/Rev1, of 2 October 1997, para. 32, and Report of the United Nations Working Group on Enforced or Involuntary Disappearances. General comment on article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance. Report presented during the sixty-second session of the Commission on Human Rights. U.N. Doc. E/CN.4/2006/56, of 27 December 2005, paragraph 2, subparagraphs a), c), and d) of the general comments, 23 of the introduction and 599 of the conclusions and recommendations. Similarly, cf. United Nations Working Group on Enforced or Involuntary Disappearances. Report to the Human Rights Council, fourth session, U.N. Doc. A/HRC/4/41, of 25 January 2007, para. 500. Also, in the universal domain, the treaty bodies for the protection of human rights have sustained the same criteria on the prohibition of amnesties that prevent the investigation and punishment of those who commit grave human rights violations. Cf. Human Rights Committee. General Comment No. 31: Nature of the General Legal Obligations imposed on States Parties to the Covenant. U.N. Doc. CCPR/C/21/Rev.1/Add.13, of 26 May 2004, para. 18. This general comment expanded the content of General Comment No. 20 which only referred to acts of torture, and cruel treatment or punishment. In this regard, also, cf. Human Rights Committee. General Comment 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7), U.N. Doc. A/47/40(SUPP), Annex VI, A, of 10 March 1992, para. 15; Human Rights Committee, Case of Hugo Rodríguez v. Uruguay, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988, Decision of 9 August 1994, paras. 12.3 and 12.4; Human Rights Committee, Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding Observations with regard to Peru, U.N. Doc. CCPR/C/79/Add.67, of 25 July 1996, para. 9; Yemen, U.N. Doc. CCPR/C/79/Add.51, of 3 October 1995, section 4, para. 3 (255); Paraguay, U.N. Doc. CCPR/C/79/Add.48, of 3 October 1995, section C, para. 5 (9), and Haiti, U.N. Doc. CCPR/C/79/Add.49, of 3 October 1995, section 4, para. 2; Committee against Torture, General comment 2: implementation of article 2 (prevention of acts of torture) by States parties. U.N. Doc. CAT/C/GC/2, of 24 January 2008, para. 5, and ; Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and recommendations with regard to Benin, U.N. Doc. CAT/C/BEN/CO/2, of 19 February 2008, para. 9, and of the Former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/2, of 21 May 2008, para. 5.

<sup>456</sup> Cf. ECHR. *Case of Abdülşamet Yaman v. Turkey*, No. 32446/96, para. 552, 2 November 2004, African Commission on Human and Peoples' Rights, *Malawi African Association and Others v. Mauritania*, Communications Nos. 54/91, 61/91, 98/93, 164/97-196/97 and 210/98, decision of 11 May 2000, para. 83, and African Commission on Human and Peoples' Right. *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication No. 245/02, decision of 26 May 2006, paras. 211 and 215.

amnesty laws in relation to grave human rights violations with international law and the international obligations of States. This is because amnesties or similar mechanisms have been one of the obstacles cited by States in order not to comply with their obligation to investigate, prosecute and punish, as appropriate, those responsible for grave human rights violations. Also, several States Parties of the Organization of American States, through their highest courts of justice, have incorporated the said standards, observing their international obligations in good faith.<sup>458</sup> Consequently, for purposes of this case, the Court reiterates<sup>459</sup> the inadmissibility of "amnesty provisions, provisions on prescription, and the establishment of exclusions of responsibility that seek to prevent the investigation and punishment of those responsible for grave human rights violations such as torture, summary, extrajudicial or arbitrary execution, and forced disappearance, all of which are prohibited because they violate non-derogable rights recognized by international human rights law."<sup>460</sup>

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

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

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

286. However, this norm is not absolute, because, under international humanitarian law, States also have an obligation to investigate and prosecute war crimes.<sup>461</sup> Consequently,

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<sup>457</sup> Cf. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundžija*, Judgment of 10 December, 1998. Case No. IT-95-17/1-T, para. 155; S.C.S.L., *Prosecutor v. Gbao*, Decision No. SCSL-04-15-PT-141, Appeals Chamber, Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court, 25 May 2004, para. 10; S.C.S.L., *Case of Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Judgment of the Trial Chamber, 25 February 2009, para. 54, and *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Chamber, Sentencing Judgment, 8 April 2009, para. 253. In this regard, see also: Agreement between the Lebanese Republic and the United Nations regarding the establishment of a special tribunal for Lebanon, signed on January 23 and February 6, 2007, respectively, Article 16 and the Statute of the Special Tribunal for Lebanon approved by resolution 1757 of the Security Council of the United Nations. U.N. Doc.S/RES/1757, of 30 May 2007, Article 6; State of the Special Tribunal for Sierra Leone, of 16 January 2002, Article 10; Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian law of crimes committed during the Period of Democratic Kampuchea, of 6 March 2003, Article 11, and Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on October 27, 2004 (NS/RKM,1004/006), new Article 40.

<sup>458</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, paras. 147 to 182, and *Case of Gelman v. Uruguay*, paras. 183 to 229.

<sup>459</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, para. 172, and *Case of Contreras et al. v. El Salvador*, para. 174.

<sup>460</sup> *Case of Barrios Altos v. Peru. Merits*, para. 41, and *Case of Gelman v. Uruguay*, para. 225.

<sup>461</sup> Cf. Rule 159: "[a]t the end of hostilities, the authorities in power must endeavor to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes." In this regard, the International Committee of the Red Cross has stated that "[w]hen Article 6(5) of Additional Protocol II was adopted, the USSR stated, in its explanation of vote, that the provision could not be construed to enable war criminals, or those guilty of crimes against humanity, to evade punishment. The ICRC shares this interpretation.

"persons suspected or accused of having committed war crimes, or who have been convicted of this" cannot be covered by an amnesty.<sup>462</sup> Consequently, it may be understood that article 6(5) of Additional Protocol II refers to extensive amnesties in relation to those who have taken part in the non-international armed conflict or who are deprived of liberty for reasons related to the armed conflict, provided that this does not involve facts, such as those of the instant case, that can be categorized as war crimes,<sup>463</sup> and even crimes against humanity.<sup>464</sup>

287. The negotiations under the good offices of the Secretary-General of the United Nations and the agreements reached by the parties to the Salvadoran armed conflict – the Government of the Republic of El Salvador and the Farabundo Martí National Liberation Front – in the process conducted in order "to terminate the armed conflict using political means as soon as possible, to promote the democratization of the country, to guarantee absolute respect for human rights, and to reunify Salvadoran society," converge in the signature, on January 16, 1992, of a Peace Accord that ended the hostilities.<sup>465</sup> This Accord made no mention of amnesty, but established clearly in its Chapter I ("Armed Forces") section 5, a paragraph entitled "End to impunity,"<sup>466</sup> which establishes the following:

The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to the Commission on the Truth for consideration and resolution. All of this shall be without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible.<sup>467</sup>

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

289. Subsequently, the Legislative Assembly of the Republic of El Salvador enacted the 1992 National Reconciliation Law, which established the benefit of unrestricted amnesty, while excluding from its application "anyone who, according to the report of the Truth Commission, had taken part in grave acts of violence that had occurred since January 1, 1980, whose impact

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Such amnesties would also be incompatible with the rule obliging States to investigate and prosecute persons suspected of having committed war crimes in non-international armed conflicts." [citations omitted]. Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, pp. 691 and 692.

<sup>462</sup> This rule of international humanitarian law and interpretation of Additional Protocol II, Article 6(5) has been referred to by the Human Rights Committee of the United Nations. Cf. *inter alia*, H.R.C., Concluding Observations of the Human Rights Committee: Lebanon U.N. Doc. CCPR/C/79/Add.78, 5 May 1997, para. 12, and Concluding Observations of the Human Rights Committee: Croatia, U.N. Doc., CCPR/CO/71/HRV, 4 April 2001, para. 11.

<sup>463</sup> The Rome Statute of the International Criminal Court defines war crimes as violence against person or property, in particular murder of all kinds, cruel treatment and torture, outrages upon personal dignity, and extrajudicial executions in Article 8, paragraph 2, subparagraph (c), i) ii) and iv), and in subparagraph (e) i) and vi) of this Statute, intentional attacks against the civilian population and rape.

<sup>464</sup> The Rome Statute of the International Criminal Court defines crimes against humanity as acts of murder, extermination, torture and rape, committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack, in Article 7, paragraphs (a), (b), (f) and (g).

<sup>465</sup> Cf. United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folios 5805 and 5858).

<sup>466</sup> Added to this, the Court bears in mind that already, in the San José Agreement of July 26, 1990, the parties that were negotiating agreed that "[a]ll necessary actions and measures would be taken immediately to avoid any type of acts or practices against the life, integrity, security and liberty of persons, [as well as] to eradicate any practice of disappearances and kidnappings, [and that p]riority w[ould] be given to the investigation of any cases of this nature that might arise, as well as to the identification and punishment of those found guilty." United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5818).

<sup>467</sup> United Nations. El Salvador Agreements: on the road to peace, 1992 (evidence file, tome IX, annex 6 to the pleadings and motions brief, folio 5865).

on society demands, with the utmost urgency, that the public know the truth, regardless of the sector to which he or she belongs."<sup>468</sup>

290. Similarly, the Truth Commission, created by the Mexico Accords of April 27, 1991, and which initiated its activities on July 13, 1992, investigated "grave acts of violence that had occurred since 1980, whose impact on society demands, with the utmost urgency, that the public know the truth," which included the Massacres of El Mozote, as an exemplary case of the peasant massacres perpetrated by the Armed Forces.<sup>469</sup> In its report published on March 15, 1993, the Truth Commission issued a series of recommendations, among which it included a section on the "measures to promote national reconciliation." In this section, it indicated, *inter alia*:

Nevertheless, in order to achieve the goal of pardon, we must pause and weigh certain consequences that can be inferred from knowledge of the truth about the serious acts described in this report. One such consequence, perhaps the most difficult to address in the country's current situation, is that of fulfilling the twofold requirements of justice: punishing the guilty and adequately compensating the victims and their families.<sup>470</sup>

291. However, on March 20, 1993, five days after the presentation of the Report of the Truth Commission, the Legislative Assembly of the Republic of El Salvador enacted the "Law of General Amnesty for the Consolidation of Peace," which extended the benefit of amnesty to the persons referred to in Article 6 of the National Reconciliation Law; namely, "those persons who, according to the Truth Commission, participated in grave human rights violations that have occurred since January 1, 1980."<sup>471</sup> In other words, a general and absolute amnesty was granted which extended the possibility of impeding the criminal investigation and the determination of responsibilities to those individuals who had taken part as perpetrators, masterminds and accomplices in the perpetration of serious human rights violations and grave breaches of international humanitarian law during the internal armed conflict, including those exemplary cases established by the Truth Commission. In short, it set aside the non-applicability of the amnesty in these situations that had been agreed by the parties to the Peace Accords and established in the National Reconciliation Law. In addition, beneficiaries of the amnesty included not only individuals whose cases were pending, but also those who had not yet been prosecuted or regarding whom a guilty verdict had already been delivered, and in all cases, civil responsibility was extinguished.

292. Consequently, it is evident that the *ratio legis* of the Law of General Amnesty for the Consolidation of Peace was to render ineffectual Chapter I ("Armed Forces"), section 5 ("End to impunity"), of the Peace Accord of January 16, 1992, and, in this way, amnesty and leave in impunity all the grave crimes perpetrated against international law during the internal armed conflict, even though the Truth Commission had determined that they should be investigated and punished. Thus, the enactment of the Law of General Amnesty for the Consolidation of Peace explicitly contradicted what the parties to the armed conflict themselves had established in the Peace Accord that determined the end of the hostilities.<sup>472</sup>

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<sup>468</sup> National Reconciliation Law, Legislative Decree No. 147, published on January 23, 1992 (evidence file, tome II, annex 5 to the submission of the case, folio 1408).

<sup>469</sup> Cf. Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folios 1081, 1087, 1195 and 1278).

<sup>470</sup> Report of the Truth Commission for El Salvador, From madness to hope: the 12-year war in El Salvador, 1992-1993 (evidence file, tome II, annex 1 to the submission of the case, folio 1274).

<sup>471</sup> Article 1 of the Law of General Amnesty for the Consolidation of Peace, Legislative Decree No. 486, published on March 22, 1993 (evidence file, tome II, annex 6 to the submission of the case, folio 1414).

<sup>472</sup> In this regard, expert witness Menéndez Leal explained that, "the justification for this benefit is clearly aligned with the considerations of its precedent, the 1992 amnesty, which granted more limited or restricted benefits; nevertheless, an amnesty was enacted that has the characteristics of being, on the one hand, extensive, absolute and unconditional, and also the speed with which it was approved was noticeable, to the point that it was considered to be one of the most serious violations in the conclusions and recommendations contained in the report [of the Truth Commission] and in the 1992 relaunching agreements and understandings, and insofar as it has prevented the legal investigation, prosecution and punishment of the masterminds and perpetrators of gross human rights violations that



293. For their part, several bodies for the protection of human rights established by the United Nations treaties have expressed their concern with regard to the Amnesty Law, stressing the need to review, modify, annul or amend it,<sup>473</sup> and emphasizing that the 2000 decision of the Constitutional Chamber (*supra* para. 278) had not resulted in the re-opening of the investigations.<sup>474</sup> At the domestic level the Ombudsman considered that the Law of General Amnesty for the Consolidation of Peace was a norm of positive law that seriously violated the constitutional legal order and that it also violated the fundamental principles of international human rights law.<sup>475</sup>

294. In the instant case, it is almost 20 years since the investigation into the massacres of El Mozote and nearby places was dismissed and the case file closed as a result of the application of the Law of General Amnesty for the Consolidation of Peace, without any response to the repeated requests to re-open the proceedings by the representatives of the victims. The 2000 decision of the Constitutional Chamber (*supra* para. 279) has had no effect in the instant case and, 12 years after its issue, it seems illusory that it will result in any real possibility for the investigation to be reopened. In this regard, expert witness Menéndez Leal stated that “this benefit has made its influence felt because, from the perspective of the agents of the system of justice, it has created the perception that, based on this amnesty law, justice cannot be administered”; consequently, “in the Salvadoran justice apparatus, it is understood that the 1993 benefit has extinguished the responsibility, both intellectual and material, for the events that occurred in the context of the conflict and, as result, the agents of justice do not apply the exceptions included in that judgment,” except in isolated cases.<sup>476</sup>

295. Thus, the approval by the Legislative Assembly of the Law of General Amnesty for the Consolidation of Peace and its subsequent application in this case by the Second First Instance Court of San Francisco Gotera, on the one hand, is contrary to the letter and spirit of the Peace

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occurred during the armed conflict.” Expert opinion provided by Salvador Eduardo Menéndez Leal before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>473</sup> Cf. Human Rights Committee, Concluding Observations of the Human Rights Committee: El Salvador, U.N. Doc. CCPR/C/79/Add.34, 18 April 1994, paras. 7 and 12, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/013a57379e3ccd57c12563ed0046d4c4?Opendocument>; Concluding Observations of the Human Rights Committee: El Salvador, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 6, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.SLV.Sp?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.SLV.Sp?Opendocument); Concluding Observations of the Human Rights Committee: El Salvador, U.N. Doc. CCPR/C/SLV/CO/6, 18 November 2010, para. 5, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/467/01/PDF/G1046701.pdf?OpenElement>; Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador, U.N. Doc. A/HRC/7/2/Add.2, 26 of October 2007, para. 69 (evidence file, tome X, annex 11 to the pleadings and motions brief, folio 6719), and Committee against Torture, Concluding Observations of the Committee against Torture with regard to El Salvador, U.N. Doc. CAT/C/SLV/CO/2, 9 December 2009, para. 15 (evidence file, tome X, annex 12 to the pleadings and motions brief, folios 6729 to 6730).

<sup>474</sup> Cf. Human Rights Committee, Concluding Observations of the Human Rights Committee: El Salvador, U.N. Doc. CCPR/C/SLV/CO/6, 18 November 2010, para. 5, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/467/01/PDF/G1046701.pdf?OpenElement>. See also, Expert opinion provided by Salvador Eduardo Menéndez Leal before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>475</sup> At the time, the Ombudsman considered that since the Law of General Amnesty for the Consolidation of Peace annulled absolutely the rights to the truth, to justice and to the reparation of the victims of crimes such as the massacre of peasants, extrajudicial executions, enforced disappearances, torture, the systematic murder of public officials and even judicial corruption, it is a norm of positive law that gravely violates the constitutional legal order and that, in the same way, affects the fundamental principles of international human rights law. Cf. Special report of the Ombudsman on the massacres of civilian population by State agents in the context of the internal armed conflict in El Salvador from 1980 to 1992, of March 7, 2005 (evidence file, tome III, annex 4 to the submission of the case, folio 1388), and *Amicus curiae* brief presented by the Ombudsman of El Salvador (merits file, tome III, folio 1256).

<sup>476</sup> Cf. Expert opinion provided by Salvador Eduardo Menéndez Leal before the Inter-American Court during the public hearing held on April 23, 2012, in which he explained that it was only in the case of the death of the Jesuit priests and their two collaborators that it was declared that the 1993 Amnesty Law did not apply, but, in any case, the prescription was applied; in other words, another legal mechanism that gave rise to similar effects. Another case is that of the judge of Tecoluca in the department of San Vicente, who, is hearing the case of a massacre in San Francisco Angulo, and “required the prosecutor to investigate the case; but the case has almost been archived.” Also, see Expert report provided by Ricardo Alberto Iglesias Herrera before the Inter-American Court in the Case of Contreras et al. v. El Salvador of May 12, 2011 (evidence file, tome X, annex 15 to the pleadings and motions brief, folio 6841).

Accords, which understood in light of the American Convention reveals a serious violation of the State's international obligation to investigate and punish the grave human rights violations relating to the massacres of El Mozote and nearby places, by preventing the survivors and the victims' next of kin in this case from being heard by a judge, in keeping with the provisions of Article 8(1) of the American Convention and receiving judicial protection, in keeping with the right established in Article 25 of this instrument.

296. On the other hand, the Law of General Amnesty for the Consolidation of Peace has resulted in the installation and perpetuation of a situation of impunity owing the absence of investigation, pursuit, capture, prosecution and punishment of those responsible for the facts, thus failing to comply with Articles 1(1) and 2 of the Convention; the latter in relation to the obligation to adapt its domestic law to the provisions of the Convention.<sup>477</sup> Given their evident incompatibility with the American Convention, the provisions of the Law of General Amnesty for the Consolidation of Peace that prevent the investigation and punishment of the grave human rights violations that were perpetrated in this case lack legal effects and, consequently, cannot continue to represent an obstacle to the investigation of the facts of this case and the identification, prosecution and punishment of those responsible, and they cannot have the same or a similar impact in other cases of grave violations of the human rights recognized in the American Convention that may have occurred during the armed conflict in El Salvador.<sup>478</sup>

## **F. Right to know the truth**

297. The representatives affirmed that the right to the truth is an autonomous and independent right, and even though it is not declared explicitly in the text of the American Convention, it comprises the protections established in Articles 1(1), 8, 25 and 13 of the Convention. In this regard, they argued that, in the instant case, the State violated the right to the truth of the victims and their next of kin insofar as the massacres had been committed by State agents as part of a military strategy. Consequently, it was the State alone that possessed relevant information to establish the truth of what happened. However, it had abstained from providing this information to the next of kin of the victims killed, the surviving victims and Salvadoran society as a whole. In addition, after 1995, the State had not taken a single measure to establish the truth of what happened; therefore, they asked the Court to declare that El Salvador has violated the right to the truth to the detriment of the presumed victims in this case, which resulted in the violation of Articles 1(1), 8, 25 and 13 of the American Convention. In this regard, the Court reiterates its case law regarding the possibility that the presumed victims or their representatives may invoke rights other than those included in the merits report of the Commission (supra para. 182).

298. Regarding the alleged violation of Article 13 of the Convention,<sup>479</sup> the Court recalls that any person, including the next of kin of victims of grave human rights violations, has the right to know the truth, under Articles 1(1), 8(1) and 25 and also, in certain circumstances, Article 13 of the Convention;<sup>480</sup> therefore, they and society in general must be informed of what happened.<sup>481</sup>

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<sup>477</sup> In light of Article 2 of the Convention, the obligation to adapt domestic law to the provisions of the Convention signifies that the State must adopt measures of two types; namely: (i) to eliminate the norms and practices of any nature that entail a violation of the guarantees established in the Convention, and (ii) to enact laws and implement practices leading to the effective observance of the said guarantees. Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Forneron and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 131.

<sup>478</sup> Cf. *Case of Barrios Altos v. Peru. Merits*, para. 44; *Case of La Cantuta v. Peru*, para. 175; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 174, and *Case of Gelman v. Uruguay*, para. 232.

<sup>479</sup> The pertinent part of Article 13 of the Convention stipulates: "1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

<sup>480</sup> Cf. *Case of Gelman v. Uruguay*, para. 243, and *Case of Contreras et al. v. El Salvador*, para. 173. In this regard, in the *Case of Gomes Lund et al.*, the Court observed that, according to the facts of the case, the right to know the truth was related to an action filed by the next of kin to have access to certain information connected to the access to justice and to the right to seek and receive information recognized in Article 13 of the American Convention, so that it analyzed the said right under this article. Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 201.

In addition, the Court considers it pertinent to reiterate, as it has in other cases, that, in compliance with its obligation to guarantee the right to know the truth, States may establish truth commissions, which contribute to the creation and preservation of the historical memory, the elucidation of the facts, and the determination of the institutional, social and political responsibilities during certain historical periods of a society.<sup>482</sup> Nevertheless, this does not complete or substitute for the State's obligation to establish the truth through judicial proceedings;<sup>483</sup> hence, the State had the obligation to open and expedite criminal investigations to determine the corresponding responsibilities. In the instant case the Court finds that it is not appropriate to make a ruling on the alleged violation of this provision, without detriment to the analysis already made under the right of access to justice and the obligation to investigate.

## G. Conclusion

299. Almost 32 years have passed since the massacres of El Mozote and nearby places occurred, and no serious and exhaustive criminal proceeding have been held to identify the masterminds and perpetrators, and all the truth about the events are still not known. Thus, a situation of total impunity prevails, shielded by the Law of General Amnesty for the Consolidation of Peace. It has been verified that, from the time the investigations began, they have been characterized by a lack of diligence, thoroughness and seriousness. In particular, the failure to comply with the obligation to open an investigation *ex officio* and to expedite the necessary measures, the absence of clear and logical lines of investigation that would have taken into account the context and complexity of the events, the periods of procedural inactivity, the refusal to provide information on the military operations, the lack of diligence and thoroughness in the implementation of the investigations by the authorities responsible for them, the delay in carrying out the judicial inspections and the exhumations, as well as the decision to dismiss the proceedings issued in application of the Law of General Amnesty for the Consolidation of Peace, allow the Court to conclude that the domestic criminal proceedings have not constituted an effective remedy to guarantee the rights of access to justice and to know the truth by the investigation and eventual punishment of those responsible, and comprehensive reparation for the consequences of the violations.

300. In short, it has been verified that, in the instant case, the State's was organized as a means and resource for perpetrating the violation of the rights that it should have respected and ensured,<sup>484</sup> and this has been aided by a situation of impunity of these grave violations, encouraged and tolerated by the highest State authorities, who have obstructed the course of the investigation. The Court notes that the criminal proceedings have been archived for more than 19 years owing to the decision to dismiss them, without having individualized prosecuted and, eventually, punished any of those responsible. Based on the foregoing, the Court finds that the State failed to conduct a serious, diligent and exhaustive investigation *ex officio*, within a reasonable term, into all the facts relating to the massacres of El Mozote and nearby places. Consequently, the Court considers it essential that, as soon as possible, the State rectify the conditions of impunity verified in this case by removing all the obstacles, *de facto* and *de jure*, that have promoted and maintained it.<sup>485</sup>

301. Therefore, the State is responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, and for the violation of the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," to the detriment of the

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<sup>481</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, para. 274, and *Case of Contreras et al. v. El Salvador*, para. 173.

<sup>482</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of Contreras et al. v. El Salvador*, para. 135.

<sup>483</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador*, para. 128, and *Case of Contreras et al. v. El Salvador*, para. 135.

<sup>484</sup> Cf. *Case of Goiburú et al. v. Paraguay*, para. 66, and *Case of Contreras et al. v. El Salvador*, para. 155.

<sup>485</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, para. 277, and *Case of Contreras et al. v. El Salvador*, para. 128.

surviving victims and the next of kin of the victims who were executed in this case, in their respective circumstances.

## **IX REPARATIONS (Application of Article 63(1) of the American Convention)**

302. Based on the provisions of Article 63(1) of the American Convention,<sup>486</sup> the Court has indicated that any violation of an international obligation that has produced damage entails the obligation to provide adequate reparation<sup>487</sup> and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>488</sup>

303. Taking into consideration the violations of the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará" declared in this Judgment, the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to repair,<sup>489</sup> in order to establish measures designed to repair the damage caused to the victims.

304. This Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe the concurrence of these elements in order to rule appropriately and in accordance with the law.<sup>490</sup>

305. Before this, the Court finds it pertinent to reiterate that the denial of justice to the detriment of the victims of grave human rights violations, such as a massacre, results in a variety of impacts in both the individual and the collective spheres.<sup>491</sup> Thus, it is evident that the victims of prolonged impunity suffer different adverse effects owing to the search for justice, not only of a pecuniary nature, but also sufferings and damage of a psychological and physical nature, and to their life project, as well as other possible alterations in their social relationships and their families and community dynamics.<sup>492</sup> This Court has indicated that this damage is increased by the absence of support from the State authorities in the effective search for and identification of the remains, and the impossibility of honoring their loved ones appropriately.<sup>493</sup> Accordingly, the Court has considered the need to grant different measures of reparation, in order to redress the damage fully; thus, in addition to pecuniary compensation, measures of satisfaction, restitution and rehabilitation, and guarantees of non-repetition have special relevance owing to the severity of the effects and the collective nature of the damage

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<sup>486</sup> 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."

<sup>487</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Vélez Restrepo and family members v. Colombia*, para. 253.

<sup>488</sup> Cf. *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, para. 50, and *Case of Vélez Restrepo and family members v. Colombia*, para. 253.

<sup>489</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of Vélez Restrepo and family members v. Colombia*, para. 257.

<sup>490</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Vélez Restrepo and family members v. Colombia*, para. 255.

<sup>491</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 226.

<sup>492</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 226.

<sup>493</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 226.

suffered.<sup>494</sup>

### **A. Injured party**

306. The Court reiterates that, in the terms of Article 63(1) of the Convention, the injured party is the party that has been declared a victim of the violation of any right recognized in the Convention. Therefore, the Court considers as "injured parties" those persons included in the lists of: (i) victims who were executed; (ii) the surviving victims; (iii) the next of kin of the victims who were executed, and (iv) the victims forcibly displaced, that are included as Annexes identified in the Appendixes "A", "B", "C" and "D" to this Judgment. As victims of the violations declared in Chapters VII and VIII, they will be beneficiaries and recipients of the measures that the Court establishes in this chapter.

307. In addition, the Commission asked the Court to require the State to establish a mechanism that allows, insofar as possible, the complete identification of the victims executed in the massacres of El Mozote and nearby places. It also indicated that this mechanism should facilitate the complete identification of the next of kin of the executed victims, so that they can become beneficiaries of the reparations that are established. The foregoing in coordination and as a complement to the measures already taken by the representatives.

308. The representatives considered that the State should endeavor to determine the identity all those persons who were murdered, as well as all the next of kin of the deceased victims and of the victims who survived the massacres. Consequently, it requested that the State be granted a maximum of six months to identify all those persons who should be considered entitled to the right to reparation and who are not included on the lists of victims, so that they may be included in the reparations established by this Court. In addition, they asked that all those murdered in the massacres should be added to the lists of victims already provided, even in the eventuality that their remains are not found. According to the representatives, this measure would entail drawing up a list of murdered victims, that also contained the basic characteristics of each of them, including age and gender, and this should be published in the same terms as the Court's judgment. To implement all the above, they considered it essential that the State coordinate with the victims and ensure the provision of all necessary technical and financial resources, as well as trained personnel. However, they also considered it essential that compliance with the other measures of reparation established by the Court should not be dependent on compliance with this measure.

309. The State indicated that the creation of a list of victims "is a process that the State of El Salvador has already undertaken and is underway," and "it will be the basis to identify not only the individuals but also the geographic areas and the population to which many of the measures of a social nature will be addressed." In this regard, it explained that, in principle, the creation of the "Single List of Victims and Next of Kin of Victims of Grave Human Rights Violations during the Massacre of El Mozote" responds to the representatives' request for the preparation of a list of murdered victims that also contains the basic characteristics of each one, including age and gender and, in addition, includes all the next of kin of the deceased victims and the surviving victims of the massacre. However, "this list will also allow the future administration of the exercise of human rights arising from the application of the different measures of reparation that have been accepted by the State."<sup>495</sup>

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<sup>494</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 226.

<sup>495</sup> In this regard, the State explained that the process of identifying the victims had been designed in four stages: (a) determination of the scope of the list; (b) pre-registration procedure; (c) registration procedure, and (d) delivery of the list. Each of these stages had been defined technically during a process of permanent dialogue with victims and their representatives. Regarding the registration procedure, the process had begun on site on May 21, 2012, and covered the municipalities of Arambala, Meanguera, Jocoaitique, Chilanga and Cacaopera, all in the department of Morazán, as well as the municipalities of Lourdes, Gotera, San Miguel and others, where the displaced population was located. The registration of victims is being carried out in two stages simultaneously; the first consisting in registration on demand, and the second on visits to each house. According to the State, the data gathering process would take 15 consecutive days and the process to revise the list would take 20 working days more, so that it was anticipated that the list would be ready – prior to the administration stage – in six weeks. The first procedure was being prepared by personnel of the

310. The Court observes that, owing to the particular characteristics of the case, and for the reasons already indicate in this Judgment (*supra* paras. 59 and 51), it has not been possible to identify and individualize all the victims. Consequently, the Court considers that, in the instant case, there is a reasonable justification to apply the exception established in Article 35(2) of the Court's Rules of Procedure in order to include other persons as victims even when they have not been identified and individualized previously by this Court, by the Inter-American Commission or by the representatives (*supra* para. 57). To this end, the Court assesses positively the State's initiative to create the "Single List of the Victims and Next of Kin of the Victims of Grave Human Rights Violations during the Massacre of El Mozote." Accordingly, this Court establishes that the State must continue with the full implementation of the "Single List of the Victims and Next of Kin of the Victims of Grave Human Rights Violations during the Massacre of El Mozote"; to this end, it must adopt the necessary measures to ensure its sustainability and the budgetary allocation to guarantee its effective operation. In addition, the Court considers it pertinent that, within one year of notification of this Judgment, the State present the results of the identification of the victims who were executed, the surviving victims, the next of kin of the executed victims, and the victims forcibly displaced of the massacres of El Mozote and nearby places, conducted within the framework of the "Single List of the Victims and Next of Kin of the Victims of Grave Human Rights Violations during the Massacre of El Mozote," so that these persons may request and receive the corresponding reparation in the terms of this Judgment.

311. The foregoing does not impede or exclude the possibility that, when the one-year time frame has expired, the process of identifying the victims continue, and that any new victims be added to the "Single List of the Victims and Next of Kin of the Victims of Grave Human Rights Violations during the Massacre of El Mozote," and be considered beneficiaries of the reparations established in this Judgment to be made by the State, when they submit this request to the Salvadoran authorities, outside the established time frame. The State must provide information to the Court about the persons who have requested reparations in the context of the said mechanism. To this end, the Court will make the pertinent assessment in the exercise of its authority to monitor this Judgment.

**B. Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and punish, as appropriate, those responsible, and also to locate, identify and, return to their next of kin the remains of the victims of the massacres**

**1) Complete investigation, determination, prosecution and eventual punishment of all the masterminds and perpetrators of the massacres**

312. The Commission asked the Court to order the State to undertake an impartial and effective investigation, within a reasonable time, to elucidate the facts fully, identify the masterminds and perpetrators, and impose the corresponding punishments. In addition, it maintained that in their prompt compliance with this obligation, the Salvadoran authorities may not invoke the Law of General Amnesty for the Consolidation of Peace. Thus, it asked that the Court order the immediate reopening of the investigations, without this being opposed by either the decision to dismiss the proceedings or the Law of General Amnesty for the Consolidation of Peace. It also asked the Court to order the State to annul or revoke the Law of General Amnesty for the Consolidation of Peace, because it prevents the investigation, prosecution and punishment of those responsible for violations of human rights and the rights of the victims to the truth, justice and reparation; accordingly, the State must use the legal and/or constitutional means available to it to ensure that the application of this law "does not continue perpetuating

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General Directorate of Statistics and Censuses (DIGESTYC) of the Ministry of Economy, and the second procedure by a Government technical team (the Technical Secretariat of the Presidency, the Ministry of Foreign Affairs, and the General Directorate of Statistics and Censuses). Both procedures would be guided by the victims' association. In addition, the State indicated that, as part of the comprehensive reparation policy, a mechanism was being developed that would allow the permanent administration of the said list; in other words, it was "not preparing a single physical list; it is a preliminary list that will allow the incorporation of other victims that were not included in these procedures, as necessary."

impunity." In addition, it indicated that other obstacles *de jure* or *de facto* used by judicial or investigative authorities must be eliminated.

313. The representatives asked the Court to order the State to annul or revoke the Amnesty Law using the mechanisms established in its domestic laws, and that whatever the procedural route selected, it should be established that, given the incompatibility of the said law with the American Convention, "it lacks effects since its inception, and therefore cannot constitute an obstacle for the investigation, prosecution and punishment of this case, or of any other grave human rights violation committed during the Salvadoran armed conflict." Consequently, the representatives asked the Court to order the State to conduct a serious and effective investigation into all the events denounced in this case, including the acts of torture and the extrajudicial executions perpetrated against the victims. In this regard, they considered it necessary that the Court order the State to annul the decision to dismiss the proceedings issued on September 1, 1993, and to order, immediately, the re-opening of the investigations, and that the latter should abide by the following: (a) take into account the pattern of human rights violations existing at the time; (b) determine the masterminds and perpetrators of the events, without the State being able to apply the Amnesty Law in favor of the perpetrators, or any other similar provision, prescription, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem* or any other analogous mechanisms to waive responsibility, "and that the authorities abstain from taking measures that involve the obstruction of the investigative process," and (c) ensure that: (i) the competent authorities conduct the corresponding investigations *ex officio*, and that, to this end, they have available and use all the necessary logistic and scientific resources, and that they have the authority to access the pertinent documentation and information; (ii) the persons who take part in the investigation have adequate guarantees for their safety, and (iii) the authorities refrain from taking measures that involve the obstruction of the investigative process. In this regard, they indicated that the victims' next of kin must have full access and legal standing at the different procedural stages, and that the results of the investigations must be widely publicized so that Salvadoran society may know them.

314. The State recognized "its obligation to investigate the events denounced, to prosecute in a fair trial and, as appropriate, to punish those responsible for the events described in the application [*sic*] when they have been individualized and their criminal or administrative responsibility determined by the competent authorities," as well as "its obligation to adapt its domestic law in conformity with the provisions of Article 2, in relation to Article 1(1) of the American Convention."

315. In Chapter VIII of this Judgment, the Court declared the violation of the rights to judicial guarantees and to judicial protection, as well as the failure to comply with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Convention of Belém do Pará, because it had not opened an investigation *ex officio*, because of the lack of diligence in the criminal investigation conducted by the Second First Instance Court of San Francisco Gotera, and because of decision to dismiss the proceedings in application of the Law of General Amnesty for the Consolidation of the Peace, as well as because of the violation of the guarantee of a reasonable term. Thus, the said investigation has not constituted an effective remedy to ensure the rights of access to justice and to know the truth by the investigation, prosecution and eventual punishment of those responsible for the massacres, in a way that examines, completely and exhaustively, the numerous adverse effects caused to the victims in this case, or to ensure the full reparation of the consequences of the violations. Accordingly, 32 years after the events, and 19 years after the decision was issued to dismiss the only proceedings that had been opened for the facts of this case, without any of those responsible having been identified or indicted during the investigation, total impunity prevails.

316. The Court assesses positively the work of the Truth Commission for El Salvador and the publication of its report, as an effort that has contributed to the search for and determination of the truth of a historic period in El Salvador. In addition, the Truth Commission underlined the importance of holding judicial proceedings to prosecute and punish those responsible, so that the Court considers it pertinent to reiterate that the "historic truth" contained in the said report

neither completes nor substitutes for the State's obligation to establish the truth and to ensure the judicial determination of individual or State responsibilities also by judicial proceedings.<sup>496</sup>

317. The Court reiterates that investigation is a peremptory obligation of the State, and also the importance that such actions be conducted in conformity with international standards. Therefore, the Court considers that the State must adopt clear and specific strategies to overcome impunity in the prosecution of the masterminds and perpetrators of the massacres of El Mozote and nearby places committed during the Salvadoran armed conflict.

318. First, since the Law of General Amnesty for the Consolidation of Peace lacks effectiveness according to the considerations made in paragraphs 283 to 296, the State must ensure that this law never again represents an obstacle to the investigation of the events that are the subject of this case or to the identification, prosecution and eventual punishment of those responsible for these events and other similar grave human rights violations that occurred during the armed conflict in El Salvador. This obligation is binding on all the State's powers and organs as a whole, which are obliged to exercise *ex officio* the control of conformity between the domestic norms and the American Convention; evidently, within the framework of their respective competences and the corresponding procedural regulations.<sup>497</sup>

319. Based on the foregoing and also on its case law,<sup>498</sup> this Court establishes that the State must, within a reasonable time, initiate, promote, re-open, direct, continue and conclude, as appropriate, with the greatest diligence, the pertinent investigations and proceedings in order to establish the truth of the events and to determine the criminal responsibilities that may exist, and remove all the obstacles *de facto* and *de jure* that maintain total impunity in this case, taking into account that around 31 years have passed since the said massacres took place. In this regard, the State must investigate effectively all the facts of the massacres including, in addition to the extrajudicial executions, other possible serious violations of personal integrity and, in particular, the acts of torture, and the rape of the women, as well as the enforced displacements. To this end, the State must:

- a) Abstain from resorting to mechanisms such as amnesty in favor of the perpetrators, as well as any other similar provision, prescription, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem*, or any other mechanism that exempts responsibility, to waive this obligation;
- b) Take into account the systematic pattern of human rights violations in the context of the Salvadoran armed conflict, as well as the large-scale military operations within which the events of this case took place, so that the pertinent investigations and proceedings are conducted bearing in mind the complexity of these events and the context in which they occurred, avoiding omission in the collection of evidence in following logical lines of investigation based on a correct assessment of the systematic patterns that gave rise to the events investigated;
- c) Identify and individualize all the masterminds and perpetrators of the massacres in this case. Due diligence in the investigation signifies that all the State authorities are obliged to collaborate in the collection of evidence; therefore they must provide the judge, prosecutor or other judicial authority with all the information required and abstain from actions that entail an obstruction to the progress of the investigation;

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<sup>496</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, para. 150, and *Case of the Río Negro Massacres v. Guatemala*, para. 259.

<sup>497</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, para. 124, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 225.

<sup>498</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of the Río Negro Massacres v. Guatemala*, para. 257.



d) Ensure that the competent authorities conduct the corresponding investigations *ex officio* and, to that end, that they have available and use all the necessary logistic and scientific resources to obtain and process the evidence and, in particular, that they have the authority to access the pertinent documentation and information to investigate the events denounced and to carry out the essential actions and inquiries to clarify what happened in this case;

e) Guarantee that the investigations into the events that constitute the massacres in this case remain, at all times, in the ordinary jurisdiction;

f) Ensure that the different organs of the justice system involved in the case have the necessary human, financial, logistic, scientific or any other type of resources necessary to perform their tasks adequately, independently and impartially, and take the necessary measures to ensure that judicial officials, prosecutors, investigators and other agents of justice have an adequate safety and protection system, taking into account the circumstances of the cases under their responsibility and the place where they are working, that will allow them to perform their functions with due diligence, and also to ensure the protection of witnesses, victims and next of kin, and

g) Ensure full access and legal standing at all the stages of the investigation and prosecution of those responsible to the victims or their next of kin.

320. In addition, the results of the corresponding proceedings must be published so that Salvadoran society knows the facts that are the purpose of this case, and also those responsible.

321. As decided in the *Case of Contreras et al v. El Salvador*,<sup>499</sup> the State must adopt pertinent and adequate measures to guarantee to agents of justice, and also Salvadoran society, public, technical and systematized access to the archives that contain relevant and useful information for the ongoing investigations in the cases concerning human rights violations during the armed conflict; measures that it must support with the appropriate budgetary allocations.

## **2) Administrative, disciplinary or criminal measures for the State officials responsible for obstructing the investigations**

322. The Commission asked the Court to order the State to require the corresponding administrative, disciplinary or criminal measures for the acts or omissions of State officials who contributed to the denial of justice and the impunity of the facts of the case, or who took part in actions to obstruct the proceedings intended to identify and punish those responsible.

323. The representatives indicated that, even though, during the judicial proceedings, numerous statements were received and that, based on the exhumations, the violent death of the victims has been proved, the State agents in charge of the proceedings have not taken a single measure to establish the truths about what happened. In addition, after five years, the trial judge has still not decided a series of requests filed by the victims' representatives that include the non-applicability of the Amnesty Law, and the implementation of a series of procedures to clarify the facts. Furthermore, although the Supreme Court of Justice indicated that the Amnesty Law should not be applied to this kind of event more than 10 years ago, the prosecution has not filed the corresponding request, and the trial judge has not adopted any decision whatsoever. Therefore, it would be "evident that, in this case, neither the trial judge nor the Public Prosecution Service has complied with their obligations." Consequently, they asked the Court to order the State to conduct a prompt, adequate and impartial investigation that allows the irregularities to be rectified, and those responsible to be prosecuted and punished.

324. The State made no specific reference to this claim for reparation, although it acknowledged its "obligation to investigate the events denounced, to prosecute by a fair trial

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<sup>499</sup> Cf. *Case of Contreras et al. v. El Salvador*, para. 212.

and to punish, as appropriate, those responsible for the facts set out in the application [*sic*], once they have been individualized and their criminal or administrative responsibility determined by the competent authorities.”

325. In previous cases,<sup>500</sup> when dealing with certain violations, the Court has established that the State must file disciplinary, administrative or criminal actions, as appropriate, according to its domestic laws, against those responsible for the different procedural and investigative irregularities. In the instant case, it has been proved that various State authorities obstructed the progress of the investigations and delayed the judicial inspections and exhumations, and this culminated with the application of the Law of General Amnesty for the Consolidation of Peace, thus perpetuating the impunity in this case (*supra* para. 299). Also, despite requests to re-open the proceedings made by the representatives, the investigation remains closed and archived (*supra* para. 300).

326. Consequently, this Court considers that, as a way of combating impunity, the State must, within a reasonable time, investigate, through its competent public institutions, the conduct of the officials who obstructed the investigation and permitted the facts to remain unpunished since they occurred and then, following an appropriate proceeding, apply the corresponding administrative, disciplinary or criminal punishments, as appropriate, to those found responsible.

**3) *Discovery, identification and return to their next of kin of the remains of the persons executed in the massacres of El Mozote and nearby places***

327. The Commission asked the Court to order the State to provide the necessary resources to continue the exhumation, identification and return of the mortal remains of victims who had been executed, according to the wishes of their next of kin.

328. The representatives asked the Court to order the State to initiate, systematically and rigorously, with adequate human and technical resources, and following up on the work already undertaken, any other action necessary for the exhumation, identification and return of the remains of the other individuals who were executed. To this end, all the necessary technical and scientific resources should be used, taking into account the pertinent national and international standards, and all the exhumations should be completed within two years of notification of the judgment. In their brief with final arguments, the representatives considered it necessary, as part of these measures to have the consent of the victims’ next of kin “because there could be cases in which the victims do not want their family members to be exhumed,” and that the State: (i) should gather the available information on possible burial sites; (ii) create a genetic database, and (iii) ensure training for personnel specialized in this area so as to be able to begin the work of locating and exhuming the bodies.

329. The State expressed its willingness to accept and carry out, within the reasonable time that the nature of the work requires, the continuation of the exhumation of the victims that remain pending.

330. The Court appreciates the work performed by the Argentine Forensic Anthropology Team to recover the remains of those who had been executed, as well as the return of remains that was carried out by the judicial authorities as a result of this work (*supra* paras. 230 to 241). Nevertheless, the Court observes that the Second First Instance Court of San Francisco Gotera decided to terminate the exhumation procedures once the Law of General Amnesty for the Consolidation of Peace had been enacted and applied to this case (*supra* paras. 229 and 276). The subsequent exhumations were only performed on the initiative of *Tutela Legal del Arzobispado* (*supra* para. 234). Moreover, no other measures have been taken since 2004 to seek and locate other individuals who died in the massacres.

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<sup>500</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 233(d), and *Case of the Río Negro Massacres v. Guatemala*, para. 257(d).

331. This Court has established that the right of the victims' next of kin to know the whereabouts of the remains of their loved ones constitutes, in addition to a requirement of the right to know the truth, a measure of reparation and, therefore, gives rise to a correlated obligation of the State to meet this fair expectation. In addition, for the next of kin, it is very important to receive the bodies of those who died in the massacre, because it allows them to bury them in accordance with their beliefs, as well as to close the process of mourning that they have endured all these years.<sup>501</sup> In the words of expert witness Yáñez de la Cruz, "certain cultural and social rituals contribute to the mourning process through practices such as the wake, the burial, consolation, all the actions that confirm that the loved will not return"; and these rituals could not be performed with regard to the massacres of El Mozote and nearby places.<sup>502</sup> It is also worth underlining that the remains can provide useful information to clarify the facts, because they provide details of the treatment that the victims received, the way in which they were executed, and the *modus operandi*. Similarly, the place where the remains are found may provide valuable information on the perpetrators or the institution to which they belonged.<sup>503</sup>

332. The Court considers that, within six months of notification of this Judgment, the State must collect the available information on possible interment or burial sites, which must be protected in order to preserve them so that, following up on the work already undertaken by the Argentine Forensic Anthropology Team, any other action that is necessary in order to exhume and identify other individuals who were executed is initiated systematically and rigorously, with adequate human and financial resources.<sup>504</sup> To this end, the State must use all necessary technical and scientific means, taking into account the pertinent national and international standards<sup>505</sup> and must endeavor to complete all the exhumations within two years of notification of this Judgment. In this regard, the Court considers that the informed consent of the victims' families and coordination with them through their representatives is a fundamental element of this process.<sup>506</sup>

333. If the remains are identified, they must be delivered to the next of kin, after a genetic corroboration of relationship or testing using adequate and suitable methods, as appropriate, as soon as possible and at no cost to the next of kin. The State must also cover the expenses for transportation and burial in accordance with the beliefs of their family.<sup>507</sup> Should the remains not be identified or claimed by any next of kin, the State must bury them individually in an acceptable cemetery or place that is known to the communities that were victims of the massacres. A specific identifiable area in this place shall be reserved for their burial with the indication that these are individuals who have not been identified or claimed who died in the massacres of El Mozote and nearby places, with information on the place where the remains were found.

334. To ensure that the individualization of those exhumed is effective and viable, this Court

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<sup>501</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 245.

<sup>502</sup> Cf. Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10550).

<sup>503</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 245.

<sup>504</sup> Cf. Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, affidavits, folios 10313 and 10322).

<sup>505</sup> Such as those established in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

<sup>506</sup> Cf. Joint expert opinion provided by affidavit by Luis Fondebrider, Mercedes C. Doretti and Silvana Turner on April 18, 2012 (evidence file, tome XVII, affidavits, folio 10318), and Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10559).

<sup>507</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 248.

establishes, as it has in other cases,<sup>508</sup> that the State must provide written information to the victims' representatives on the process of identification and return of the remains of those who died in the massacres and, as appropriate, request their collaboration for the pertinent purposes. Copies of these communications must be presented to the Court to be considered during the monitoring of compliance with this Judgment.

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

335. International case law and, in particular, that of the Court, has established repeatedly that the judgment may constitute *per se* a form of reparation.<sup>509</sup> However, based on the circumstances of the case and the adverse effects on the victims as a result of the violations of the American Convention declared to their detriment, the Court considers it pertinent to determine the following measures of reparation.

#### **1) Measures of restitution**

##### *a) Development program for the village of El Mozote and nearby places*

336. The Commission did not present any request in this regard.

337. The representatives indicated that the communities of El Mozote and nearby places do not have adequate public roads, access to public water and electricity services, access to health care services and schools. Consequently, they requested that the State "create a development program for these communities that includes all the said aspects." In other words, the rehabilitation of the public roads and the construction of at least one health care center and one school at a place that is accessible for most of the villages. In addition, given the situation of the surviving victims, they asked that the State include scholarships for the next of kin of the victims who are of school age, and the establishment of centers for the elderly.

338. The State expressed its willingness to agree to and promote a social development program in favor of the victims in this case, within the reasonable time required by such a program. Thus, it explained that, within the framework of the dialogue it maintains with the affected communities, it is designing and planning a development program for the village of El Mozote and nearby places, based on the main needs that are identified and agreed on, but bearing in mind the interest in certain specific projects, such as the home for the elderly, scholarships and connecting road. To this end, it will prepare a comprehensive plan for social development infrastructure and economic stimulus, and for the provision of public services, without prejudice to responding to the details of possible measures of reparation established in the judgment on reparations delivered by the Court in this case.

339. The Court assesses positively the State's willingness to institute a social development program in favor of the victims in this case. In view of the harm caused by the facts of this case to the members of the communities belonging to the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles, and Jocote Amarillo, and the canton of Cerro Pando, this Court establishes, as it has in other cases,<sup>510</sup> that, in these communities and irrespective of the public works included in the national budget destined to that region or municipality, the State must implement in these communities in full coordination with the victims and their representatives, a development program that includes the following: (a) improvements to the public road system; (b) access to public services of water and electricity; (c) establishment of a

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<sup>508</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 249.

<sup>509</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Furlan and family v. Argentina*, para. 319.

<sup>510</sup> Cf. *Case of Masacre Plan de Sánchez v. Guatemala. Reparations and costs*. Judgment of November 19, 2004. Series C No. 116, para. 105, and *Case of the Río Negro Massacres v. Guatemala*, para. 284.

health care center in a place accessible for most of the villages, with adequate personnel and conditions, that can provide medical, psychological or psychiatric care to the people who have been affected and who require this type of treatment in keeping with paragraphs 350 to 353 of the Judgment; (d) construction of a school in a place accessible for most of the villages, and (e) construction of a center for the elderly.

340. The State must implement the development program within five years of notification of this Judgment.

*b) Provide adequate conditions for the victims who are still displaced to return to their place of origin*

341. The Commission did not present any request in this regard.

342. The representatives indicated that the only way to repair, in part, the suffering to which the victims have been submitted owing to their enforced displacement is to offer them the possibility of returning to their place of origin. In this regard, they affirmed that, for this return to provide true reparation, it must be the result of an individual voluntary decision by each of those affected, adopted without coercion and based on sufficient and adequate information. According to the representatives, this measure must include, at least, the following components: (a) guarantee of the physical security of those who return; (b) establishment of a monitoring mechanism during and after their return by independent entities; (c) establishment of mechanisms for the restitution of property, taking into account both codified law and traditional property norms; (d) Restitution of documentation to those who return without discrimination or delay, and (e) guarantee of access of those who return, without any discrimination, to public services, means of subsistence, and income-generating activities. In addition, they mentioned the reconstruction of the homes and the creation of a favorable economic and social environment upon their return. Similarly, they stated that “[t]he measures regarding the recovery of property and homes and access to public services, means of subsistence, and income-generating activities should also cover those individuals who were displaced and who were able to return on their own.”

343. The State expressed its willingness to accept and take measures to create the conditions for the return of those who remain displaced, within the reasonable time required by the nature of such measures.

344. The evidence presented in this case reveals that most of the victims who survived the massacres displaced from their places of origin to other municipalities and even outside El Salvador, losing their homes and, in some cases, their crops, possessions, farm animals and livestock during the massacres and the displacement (*supra* paras. 175 and 183). As determined, some of the displaced victims have returned to their place of origin, while others have not yet returned and, in some cases, there is no information on their current location (*supra* paras. 189 and 190).

345. In order to contribute to the reparation of the victims who were forcibly displaced from their communities of origin; namely, the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles, and Jocote Amarillo, and the canton of Cerro Pando, the Court orders that the State must guarantee adequate conditions so that the displaced victims can return to their communities of origin permanently, if they so wish. If these conditions do not exist, the State must provide the necessary and sufficient resources to enable the victims of enforced displacement to resettle in similar conditions to those they had before the events, in the place that they freely and willingly indicate within the department of Morazán, in El Salvador. The Court recognizes that the State’s compliance with this measure of reparation entails, in part, that the beneficiaries indicate their intention of returning to their places of origin in El Salvador. Therefore, the Court establishes that, within two years of notification of this Judgment, the State and the beneficiaries should reach the pertinent agreement in order to comply with what the Court has ordered if the forcibly displaced victims identified in Annex “D” of this Judgment wish

to return to their communities of origin.

346. In addition, given that the inhabitants of the said communities lost their homes as a result of the facts of this case (*supra* paras. 175 to 178), this Court orders the State to implement a housing program in the areas affected by the massacres of this case, under which adequate housing is provided to the displaced victims who require this.<sup>511</sup> The forcibly displaced victims identified in Annex "D" of this Judgment who request this measure of reparation, or their legal representatives, have one year from notification of this Judgment to inform the State of their intention to be part of the housing program.

## **2) Measures of rehabilitation**

### *a) Medical, psychological or psychiatric care for the victims*

347. The Commission asked the Court to order the State to implement an adequate program of psychosocial attention to the surviving next of kin.

348. The representatives requested that the State provide free medical and psychosocial assistance to the surviving victims of the massacres and to the next of kin of the deceased victims, so they can access a State medical center where they are provided with adequate personalized attention to help them heal their physical and mental injuries resulting from the violations suffered. This measure must include the cost of any medication prescribed. In addition, when providing the treatment, the specific circumstances of each person must be taken into consideration, as well as the needs of each of the victims. Additionally, the treatment must be carried out after an individual evaluation, as agreed with each of them. Also, the medical center where the physical and psychosocial care is provided to the victims and their next of kin must be located in a place accessible from their homes.

349. The State accepted to provide health care services and psychosocial attention to the surviving victims and the next of kin of the victims who are identified in this case. In addition, it advised that, on February 14, 2012, it had installed a Family Health Community Team in El Mozote "known as ECOS" for the next of kin of the victims of the massacres; it consisted of medical and nursing staff, health promoters, a psychologist and a multi-purpose health worker. This method of providing health care would allow general medical services, psychological care, prenatal monitoring of pregnant women, family planning services, child health monitoring, attention to the elderly, medicines, vaccines and other elements to be brought closer to the population, based on comprehensive care during the person's entire life cycle.

350. First, the Court appreciates the general initiatives taken by the State regarding the public health care systems. Despite this, it considers it pertinent to indicate that the social services that the State provides to individuals should not be confused with the reparations to which the victims of human rights violations are entitled, based on the specific damage caused by the violation.<sup>512</sup>

351. Regarding the psychosocial impact and emotional consequences suffered by the victims, expert witness Yáñez de La Cruz explained that "the massacre [...] dissolved the social networks in which the life project of both the individual and the community was inserted [...]. There was a loss of the collective subject that identifies an individual with the community, and there was a significant impact on the collective dignity."<sup>513</sup> In this regard, she pointed out that the violence took place in the village squares and churches and, just as it destroyed the land and the animals, it also destroyed "the core of the collective way of life," "the identity and symbols of the

<sup>511</sup> Cf. *Case of Masacre Plan de Sánchez v. Guatemala. Reparations and costs*, para. 105, and *Case of the Ituango Massacres v. Colombia*, para. 407.

<sup>512</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, para. 529.

<sup>513</sup> Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

peasant universe.”<sup>514</sup> Thus, when the victims hear the massacre discussed or see something that reminds them, “98% of them describe feeling ill, dizzy, chest pains and generally depressed.”<sup>515</sup> In addition, many have been diagnosed with illnesses such as cancer, multiple sclerosis and other terminal diseases.<sup>516</sup> For their part, the individuals and families who were displaced from their place of origin “lost their community and affective ties to their identifying roots, in addition to their property,” as well as “what had been, until then, the life project of each of them.”<sup>517</sup> Therefore, they feel “anger, sadness, fear, nostalgia, helplessness, shame, abandonment, and loss of their place in the universe, all of which may result in the appearance of psychological symptoms.”<sup>518</sup> The expert witness noted that, in general, the victims “have not been able to process their sorrow owing to lack of mechanisms for the social validation of their pain, as a result of the lack of institutional and collective support. It is a very deep and private sorrow, which paralyzes many healthy aspects, such as giving or receiving affection, and having a plan for the future.”<sup>519</sup> All of this must be repaired at both the individual and the collective levels.<sup>520</sup>

352. Having verified the violations and the harm suffered by the victims, as it has in other cases,<sup>521</sup> the Court considers it necessary to order measures of rehabilitation in this case. In this regard, it finds that comprehensive attention to the physical, mental and psychosocial problems suffered by the victims in this case is the appropriate reparation. Indeed, given the characteristics of this case, the Court finds that psychosocial is an essential component of reparation, because it has been verified that the harm suffered by the victims refers not only to parts of their individual identity, but also to the loss of their community roots and ties. Consequently, the Court finds it necessary to establish the obligation of the State to implement, within one year, a permanent program of comprehensive care and attention to their physical, mental and psychosocial health. This program must have a multidisciplinary approach and be headed by experts in this area, who have been sensibilized and trained in attention to victims of human rights violations, and also a collective approach.

353. Thus, under the said program ordered for the comprehensive care and attention to health, the State must provide, free of charge, through its specialized health care institutions in El Salvador, adequately and effectively, medical, psychological or psychiatric, and psychosocial treatment to the surviving victims of the massacres and the next of kin of the victims who were executed, who request this, following their informed consent, including the supply, free of charge, of the medicines and tests they may eventually require, taking into consideration the ailments of each of them. If the State is unable to provide this treatment, it must have recourse to specialized private or civil society institutions. Furthermore, the respective treatments must

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<sup>514</sup> Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>515</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10548).

<sup>516</sup> Cf. Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012.

<sup>517</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10549 to 10550).

<sup>518</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10548 to 10550).

<sup>519</sup> Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10548).

<sup>520</sup> Cf. Expert opinion on psychosocial impacts and recommendations for reparations in the case of “The Massacres of El Mozote and nearby places” provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folio 10550).

<sup>521</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 51(e), and *Case of the Río Negro Massacres v. Guatemala*, para. 287.

be provided, to the extent possible, in the centers nearest to their places of residence<sup>522</sup> in El Salvador for as long as necessary. When providing the psychological or psychiatric treatment, the specific circumstances and needs of each victim must also be taken into consideration, so that they may be provided with collective, family or individual treatments, as agreed with each of them and after individual evaluation.<sup>523</sup> This medical, psychological or psychiatric, and psychosocial treatment must include simple and differentiated registration and updating procedures by the corresponding health care system, and the State officials responsible for providing it must know that they are designed to provide reparation. The surviving victims and the next of kin of the executed victims identified in Annexes "B" and "C" of this Judgment who request this measure of reparation, or their legal representatives, have one year from notification of this Judgment to inform the State of their intention of receiving medical, psychological or psychiatric, and psychosocial treatment.

### **3) Measures of Satisfaction**

#### *a) Public acknowledgment of responsibility*

354. In general terms, the Commission asked the Court to order the State to establish and disseminate the historical truth of the facts and to recover the memory of the deceased victims. In their pleadings and motions brief, the representatives indicated that, for the acknowledgment of responsibility to have a true meaning for the victims, given the severity of the facts, it must be made by the President of the Republic, in his capacity as Head of State, and the High Command of the Armed Forces, senior officials of the Public Prosecution Service and the Judiciary, and the executive council of the Salvadoran Legislative Assembly must attend the ceremony. They also asked that the ceremony be held in the village of El Mozote; that the State ensure the presence at this ceremony of the greatest number of surviving victims and next of kin of the murdered victims, and assume all the expenses arising from the transfer of these people; that the characteristics and details of this ceremony, such as the date and place, be agreed previously with the victims and their representatives, and that it be broadcast by the main national media.

355. Initially, the State expressed its willingness to accept and carry out the public acknowledgment of responsibility. Subsequently, during the public hearing and in its brief with final arguments, the State indicated that the said "measure ha[d] already been complied with." In this regard, the State mentioned the act of apology and acknowledgment of responsibility for the massacres of El Mozote and nearby places, held in the village of El Mozote on January 16, 2012, in the context of commemorating the twentieth anniversary of the Peace Accords. In this regard, the State explained that, on December 5, 2011, the President of the Republic of El Salvador had met with a representative group of the victims of this case and their representatives, when "the President agreed to realize the act of apology and acknowledgment of responsibility requested by the representative before the Inter-American Court." According to the State, this proposal was accepted and "the organization of the historic act of apology was carefully planned by the State, in full coordination with the victims and their representatives." The said act was held on January 16, 2012, with the presence of the President of the Republic and different State authorities.<sup>524</sup> The State assumed all the costs of the ceremony, and it was

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<sup>522</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 270, and *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, para. 253(d).

<sup>523</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 270, and *Case of Uzcátegui et al. v. Venezuela*, para. 253(b).

<sup>524</sup> The Presidential act was also attended by the Vice President of the Republic, most of the Government's Cabinet, including the Secretary for Social Inclusion and the First Lady of the Republic; the Minister of National Defense and representatives of the High Command of the Armed Forces of El Salvador; the Ministers of Foreign Affairs, Economy, Health, the Interior, Justice and Public Security, Labor and Social Welfare, and the Deputy Minister of the Environment; officials of the Public Prosecution Service, such as the Ombudsman and the Prosecutor General; Justices of the Supreme Court of Justice, representing the Judiciary; the President of the Legislative Assembly and members of the legislature; the Director General of the National Civil Police; the Inspector General of the National Civil Police; the Diplomatic Corps accredited to the country, and also a representative number (several hundreds) of surviving victims and next of kin of



transmitted in direct by all national radio stations and television channels. Subsequently, it was disseminated by some of the main newspapers, and in radio and television announcements.

356. At the public hearing and in their final arguments brief, the representatives recognized the importance for the victims of the “speech in which the Salvadoran President acknowledged responsibility and apologized for the facts of the massacre,” in the context of the commemoration of the twentieth anniversary of the Peace Accords, held in El Mozote on January 16, 2012, “because they took part in its planning and because they really felt they had received redress.” They also stated that, for the State’s acknowledgment and the ideas proposed to have a reparatory effect and to be coherent it is essential that they lead to the adoption of effective measures that take into account the opinions of the victims. The representatives also indicated that “[o]n January 16, 2010, in the context of the commemoration of the signature of the El Salvador Peace Accords, the Salvadoran President [had] announced the creation of a commission in charge of proposing measures of reparation that would benefit the victims of grave human rights violations during the armed conflict,” and that “[a]s of that time, meetings ha[d] been held with civil society organizations and victims of human rights violations, purportedly in order to obtain input to prepare this proposal.” Consequently, they considered that the Court should remind the State “of the need to comply with the commitment assumed by the President,” and that the said measures must comply with the standards established by the Court.

357. In the instant case, the Court notes that the act of acknowledgment of responsibility held at the domestic level and before the delivery of this Judgment was agreed with the victims or their representatives and was executed as follows: (a) publicly; (b) at the place where the events occurred; (c) responsibility for the extrajudicial execution of the victims was acknowledged as well as for the other violations committed in this case; (d) it was held in the presence, and with the participation, of a considerable number of survivors and next of kin; (e) it was headed by the highest State authority – namely, the President of the Republic – and senior State officials took part in it, and (f) it was broadcast and disseminated fully throughout the country. In this regard, the Inter-American Court considers that the ceremony conducted by El Salvador is appropriate and proportionate to the severity of the violations whose reparation is sought and that the declarations of the President of the Republic were designed to recover the memory of the victims, recognize their dignity, and console their relatives.<sup>525</sup> Therefore, the Court considers that it is not necessary to order another public act of acknowledgment of international responsibility in relation to the facts of this case and, in addition, it assesses positively the State’s initiative to hold talks with the victims on the other measures of reparation to be implemented. Lastly, the Court urges the State to continue making the necessary arrangements to comply with the measures announced in the said speech.

*b) Publication of the Judgment*

358. In general terms, the Commission asked the Court to order the State to establish and disseminate the historical truth of the facts and to recover the memory of the deceased victims.

359. The representatives asked the Court, in accordance with its case law, to order the State to publish the relevant parts of the Judgment, in both the Official Gazette and a national newspaper with widespread circulation.

360. The State expressed its willingness to accept this measure and to publish the relevant parts of the judgment to be delivered by the Court, within the reasonable time required by its nature.

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the murdered victims; representatives of the El Mozote *Asociación Promotora de Derechos Humanos, Tutela Legal del Arzobispado* and the *Comunidades Eclesiales de Base de Morazán*.

<sup>525</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 77, and *Case of Gelman v. Uruguay*, para. 265.

361. Based on the nature and scale of the violations declared, the Court finds it appropriate to establish, as it has in other cases,<sup>526</sup> that the State must publish, within six months of notification of this Judgment:

- (a) The official summary of this Judgment prepared by the Court, once, in the Official Gazette;
  - (b) The official summary of this Judgment prepared by the Court, once, in a national newspaper with extensive circulation, and
  - (c) This Judgment in its entirety, available for one year, on an official website.
- c) *Production and diffusion of audiovisual material*

362. In general terms, the Commission asked the Court to order the State to establish and disseminate the historical truth of the facts and to recover the memory of the deceased victims.

363. The representatives considered that it was essential that the State produce a video in which it informed society of the grave acts committed during the massacres of El Mozote and nearby places, which must also refer to the "scorched earth" policy, "in the context of which the events of the massacre occurred, and include information regarding the failure to investigate these grave events, [and also] an undertaking by the State that such events will not happen again." In this regard, they asked that all expenses for the production of the video be assumed by the State and that its content be approved by the victims and their representatives, before its transmission. They also asked that this video be broadcast in the audiovisual media with greatest national coverage, on at least three occasions separated by a month, at prime time, and that it be uploaded to the web page of the Salvadoran Armed Forces.

364. The State expressed its willingness to agree to, and to produce and disseminate an audiovisual presentation, within the reasonable time required by its nature.

365. The Court assesses positively the State's willingness to comply with the measure of reparation requested by the representatives in this aspect of the Judgment. In view of the circumstances of this case, the Court requires the preparation of an audiovisual documentary on the grave acts committed during the massacres of El Mozote and nearby places, which must also refer to the "scorched earth" policy in the context of the armed conflict in El Salvador, with specific mention of this case; its content must be agreed previously with the victims and their representatives. The State must assume all the expenses arising from the production and distribution of this video. The Court considers that the video must be distributed as extensively as possible among the victims, their representatives, and the country's schools and universities for its subsequent promotion and impact with the ultimate objective of informing Salvadoran society of these facts. The said video must be transmitted, at least once, on a national channel and during prime time, and it must be uploaded to the web page of the Armed Forces of El Salvador. The State has two years from notification of this Judgment to comply with this measure.

#### **4) Guarantees of non-repetition**

- a) *Training for the Armed Forces of the Republic of El Salvador*

366. The Commission asked the Court to order the State to adopt the necessary measures to avoid similar events occurring in future, in keeping with the obligation to prevent violations and to ensure the human rights recognized in the American Convention; in particular, to implement permanent training programs on human rights and humanitarian international law in the Armed

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<sup>526</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 79, and *Case of Furlan and family v. Argentina*, para. 290.

Forces training establishments.

367. Neither the representatives nor the State made any specific mention regarding this measure of reparation.

368. In the instant case, the State has acknowledged and the Court has determined that, during the military operation in which the Atlacatl BIRI was the main participant, with the support of other military units, including the Salvadoran Air Force, successive massacres were perpetrated at seven places in the north of the department of Morazán (*supra* paras. 17, 19 and 151). In this regard, the Court considers it pertinent to recall that it is crucial that human rights education programs are implemented effectively within the security forces and have an impact in order to create guarantees of non-repetition of events such as those of the instant case. Such programs must be reflected in results of action and prevention that demonstrate their effectiveness, regardless of the fact that they must be evaluated by suitable indicators.<sup>527</sup>

369. Consequently, this Court considers it important to strengthen the State's institutional capacities by training the members of the Armed Forces of the Republic of El Salvador on the principles and norms of protection of human rights and on the constraints to which they must be subject. Therefore, the State must implement, within one year term of notification of this Judgment and with the respective budgetary provision, a permanent and compulsory program or course on human rights, including a children- and gender-based perspective, for all ranks of the Armed Forces of the Republic of El Salvador. This Judgment and the case law of the Inter-American Court on grave human rights violations must be included in the training.

#### **5) Other measures requested**

370. The representatives submitted the following additional requests: (a) that the State adopt measures to improve the monument erected to commemorate the victims in the square of the village of El Mozote, "which includes ensuring the inclusion of the names of all the victims who have been considered victims in these proceedings," as well as that the said monument be declared a national monument, and that, on this basis, the State be responsible for its maintenance and protection; (b) that the State "acquire the houses in the village of El Mozote where the women were murdered, in order to create in it a memorial, where objects and documents relating to the massacre can be kept," and (c) that the State establish a place in each of the affected villages where the next of kin of the murdered victims may go to remember them.

371. The State expressed its willingness to agree to and create spaces to recognize the dignity of the victims and remember them, within the reasonable time required by its nature. In this regard, the State indicated that it had begun the corresponding procedure to declare the site where the massacre of El Mozote occurred as a cultural site, as a measure of moral reparation for the victims and their next of kin and that, in addition, it would draw up a plan to create different spaces in the affected villages to recognize the dignity of the victims, all this in coordination with the communities concerned.

372. The Court assesses positively and takes note of the State's willingness to agree to and create spaces to recognize the dignity of the victims and remember them, and urges El Salvador to comply with this undertaking, which will not be supervised by the Court.

373. The representatives asked the Court to order the State to eliminate the names of those identified as responsible for the massacres from any public institution, as well as to prohibit any means of honoring them. In this regard, they explained that a hall of the Military Museum of the Armed Forces, and the Third Infantry Brigade are named after Domingo Monterrosa, and

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<sup>527</sup> Cf. *Case of Goiburú et al. v. Paraguay. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 19, 2009, forty-ninth considering paragraph, and *Case of the Las Dos Erres Massacre v. Guatemala*, para. 252.

another hall of the Military Museum is named after Armando Azmilia Melara, even though these individuals have been identified as two of the officers who were in charge of the operation in which the massacres occurred. Also, on October 23 each year, the Armed Forces and the Mayor's Office organize a ceremony to honor Domingo Monterrosa, commemorating his death, in the Municipality of Jocoateca, department of Morazán.

374. The State affirmed that, during the act of acknowledgement and apology held on January 16, 2012, the President of the Republic "made a very clear appeal not only to the Armed Forces of El Salvador, [...] but also to different sectors that do not depend on the Salvadoran Executive, to abstain from honoring individuals linked to human rights violations during the armed conflict"; nevertheless, El Salvador expressed its willingness to abide by that the Court decides.

375. The Court has taken note of the feelings of sorrow and injustice that the said tributes cause to the surviving victims and the next of kin of the victims executed in the massacres<sup>528</sup> and, thus, it assesses positively the fact that the State is adopting specific measures in this regard. However, the Court does not consider it appropriate to order the measure requested by the representatives, because the delivery of this Judgment and the reparations ordered are sufficient and adequate to repair the violations suffered by the victims of the present case.

376. The representatives asked the Court to order the State to designate December 11, 1981, - the date of which the massacre of El Mozote began - as the "National Day of the victims of massacres committed during the Salvadoran armed conflict," and that the State carry out activities to remember and recover the memory of the victims of the massacres. The State agreed "to promote the designation of a national day, in honor of the victims of massacres and other grave human rights violations that occurred during the internal armed conflict." However, it indicated that this designation would have "a direct implication for many other victims of lamentable facts that occurred in different parts of the country at the time"; it therefore suggested adopting a dialogue mechanism in which the victims of other cases could participate, "so that the exact name and selection of the date can be established based on an ample consensus and the majority of the victims consider themselves represented."

377. In this regard, the Court does not consider it appropriate to order this measure requested by the representatives, because the delivery of this Judgment and the reparations ordered are sufficient and adequate to repair the violations suffered by the victims of this case.

378. In its final observations, the Commission asked the Court to order the State to arrange

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<sup>528</sup> Cf. Sworn statement made by María del Rosario López Sánchez before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5524); Sworn statement made by Pedro Chicas Romero before the *Oficina de Tutela Legal del Arzobispado* on July 25, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5530 to 5531); Sworn statement made by Santos Jacobo Chicas Guevara before the *Oficina de Tutela Legal del Arzobispado* on June 20, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5540); Sworn statement made by César Martínez Hernández before the *Oficina de Tutela Legal del Arzobispado* on June 22, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5548); Sworn statement made by Alejandro Hernández Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 3, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5574 to 5575); Statement made by María Dorila Márquez de Márquez before the Inter-American Court during the public hearing held on April 23, 2012; Sworn statement made by José Eliseo Claros Romero before the *Oficina de Tutela Legal del Arzobispado* on July 21, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5534); Sworn statement made by José Gervacio Díaz before the *Oficina de Tutela Legal del Arzobispado* on June 28, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5545); Sworn statement made by José Cruz Vigil del Cid before the *Oficina de Tutela Legal del Arzobispado* on June 19, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folio 5559); Sworn statement made by María Regina Márquez Argueta before the *Oficina de Tutela Legal del Arzobispado* on August 2, 2011 (evidence file, tome VIII, annex 3 to the pleadings and motions brief, folios 5586 to 5588); Affidavit provided by Sofía Romero Pereira on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10282); Affidavit provided by Eduardo Concepción Argueta Márquez on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10293); Affidavit provided by José Pablo Díaz Portillo on April 1, 2012 (evidence file, tome XVII, *affidavits*, folio 10299); Expert opinion provided by María Sol Yáñez De La Cruz before the Inter-American Court during the public hearing held on April 23, 2012, and Expert opinion on psychosocial impacts and recommendations for reparations in the case of "The Massacres of El Mozote and nearby places" provided by María Sol Yáñez De La Cruz, undated (evidence file, tome XVIII, annex 2 to the final written arguments of the representatives, folios 10542 to 10544 and 10552).

training for judicial and prosecution officials on the incompatibility between the Amnesty Law and the American Convention and the lack of legal effects on the investigation and punishment of those responsible for the human rights violations during the armed conflict. Regarding this request, the Court observes that it was not submitted at the correct procedural moment that is, in the brief submitting the case to the Court; consequently, it is time-barred and will not be considered.<sup>529</sup>

## **D. Compensation**

### **1) Pecuniary and non-pecuniary damage**

379. The Commission requested adequate reparation for both the pecuniary and non-pecuniary aspects of the human rights violations.

380. The representatives asked the Court to order the State to compensate the damage caused to the victims of the massacres of El Mozote and nearby places and their next of kin, based on the violations to their rights committed after June 6, 1995. In this regard, they asked the Court establish in equity the amount corresponding to each beneficiary for the damage caused; namely: (a) owing to "the lack of investigation of the facts due to the application of the Amnesty Law and the situation of impunity of the grave acts that occurred during the massacres." This reparation must be provided to both the surviving victims and the next of kin of the victims murdered in the massacres; (b) owing to "the scale of the massacre, as well as the knowledge that those responsible continue free and are even the object of tributes[, which] ha[d] resulted in suffering for the next of kin that survived, even when their relationship is not that close," and (c) owing to "the suffering caused due to the situation of displacement in which [the surviving victims] were forced to live for years, as well as the loss of their basic possessions, such as their homes and their means of subsistence, which they were never able to recover."

381. The State did not refer to these measures of reparation.

382. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it must be compensated. The Court has established that pecuniary damage supposes the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.<sup>530</sup> For its part, international case law has repeatedly established that the judgment may constitute *per se* a form of reparation.<sup>531</sup> Furthermore, in its case law, the Court has developed the concept of non-pecuniary damage and has established that "it may include both the suffering and affliction caused to the direct victim and his next of kin, the harm to values that are very significant to the individual, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his family."<sup>532</sup> In the instant case, the representatives did not argue a specific concept in relation to the alleged pecuniary and non-pecuniary damage and did not present evidence that proves the estimated costs of the said damage.

383. The Court does not have any evidence to prove the loss of earnings and the consequential losses suffered by the victims in this case. However, the Court considers it logical that, in cases such as this one, gathering evidence to prove this type of material loss and submitting it to the Court is a complex task. In addition, it is evident that the human rights

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<sup>529</sup> Cf. *Case of Radilla Pacheco v. Mexico*, para. 359, and *Case of Contreras et al. v. El Salvador*, para. 221.

<sup>530</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of González Medina and family members v. Dominican Republic*, para. 310.

<sup>531</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*, para. 35, and *Case of Furlan and family v. Argentina*, para. 319.

<sup>532</sup> *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of the Río Negro Massacres v. Guatemala*, para. 307.

violations declared in this case necessarily entail serious pecuniary consequences. Furthermore, the Court considers that, as a result of the violations that it has declared in this Judgment, it can be assumed that they produced serious non-pecuniary damage, because it is inherent in human nature that anyone who suffers a violation of his or her human rights experiences suffering.<sup>533</sup>

384. Based on the criteria established in this Court's consistent case law, the circumstances of this case, the scale, nature and severity of the violations committed, the damage arising from the impunity, as well as the physical, moral and mental suffering caused to the victims,<sup>534</sup> the Court finds it pertinent to establish, in equity, for pecuniary and non-pecuniary damage, the amounts indicated below, which must be paid within the time frame that the Court establishes in this regard (*infra* para. 397):

- a) US\$35,000.00 (thirty-five thousand United States dollars) to each of the victims of extrajudicial execution indicated in Annex "A" of this Judgment;
- b) US\$20,000.00 (twenty thousand United States dollars) to each of the surviving victims of the massacre indicated in Annex "B" of this Judgment, and
- c) US\$10,000.00 (ten thousand United States dollars) to each of the other family members of the victims who were executed, indicated in Annex "C" of this Judgment.

#### **E. Costs and expenses**

385. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.<sup>535</sup>

386. The representatives asked the Court to order the State to reimburse the corresponding costs and expenses. They requested the reimbursement of US\$20,837.95 (twenty thousand eight hundred and thirty-seven United States dollars and ninety-five cents) to the Center for Justice and International Law (CEJIL), for representation of the victims and their next of kin in the international proceedings as of 2000, which include travel, accommodation, communications, photocopies, stationery and mailings. They also presented a global estimate of the costs and expenses of the *Oficina de Tutela Legal del Arzobispado* calculated at US\$120,000.00 (one hundred and twenty thousand United States dollars), owing to the investigative proceedings started in 1990, the measures taken before the judicial and prosecution instances, and the costs for representation and monitoring the case at the inter-American level. In their final arguments brief, the representatives updated the amounts with the expenses incurred in "for the production of evidence and preparation for and participation in the public hearing," requesting an additional payment in favor of CEJIL of US\$26,350.58 (twenty six thousand three hundred and fifty United States dollars and fifty-eight cents), and in favor of *Tutela Legal del Arzobispado* of US\$6,090.93 (six thousand and ninety United States dollars and ninety-three cents). In brief, they requested a total of US\$47,188.53 (forty-seven thousand one hundred and eighty-eight United States dollars and fifty-three cents) in favor of CEJIL and US\$126,090.93 (one hundred and twenty-six thousand and ninety United States dollars and ninety-three cents) in favor of *Tutela Legal del Arzobispado*. Additionally, they asked the Court to order an additional amount for "future expenses" related to compliance with the judgment and the monitoring procedure.

387. The State affirmed that the amount of the costs and expenses requested by the representatives "exceeds the standard of precedents established by [the] Court." It also noted

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<sup>533</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 176, and *Case of the Río Negro Massacres v. Guatemala*, para. 307.

<sup>534</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, para. 109, and *Case of the Río Negro Massacres v. Guatemala*, para. 309.

<sup>535</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Vélez Restrepo and family members v. Colombia*, para. 303.

that the vouchers presented included photocopied documents that were not completely legible and others that were not clearly related to the costs and expenses arising from this case or that did not correspond to expenses incurred exclusively for this case, such as fuel, vehicle maintenance and computer equipment, newspaper subscriptions, and supplies such as licenses for software programs, servers, public domain registration, computer antivirus programs. Regarding this evidence, it indicated that the representatives had not clearly indicated its relationship to the case or the percentage of the expenses applied to each aspect. Therefore, it asked the Court to take these aspects into account when establishing the reasonable *quantum*, based on the application of the equity principle.

388. The Commission did not submit any arguments in this regard.

389. The Court reiterates that, in keeping with its case law,<sup>536</sup> costs and expenses are part of the concept of reparation, because the measures taken by the victims to obtain justice at both the national and the international level entail expenditure that must be compensated when the State's international responsibility has been declared in a guilty verdict. Regarding the reimbursement of costs and expenses, the Court must prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those arising during the proceedings before the inter-American system, taking into consideration the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>537</sup>

390. The Court has indicated that "the claims of the victims or their representatives for costs and expenses, together with the evidence to support them, must be presented to the Court at the first procedural moment granted them, namely in the pleadings and motions brief, without prejudice to these claims being updated subsequently, in keeping with the new costs and expenses incurred as a result of the proceedings before this Court."<sup>538</sup> The Court also reiterates that it is not sufficient to merely forward probative documents; rather the parties must present arguments that relate the evidence to the fact considered represented and, since this refers to alleged financial expenses, they must define the items and their justification clearly.<sup>539</sup>

391. The *Oficina de Tutela Legal del Arzobispado* has worked on the investigation, documentation, monitoring and processing of the litigation of this case at the national and international levels from 1990 to date. Regarding the evidence relating to its financial expenses, the Court verified that the vouchers sent correspond to the 2000 onwards and concern expenses relating to the arrangements for carrying out the exhumation and forensic work at different sites between 2000 and 2004, legal representation, documentation expenses, transportation, food, and per diem expenses, stationery, office supplies, computer maintenance, as well as the travel, accommodation, food and per diem expenses to attend the hearing held before the Court in this case in Guayaquil, Ecuador. The Court notes that the expenses authenticated by *Tutela Legal del Arzobispado* amount to approximately US\$117,116.41 (one hundred and seventeen thousand one hundred and sixteen United States dollars and forty-one cents). In this regard, the Court notes that: (a) some receipts refer, in general, to payrolls, documentation expenses, office supplies, gasoline, and vehicle maintenance, without specifying the percentage that corresponds to the expenses of this case; (b) some vouchers are for an expense that is not clearly and

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<sup>536</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, para. 79, and *Case of the Río Negro Massacres v. Guatemala*, para. 314.

<sup>537</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, para. 82, and *Case of the Río Negro Massacres v. Guatemala*, para. 314.

<sup>538</sup> *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of Vélez Restrepo and family members v. Colombia*, para. 307.

<sup>539</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 277, and *Case of Vélez Restrepo and family members v. Colombia*, para. 307.

precisely linked to the instant case, and (c) some vouchers do not show a specific expenditure. In equity, these concepts have been deducted from the estimate established by this Court.

392. The Court has also verified that the Center for Justice and International Law (CEJIL) incurred expenses related to the processing of the litigation at the international level starting in October 2005. The representatives forwarded the vouchers for the said expenses that are related to: expenses for the processing of the case in El Salvador, which include travel, accommodation, food, and communication services; workshops held with the victims to prepare the case; travel expenses to Guayaquil, Ecuador, to attend the hearing held before the Court in this case; expenses for the appearance of deponents during the public hearing, and expenses for the preparation of the expert opinion of Yáñez De La Cruz. In addition, the Court observes that CEJIL requested proportionate payment for legal representation, as well as messenger services and stationery. The Court notes that the expenses authenticated by CEJIL amount to approximately US\$45,867.11 (forty-five thousand eight hundred and sixty-seven United States dollars and eleven cents). In this regard, the Court observes that some of the expense vouchers presented by the representatives do not correspond only to expenses incurred owing to this case; others do not indicate a specific concept for the expense, are illegible or are not linked to the case, and some refer to expenses covered by resources from the Victims' Legal Assistance Fund (*supra* para. 12). Therefore, in equity, these concepts have been deducted from the calculation made by the Court.

393. Consequently, the Court decides to establish, in equity, the sum of US\$70,000.00 (seventy thousand United States dollars) for *Tutela Legal del Arzobispado* for reimbursement of costs and expenses for the work carried out in the search for the executed victims by expediting the exhumations and the litigation of the case at the domestic and international levels since 1990 and, in addition, the Court establishes for the Center for Justice and International Law (CEJIL), in equity, a total sum of US\$30,000.00 (thirty thousand United States dollars) for reimbursement of costs and expenses for the international litigation of the case since the 2006. These amounts must be delivered directly to the representative organization. The Court considers that, during the proceedings of monitoring compliance with this Judgment, it may order the State to reimburse the victims or their representatives the reasonable expenses incurred during that procedural stage.

#### **F. Reimbursement of the disbursements from the Victims' Legal Assistance Fund**

394. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System, the purpose of which "is to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their case before the system."<sup>540</sup> In the instant case, the financial assistance needed for the appearance of María Dorila Márquez de Márquez, María del Rosario López Sánchez, María Margarita Chicas Márquez and María Sol Yáñez De la Cruz at the public hearing held in Guayaquil, Republic of Ecuador, was granted from this Fund (*supra* paras. 12 and 13).

395. The State had the opportunity to present its observations on the disbursements made in this case, which amounted to US\$6,034.36 (six thousand and thirty-four United States dollars and thirty-six cents). El Salvador indicated that the details of the expenses in relation to the items covered is in keeping with the Order of the President of the Court that granted the financial assistance; therefore it had no observations to make on them. In addition, it asked the Court, when evaluating whether it is appropriate to order the reimbursement of these disbursements, to "take into consideration the good will manifested during the [...] proceedings before the [...] Court." Consequently, it corresponds to the Court, in application of article 5 of the

<sup>540</sup> AG/RES. 2426 (XXXVIII-O/08), resolution adopted by the thirty-eighth OAS General Assembly during the fourth plenary session held on June 3, 2008, "Establishment of the Legal Assistance Fund of the inter-American human rights system," Operative paragraph 2(a), and CP/RES. 963 (1728/09), resolution adopted on November 11, 2009, by the OAS Permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the inter-American human rights system," Article 1(1).



Rules of the Fund, to evaluate whether it is appropriate to order the respondent State to reimburse the disbursements made from the Legal Assistance Fund.

396. Based on the violations declared in this Judgment, the Court orders the State to reimburse this Fund the sum of US\$6,034.36 (six thousand and thirty-four United States dollars and thirty-six cents) for the expenditure incurred for the appearance of the deponents at the public hearing in this case. This amount must be reimbursed within 90 days of notification of this Judgment.

**G. Method of compliance with the payments ordered**

397. The State must make the payments for compensation of pecuniary and non-pecuniary damage and for reimbursement of costs and expenses established in this Judgment directly to the individuals and organizations indicated herein, in equal annual installments over five years calculated from notification of this Judgment, without prejudice to making the complete payment before the final date.

398. If the beneficiaries have died or die before the payment of the respective amounts, these shall be paid directly to their heirs, in accordance with the applicable domestic law or using the most suitable mechanism that is agreed on during the discussions with the victims and their representatives.

399. The State must comply with its monetary obligations by payment in United States dollars.

400. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, the payment of the specified amounts cannot be made within the indicated time frame, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a solvent Salvadoran financial institution, in United States dollars, and in the most favorable financial conditions permitted by law and banking practice. If, after ten years, the corresponding compensation has not been claimed, the amounts shall be returned to the State with the accrued interest.

401. The amounts allocated in this Judgment as compensation and reimbursement of the costs and expenses must be delivered in full to the individuals and organizations indicated, as established in this Judgment, without deductions arising from eventual taxes or charges.

402. If the State should fall into arrears with the payments, it must pay interest on the amount owed corresponding to bank interest of arrears in El Salvador.

**X  
OPERATIVE PARAGRAPHS**

403. Therefore,

**THE COURT**

**DECIDES,**

Unanimously, that:

1. It accepts the acknowledgment of the facts made by the State, in accordance with paragraphs 17 to 28 of this Judgment.

## **DECLARES,**

Unanimously that:

1. The State is responsible for the violation of the rights to life, to personal integrity and to property recognized in Articles 4, 5(1), 5(2), 21(1) and 21(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and, additionally, in relation to Article 19 with regard to the children, to the detriment of the victims who were executed, listed in Annex "A", in accordance with paragraphs 142 to 157, 159 to 162, 168, 203 and 208 of this Judgment.
2. The State is responsible for the violation of the right to personal liberty recognized in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the victims who were executed in the village of El Mozote, listed in Annex "A", in accordance with paragraphs 158, 203 and 208 of this Judgment.
3. The State is responsible for the violation of the prohibition of torture or cruel, inhuman or degrading treatment or punishment, established in Article 5(2), as well as for the violation of the right to privacy recognized in Article 11(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of women who were victims of rape in the village of El Mozote, in accordance with paragraphs 163 to 167, 204 and 208 of this Judgment.
4. The State is responsible for the violation of the rights to personal integrity, to privacy and domicile, and to property recognized in Articles 5(1), 5(2), 11(2), 21(1) and 21(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and, additionally, in relation to Article 19 with regard to the children, to the detriment of the victims who survived the massacre, listed in Annex "B", in accordance with paragraphs 170 to 182, 205 and 208 of this Judgment.
5. The State is responsible for the violation of the right to freedom of movement and residence recognized in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and, additionally, in relation to Article 19 with regard to the children, to the detriment of the persons who were forced to displace within El Salvador and to the Republic of Honduras, listed in Annex "D", in accordance with paragraphs 183 to 196, 207 and 208 of this Judgment.
6. The State is responsible for the violation of the rights to personal integrity and to property, recognized in Articles 5(1), 5(2), 21(1) and 21(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims who were executed, listed in Annex "C", in accordance with paragraphs 197 to 202, 206 and 208 of this Judgment.
7. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, as well as failure to comply with the obligations established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará," with regard to the victims who survived the massacres, listed in Annex "B", as well as the next of kin of the victims who were executed, listed in Annex "C", in accordance with paragraphs 242 to 249, 251 to 252, 255 to 264, 283 to 295, 298 and 299 to 301 of this Judgment.
8. The State has failed to comply with the obligation to adapt its domestic law to the American Convention on Human Rights, contained in Article 2, in relation to Articles 8(1), 25 and 1(1) of this instrument, to the detriment of the victims who survived the massacres, listed

in Annex "B", as well as the next of kin of the victims who were executed, listed in Annex "C", in accordance with paragraphs 283 to 296 and 299 to 301 of this Judgment.

**AND ORDERS,**

Unanimously that,

1. This Judgment constitutes *per se* a form of reparation.
2. The State must continue to implement fully the "Single List of Victims and Next of Kin of Grave Violations of Human Rights during the Massacre of El Mozote" and adopt the necessary measures to ensure its permanence and the budgetary allocation for its effective functioning, in accordance with paragraphs 310 and 311 of this Judgment.
3. The State must, within a reasonable time, initiate, expedite, re-open, supervise, continue and conclude, as appropriate, with the greatest diligence, the investigations into all the facts that resulted in the violations declared in this Judgment, in order to identify, prosecute and, as appropriate, punish those responsible, in accordance with paragraphs 315 to 321 of this Judgment.
4. The State must ensure that the Law of General Amnesty for the Consolidation of the Peace never again represents an obstacle to the investigation of the facts that are the subject matter of this case or to the identification, prosecution and eventual punishment of those responsible for them and for other similar grave human rights violations that took place during the armed conflict in El Salvador, in accordance with paragraph 31 of this Judgment.
5. The State must, within a reasonable time, investigate, through the competent public institutions, the conduct of the officials who obstructed the investigations and allowed the facts to remain in impunity and, following a suitable proceeding, apply, if appropriate, the corresponding administrative, disciplinary or criminal sanctions to those found responsible, in accordance with paragraphs 325 and 326 of this Judgment.
6. The State must review the information available on possible interment or burial sites, which must be protected to preserve them, in order to initiate, systematically and rigorously and with the adequate human and financial resources, the exhumation, identification and, when appropriate, return of the remains of those executed to their next of kin, in accordance with paragraphs 331 to 334 of this Judgment.
7. The State must implement a development program for the communities of the village of El Mozote, the canton of La Joya, the villages of Ranchería, Los Toriles and Jocote Amarillo and the canton of Cerro Pando, in accordance with paragraphs 339 and 340 of this Judgment.
8. The State must guarantee suitable conditions so that the displaced victims may return to their original communities on a permanent basis, if they wish, and also implement a housing program in the areas affected by the massacres in this case, in accordance with paragraphs 345 and 346 of this Judgment.
9. The State must implement a permanent and comprehensive program of physical, mental and psychosocial care and attention, in accordance with paragraphs 350 to 353 of this judgment.
10. The State must make the publications indicated in paragraph 361 of this Judgment.
11. The State must make an audiovisual documentary about the grave acts committed in the massacres in El Mozote and nearby places, in accordance with paragraph 365 of this judgment

12. The State must implement a permanent and compulsory program or course on human rights, with a children- and gender-based perspective, for all ranks of the Salvadoran Armed Forces, in accordance with paragraphs 368 and 369 of this judgment.

13. The State must pay the amounts established in paragraphs 384 and 393 of this judgment, as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, in accordance with the said paragraphs and paragraphs 397 to 402 of this judgment.

14. The State must reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, in accordance with paragraph 396 of this Judgment.

15. The State must, within one year of notification of this Judgment, provide the Inter-American Court of Human Rights with a report on the measures taken to comply with it.

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

Judges Diego García-Sayán and Eduardo Vio Grossi advised the Court of their Concurring Opinions, which accompany this Judgment.

Done, at San José, Costa Rica, on September 3, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán  
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE DIEGO GARCIA-SAYÁN**  
**JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF THE MASSACRES OF EL MOZOTE AND NEARBY PLACES v. EL SALVADOR**  
**OF OCTOBER 25, 2012**

1. On several occasions, the Inter-American Court of Human Rights has referred in its judgments to the issue of amnesties in relation to the protection of human rights and the obligation of the State to investigate and, as appropriate, punish serious human rights violations.
2. For a long time, the question of amnesties has been a significant issue in international law, in international relations, and in the examination of non-international armed conflicts. In Latin America, throughout the twentieth century, amnesties were routinely used as a tool to end civil wars, outbreaks of violence, failed coups d'état, and different armed conflicts. At least until the early 1990s, these amnesties were used without any preliminary discussion or analysis.
3. In more recent times, they are a matter of growing relevance in international human rights law, as indicated in various judgments of the Inter-American Court that refer to the issue. The problem concerns horrendous events and contexts that usually give rise to these controversial responses by the law. Authoritarian or dictatorial regimes, political transition processes, internal tensions or armed conflicts, among other matters, within frameworks that are usually very complex, from a political and social perspective, usually provide the objective conditions based on which amnesties are proposed.
4. Regardless of the decision in previous cases, the question of amnesties and their relationship to the obligation to investigate and punish serious human rights violations requires an analysis that provides appropriate criteria for a considered opinion in contexts in which tensions could arise between the demands of justice and the requirements of a negotiated peace in the framework of a non-international armed conflict. This concurring opinion addresses precisely these issues, based on the Court's judgment in this case.
5. It is well-known that the "exemplary" case establishing what, for some, is the Court's interpretation of this issue is the *case of Barrios Altos v. Peru* decided on March 14, 2001. In the most known and most quoted paragraph of this judgment, the Court established that:

*"41. [...] amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law."*

6. In that specific case, this approach was in response to two laws enacted in Peru in 1995, which the Court described in its judgment as "self-amnesties." The condition of "self-amnesty" of the laws examined was so relevant, that it appeared that the Court had limited its interpretation to that type of amnesty.<sup>1</sup>

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<sup>1</sup> This interpretation could arise from the considerations in paragraph 43 of this judgment: "43. That is why the States Parties to the Convention that adopt laws that have this effect, such as self-amnesty laws, incur in a violation of Articles 8 and 25 in relation to Articles 1(1) and 2 of the Convention" (underlining added).

7. On that occasion, the concurring opinions of Judges García Ramírez and Cançado Trindade, whose reasoning I share, emphasized the contradiction between the “self-amnesty laws” and “*the general obligations of the State under the American Convention on Human Rights.*”<sup>2</sup> It was affirmed that “[t]he so-called self-amnesties are, in sum, an inadmissible offence against the right to truth and the right to justice (starting with the very access to justice)”;<sup>3</sup> that “[...] the perverse modality of the so-called laws of self-amnesty, even if they are considered laws under a given domestic legal order, are not so in the sphere of international human rights law of”;<sup>4</sup> that “[...] ‘laws’ of this kind are devoid of a general nature, as they are measures of exception”<sup>5</sup>, and that “[...] the so-called ‘laws’ of self-amnesty are not truly laws: they are nothing but an aberration, an inadmissible affront to the juridical conscience of humanity.”<sup>6</sup>
8. Since then, the Inter-American Court has had the opportunity to examine and rule on different cases on amnesty laws and their application. In these cases, the Court focused on the substantive incompatibility between the amnesty provisions and the State's obligations in relation to human rights violations. This was based on the underlying purpose of the law, its *ratio legis*: to leave these grave violations unpunished, rather than on the process of the adoption of the law or the authority that enacted it. These are the cases of *Almonacid Arellano et al. v. Chile* (2006), *La Cantuta v. Peru* (2006), *Gomes Lund et al. v. Brazil* (2010) and *Gelman v. Uruguay* (2011). In these cases, the Court followed its case law in the *Barrios Altos* case and further developed some aspects. In general, it reiterated what it had already indicated regarding the “*the incompatibility of amnesty laws relating to serious human rights violations with international law and the international obligations of States*”<sup>7</sup> and that the provisions of amnesty laws that prevent the investigation and punishment of serious human rights violations have no legal effects and, therefore, cannot obstruct the investigation of the facts and the identification and punishment of those responsible for human rights violations.<sup>8</sup>
9. Each of the cases on amnesty laws examined by the Court up until the massacres of El Mozote and nearby places had its own characteristics, nuances and emphasis, either with regard to the context in which the law originated or its scope. However, they all had in common that none of these amnesty laws was created in the context of a process aimed at ending, through negotiations, a non-international armed conflict.
10. This amnesty case arises from a different context to all the previous ones. This has implications for the analysis and legal characterization of the facts, and for the Court's concepts and considerations on this amnesty law enacted following an armed conflict and a peace negotiation process. That is why, according to the Court's reasoning, it has been necessary to take into account not only the norms and principles of international human rights law, but also the relevant provisions of international humanitarian law in view of the context in which the events occurred.
11. As described throughout this judgment, the facts of the massacres of El Mozote and nearby places occurred in the context of a non-international armed conflict. As it developed throughout the 1980s it had reached a point at which the global and regional

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<sup>2</sup> Concurring opinion of Judge Sergio García Ramírez, para. 1.

<sup>3</sup> Concurring opinion of Judge Antonio A. Cançado Trindade, para. 5.

<sup>4</sup> *Ibid.*, para. 6.

<sup>5</sup> *Ibid.*, para. 7.

<sup>6</sup> *Ibid.*, para. 26.

<sup>7</sup> *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010, para. 147.

<sup>8</sup> *Case of Gelman v. Uruguay*. Judgment of February 24, 2011, para. 232.

conditions arose coalesced to seek and achieve peace through negotiation. Under the Esquipulas II Agreement, signed in August 1987, the Presidents of five Central American countries agreed to seek a solution to the internal armed conflicts underway in El Salvador and other Central American countries. Among other matters, dialogue and reconciliation were proposed as solutions to the conflicts, and the cessation of hostilities and the democratization of Central American societies were counseled.<sup>9</sup>

12. The Salvadoran peace negotiations began, as the judgment recalls,<sup>10</sup> after the Central American Presidents requested the intervention of the Secretary-General of the United Nations. In September 1989, an agreement was signed between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN) to initiate a dialogue process and to end, by political means, the armed conflict in El Salvador. Following the signature of the partial agreements (the first was the Human Rights Accord signed on July 26, 1990), the peace agreement was finally completed on December 31, 1991, and was formally signed on January 16, 1992, at Chapultepec Castle in Mexico City.
13. As this was a negotiated end to a long and intense armed conflict, it was no surprise that the question of what to do about the past was raised. First in the process that led to the signature of the peace and its implementation and, then, within the framework of the on-site verification by ONUSAL, the United Nations Mission in El Salvador. Thus, the Mexico Accords of April 27, 1991, referred specifically to the effects of the violence during the armed conflict and, to this end, established the creation of the Truth Commission, whose recommendations the parties undertook to comply with. In the final peace accord of January 16, 1992, there was agreement on *"the need to clarify and to overcome any indication of impunity regarding the officers of the Armed Forces, especially in cases where there was a commitment to respect human rights"* and the Truth Commission was cited to this end, emphasizing that events of this kind must *"[...] be used as exemplary action by the courts of justice."*
14. A few days after the signature of the Peace Accord,<sup>11</sup> the "National Reconciliation Law" of January 23, 1992, was adopted. It granted amnesty to those who had *"participated as masterminds, perpetrators or accomplices in committing ordinary political offenses and ordinary offenses committed by no less than twenty persons, prior to January 1, 1992, with the exception, in all cases, of the common offense of kidnapping, defined in article 220 of the Criminal Code."*<sup>12</sup> The same law excluded from this pardon those who *"[...] according to the report of the Truth Commission, had participated in serious acts of violence since January 1, 1980, whose impact on society demands public awareness of the truth with greater urgency, irrespective of the sector to which they belong."*
15. Subsequently, the Truth Commission explained<sup>13</sup> the need to meet the requirements of justice in two ways: *"[o]ne is the punishment of those responsible; another is the*

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<sup>9</sup> Among other aspects, the Esquipulas II Agreement contained an explicit reference to amnesty: "In every Central American country, with the exception of those in which the International Support and Verification Committee determines that it is not necessary, amnesty decrees shall be issued that shall establish all the provisions that guarantee the inviolability of life, liberty in all its forms, property and the safety of the people to whom these decrees apply. Simultaneously with the issue of the amnesty decrees, the irregular forces of the respective country shall release all those who are in its power. "

<sup>10</sup> Para. 266 of the Judgment.

<sup>11</sup> Para. 274 of the Judgment.

<sup>12</sup> National Reconciliation Law. Legislative Decree N° 147, published on January 23, 1992.

<sup>13</sup> Para. 290 of the Judgment.



*reparation due to the victims and their families.*" Thus, according to the agreement reached by the parties, the route proposed by the Truth Commission, whose recommendations the parties had undertaken to comply with, was that of justice and reparation with regard to the cases it handled. This was consistent with the spirit and letter of what the parties had negotiated and specified in the Peace Accord. Nevertheless, within days of the publication of the Truth Commission's report, the General Amnesty Law was enacted with a very different purpose.

16. A context such as the one outlined here – and that is described in more detail in the judgment – is different from the one that preceded the other amnesty laws to which the Court's case law has referred. Thus, as previously indicated, the Court's analysis and reasoning has characteristics that led it to incorporate elements of international humanitarian law elements to produce an interpretation that harmonized with the obligations established in the American Convention, in order to make a juridical assessment of amnesty in a context such as this one.
17. There is no norm in positive international law that has explicitly prescribed any kind of amnesty. The only explicit mention of amnesty in a multilateral treaty is contained in article 6(5) of Protocol II Additional to the Geneva Conventions of August 12, 1949.<sup>14</sup> In the commentaries to that article, the International Committee of the Red Cross (ICRC) indicated that its purpose "[...] *is to encourage a gesture of reconciliation that will help restore the normal course of life in a people that has been divided.*"<sup>15</sup> According to the Proceedings of the Diplomatic Conference in which Additional Protocol II was adopted in 1977,<sup>16</sup> the meaning of that norm was to grant immunity to those detained or punished for involvement in the armed conflict.
18. Pursuant to the foregoing, in this judgment, the Court has indicated that, even though amnesties may be permitted as a component of the ending of a non-international armed conflict, they have a limit which is in relation to war crimes and crimes against humanity, so that these crimes cannot remain unpunished or be forgotten (see paragraphs 285 and 286 of the judgment). These limits are also found in what some call "*sources implicitly related to amnesty.*"<sup>17</sup>
19. Moreover, within the United Nations it has been stated "*that peace agreements approved by the United Nations can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights.*"<sup>18</sup> For its part, the Rome Statute of the International Criminal Court, although applicable only to crimes falling within its competence and jurisdiction, entails the obligation of the States parties to hold

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<sup>14</sup> Article 6(5) of Protocol II, establishes that "*at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.*"

<sup>15</sup> ICRC. Comments to the Protocol of June 8, 1997, additional to the Geneva Convention of August 12, 1949, relating to the protection of victims of non-international armed conflict. Colombia. 1998. Page 168.

<sup>16</sup> Proceedings of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974-1977). Volume 9. Geneva, Switzerland.

<sup>17</sup> Freeman, Mark. Necessary Evils. Amnesties and the Search for Justice. Cambridge University Press. 2009. Page 36. It underscores Article I of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, certain regulations contained in the Geneva Conventions and Protocol I on international conflicts, Article 7 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (1984); Article 6 of the Convention to Prevent and Punish Torture 1985; Article IV of the Inter-American Convention on Forced Disappearance of Persons, 1994, and the International Convention for the Protection of All Persons from Enforced Disappearances, 2006.

<sup>18</sup> Report of the Secretary-General on the rule of law and transitional justice in societies experiencing or emerging from conflict. U.N. Doc S/2004/616. 3 August 2004. para. 10.

credible trials for the crimes defined therein (genocide, crimes against humanity and war crimes).

20. The fact is that, in the specific context of processes of widespread violence and non-international armed conflicts, amnesties may lead, at least in theory and according to the specific case or circumstance, in different directions. Consequently, this creates a whole range of possible outcomes that can delimit the exercise of assessing the interests at stake in order to combine the aim of investigating, punishing, and repairing gross human rights violations, on the one hand, with that of national reconciliation and a negotiated solution to a non-international armed conflict, on the other. There is no universally applicable solution to the dilemmas posed by these opposing forces, because it depends on the specific context, although there are guidelines that must be taken into account.
21. Based on international human rights law and, particularly the American Convention, some fundamental criteria can be outlined in order to deal with these opposing forces, which are basically justice and reconciliation.
22. A first and obvious starting point is that the anomalous and exceptional situation of a non-international armed conflict signifies that there are many thousands of violent offenders and, above all, victims. This exceptional situation usually requires exceptional mechanisms of response. The crucial element is to develop a method of assessment that deals, to the greatest extent possible, with this tension between justice and the ending of the conflict. To this end, several components must be taken into consideration, both judicial and non-judicial, that are focused, simultaneously, on seeking the truth, justice and reparation. This is because the demands that arise from massive violations, the responses to the aftermath of the conflict, and the search for long-lasting peace, require both the States and society as a whole to apply concurrent measures that permit the greatest simultaneous attention to these three rights.
23. In this context, the rights of the victims to truth, justice and reparation must be understood as interdependent. Only the integrated application of measures in favor of victims in all these areas can achieve results that are effective and consistent with the inter-American human rights system. Thus, the simple application of criminal sanctions, without these implying a serious effort to find and report the whole truth, could become a bureaucratic process that does not satisfy the valid objective of the victims to obtain the greatest possible truth. Furthermore, the award of reparations without knowledge of the truth about the violations that occurred, and without establishing conditions for a lasting peace, would only produce an apparent relief for the victims, but not a change in the conditions that would permit a recurrence of the violations.
24. These fundamental components can serve, in whole or in part, in the design of procedures that are suitable for the specificity of a process of negotiated solution to a non-international armed conflict. This, within a perspective in which the greater or lesser severity of the facts can make a specific processing of the facts viable – or not. Thus, for example, facts that can be categorized as war crimes or crimes against humanity in the definitions of the Statute of the International Criminal Court should merit being processed specifically and with priority, and this is not necessarily the same for the other crimes or human rights violations.
25. As for the truth component, in addition to the essential issue of the “judicial truth,” which I discuss below in relation to the element of justice, on many occasions, this has led to the implementation of mechanisms such as truth commissions. However, the concept of “truth” is not unique and opens the door to different interpretations. Alex

Boraine,<sup>19</sup> former vice-chairperson of the Truth and Reconciliation Commission of South Africa conceptualized the "truth" in this type of situation at three levels: factual truth, personal truth, and social truth. The "factual" truth gives the family specific information on the whereabouts of the mortal remains of the victim or on what happened. The "personal" truth seeks a cathartic effect on the person who expresses or manifests that truth. The "social" truth is that which is adopted by society through dialogue and debate. In pursuit of this "social truth", an important role is played by measures such as access to the documentation held by the State, the revision of scholarly texts, and the construction of museums or memorials relating to what happened.

26. With regard to the element of justice, the State's legal obligation to investigate and punish the most serious human rights violations is - as the Court has repeatedly stated - an obligation of means and forms part of the obligation of guarantee established in the Convention. Thus, States must make adequate remedies available for victims to exercise their rights. However, armed conflict and negotiated solutions give rise to various issues and introduce enormous legal and ethical requirements in the search to harmonize criminal justice and negotiated peace
27. This harmonization must be carried out by weighing these rights in the context of transitional justice itself. Thus, particularities and specificities may admittedly arise when processing these obligations in the context of a negotiated peace. Therefore, in these circumstances, States must weigh the effect of criminal justice both on the rights of the victims and on the need to end the conflict. But to be valid in international law, they must abide by certain basic standards relating to what can be processed and implemented in several ways, including the role of truth and reparation.
28. It can be understood that this State obligation is broken down into three elements. First, the actions aimed at investigating and establishing the facts. Second, the identification of individual responsibilities. Third, the application of punishments proportionate to the gravity of the violations. Even though the aim of criminal justice should be to accomplish all three tasks satisfactorily, if applying criminal sanctions is complicated, the other components should not be affected or delayed.
29. The right of the victims and of society to access the truth of what happened acquires a special weight that must be considered by an adequate assessment in order to delineate the specifics of justice in such a way that it is not antagonistic to the transitional justice required in peace and reconciliation processes. In that context, specific guidelines can be designed for processing those responsible for the most serious violations, opening the way, for example, to giving priority to the most serious cases as a way to handle a problem which, in theory, could apply to many thousands of those held for trial, dealing with less serious cases by other mechanisms.
30. In this context, it is necessary to devise ways to process those accused of committing serious crimes such as the ones mentioned, in the understanding that a negotiated peace process attempts to ensure that the combatants choose peace and submit to justice. Thus, for example, in the difficult exercise of weighing and the complex search for this equilibrium, routes towards alternative or suspended sentences could be designed and implemented; but, without losing sight of the fact that this may vary substantially according to both the degree of responsibility for serious crimes and the extent to which responsibility is acknowledged and information is provided about what happened. This may give rise to important differences between the "perpetrators" and those who performed functions of high command and gave the orders.

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<sup>19</sup> Boraine, Alex. *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*. Oxford University Press. Oxford and New York, 2000.

31. It is relevant to consider the shared responsibilities of those involved in an armed conflict with regard to serious crimes. The acknowledgment of responsibility by the most senior leaders can help promote a process of clarifying both the facts and the structures that made such violations possible. Reduction of sentences, alternative punishments, direct reparation from the perpetrator to the victim, and public acknowledgment of responsibility are other ways that can be considered.
32. Full reparation is the third essential element of transitional justice in such a context. It aims to restore relationships of trust within society and seeks to lay the foundations for processes that prevent the repetition of the tragedy that violated this trust, because of the non-international armed conflict. Evidently, this is based on the principle that all violations of international law entail an obligation that they must be repaired and, in this respect, the case law of the Inter-American Court of Human Rights has made a significant contribution.<sup>20</sup> Regarding reparations, there is an extensive array of options that range from pecuniary compensation to measures of rehabilitation and satisfaction, among others.
33. As has been noted in some studies, the component of reparation has its own difficulties – and even impossibilities – in the case of massive and widespread violations of the human rights.<sup>21</sup> In these situations, it would seem that the objectives of these massive programs of reparations is not so much to reinstate the victims to the *status quo ante*, but rather to provide clear signals that the rights and dignity of people will be fully respected.<sup>22</sup> In any case, the legitimacy and effectiveness of reparation programs in these circumstances requires, as an essential ingredient, the design and implementation of effective mechanisms for the participation of those people at whom the programs are directed.<sup>23</sup>
34. Finally, an essential ingredient of reparation, not only for the victims but also for society as a whole, consists in the apologies and accounts of the perpetrators and the acknowledgments of responsibility. The full confession of the facts for which they may have been responsible is an inevitable ingredient - but not the only one - for reparation. It is also a message to society in order to close the door on violence as a way to deal with political or social differences. These “didactic monuments,”<sup>24</sup> as they are an account of atrocities, remind society about what can happen when an armed conflict breaks out and reinforce the capabilities of society in the face of future threats that something like that could happen again.
35. The acknowledgment of responsibility by senior State officials has been introduced consistently in the case law of the Inter-American Court. This is an essential ingredient of transitional justice that seeks to reconstruct the conditions for democratic institutional viability in a society. Although there are many precedents for this kind of act, they multiplied in certain parts of the world at the end of the Cold War.<sup>25</sup> Tony Blair in Great

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<sup>20</sup> International law has established this principle explicitly, not only in Articles 10, 63 and 68 of the American Convention, but in many other international instruments such as the Universal Declaration of Human Rights (Article 8), the European Convention on Human Rights (art. 50), the International Covenant on Civil and Political Rights (Article 9), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (art. 14).

<sup>21</sup> De Greiff, Pablo. *Repairing the Past: Confronting the Legacies of Slavery, Genocide, & Caste*. Yale University, Connecticut. October, 2005. Page 8.

<sup>22</sup> Ibid. Page. 10.

<sup>23</sup> Ibid. Pages 10-11.

<sup>24</sup> Osiel, Mark. *Mass Atrocity, Collective Memory and the Law*. Transaction Publishers, New Brnswick, 1999. Page. 4.

<sup>25</sup> Hazan, Pierre. *Measuring the impact of punishment and forgiveness: a Framework for evaluating transitional justice*. International Review of the Red Cross. Volume 88, Number 861. March 2006. Page 24.

Britain apologized for British responsibility in the nineteenth century Irish famine, Jacques Chirac for the deportation of French Jews to Nazi concentration camps during World War II, and Bill Clinton for the inaction of the United States government during the Rwanda genocide or for the support to dictatorships in Latin America.<sup>26</sup> In the context of processes of transition from internal armed conflict to peace, these acknowledgments acquire special relevance and significance as an ingredient that strengthens and sustains the others.

36. Thus, according to the context derived from the conclusion of the armed conflict, societies can demand that mechanisms exist that are complementary to the obligation of criminal justice and that satisfy the aspirations of the victims to a greater or lesser extent. Truth commissions, instruments for integral reparation, mechanisms to provide care and attention, the protection of vulnerable populations, purges in the public sector, and institutional reforms are some of the options that legislators and leaders have when deciding State policies, in combination with the application of criminal justice developed within a framework of weighing the elements.
37. A negotiated solution to the internal armed conflict raises several issues regarding the weighing of these rights, within the legitimate discussion on the need to conclude the conflict and put an end to future serious human rights violations. States have a legal obligation to address the rights of the victims and, with the same intensity, the obligation to prevent further acts of violence and to achieve peace in an armed conflict by the means at its disposal. Peace as a product of a negotiation is offered as a morally and politically superior alternative to peace as a result of the annihilation of the opponent. Therefore, international human rights law should consider that peace is a right and that the State must achieve it.
38. Thus, in certain transitional situations between armed conflicts and peace, it can happen that a State is not in a position to implement fully and simultaneously, the various international rights and obligations it has assumed. In these circumstances, taking into consideration that none of those rights and obligations is of an absolute nature, it is legitimate that they be weighed in such a way that the satisfaction of some does not affect the exercise of the others disproportionately. Thus, the degree of justice that can be achieved is not an isolated component from which legitimate frustrations and dissatisfactions can arise, but part of an ambitious process of transition towards mutual tolerance and peace.

Diego García-Sayán  
Judge

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<sup>26</sup> Ibid.

Pablo Saavedra Alessandri  
Secretary

Judges Leonardo A. Franco, Margarete May Macaulay, Rhadys Abreu Blondet and Alberto Pérez Pérez adhered to this Opinion of Judge Diego García-Sayán.

Leonardo A. Franco  
Judge

Margarete May Macaulay  
Judge

Rhadys Abreu Blondet  
Judge

Alberto Pérez Pérez  
Judge

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI  
CASE OF THE MASSACRES OF EL MOZOTE AND NEARBY PLACES  
v. EL SALVADOR**

**JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF OCTOBER 25, 2012  
(Merits, reparations and costs)**

This concurring opinion is issued with regard to the above-mentioned Judgment in order to place on record that, since the Court found it proved that pregnant women had been executed in the said massacres<sup>1</sup> and that the remains of a fetus were even recovered during the corresponding exhumations,<sup>2</sup> the undersigned proposed that the Court should clarify whether the latter and the other unborn children found in the wombs of those pregnant women, should be considered victims in this case.

This opinions is also issued to indicate that, since the main dispute in this case focused on the international responsibility of the Republic of El Salvador for the said massacres and not on what should be understood by person or human being under Article 4(1) of the American Convention on Human Rights,<sup>3</sup> the undersigned hopes that this issue will be addressed by the Inter-American Court of Human Rights when hearing a case that is more specifically and directly related to the issue and, on that occasion, express its opinion in that regard.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>1</sup> Paragraphs 52, 153 and 156.

<sup>2</sup> Paragraph 235.

<sup>3</sup> *"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."*

**ANNEX "A"**  
**List of victims who were executed**

1.	Abelino Rodríguez Márquez
2.	Adolfo Arturo Márquez
3.	Agustina Argueta Márquez
4.	Agustina Martínez
5.	Alejandra Romero
6.	Alexis Mejía Romero
7.	Álvaro Claros Márquez or Guevara Díaz
8.	Ambrosio Guevara
9.	Amelia Sánchez
10.	Aminta Vigil Argueta
11.	Amparo Márquez
12.	Ana Eva Claros Romero
13.	Ana María Romero Pereira
14.	Ana Vilma or Francisca Vilma Márquez Márquez
15.	Anastacia or María Anastacia Márquez
16.	Anastacia Vigil Márquez
17.	Anastasio or Anastacio Chicas Romero
18.	Andrés Argueta Ramos
19.	Ángel Vigil Márquez
20.	Ángela Argueta
21.	Ángela del Cid
22.	Angélica Márquez
23.	Antolín Díaz Portillo
24.	Antolina Claros
25.	Antonia Márquez del Cid
26.	Aquilino Díaz Martínez or Sáenz
27.	Arístides Chicas Argueta
28.	Arístides Díaz Argueta
29.	Arnoldo López Martínez
30.	Arnoldo Márquez Chicas
31.	Aurelia Ramírez
32.	Basilio Alexí Márquez
33.	Basillio Argueta Ramos
34.	Benedicto Márquez
35.	Benedicto Márquez Márquez
36.	Benito Claros Romero
37.	Benito Romero
38.	Benjamín Claros
39.	Benjamín Vigil
40.	Bernabé Guevara Chicas
41.	Bernarda Martínez or López Martínez
42.	Bernardina or Bernarda Márquez
43.	Bertoldino Pereira
44.	Beti Claros Márquez or Betty Guevara



	Díaz
45.	Bonifacia Rodríguez or Anastasia Argueta
46.	Bruno Alfredo Argueta
47.	Bruno Antonio Claros
48.	Bruno Elmer Romero Claros
49.	Carmen Márquez Chicas
50.	Catalina Guevara Chicas
51.	Catarino or Catalino Argueta
52.	Catarino or Catalino Rodríguez
53.	Cecilia Martínez or López Martínez
54.	Cecilia Ramírez
55.	Cesario Márquez
56.	Ciriaca Argueta
57.	Ciro López
58.	Claudio del Cid
59.	Clementina Argueta de Márquez
60.	Cleotilde Márquez
61.	Concepción Márquez
62.	Concepción Vigil
63.	Crescencio Argueta
64.	Cristina Martínez Romero
65.	Cristina Vigil
66.	Cristino Amaya Claros
67.	Daniel Romero
68.	David Chicas Martínez
69.	Desiderio Claros
70.	Dinora Márquez
71.	Dionisia or Leonisia Mejía Argueta
72.	Dionisio Argueta Martínez
73.	Dolores Márquez
74.	Dolores Martínez
75.	Dolores Rodríguez Pereira
76.	Dominga Argueta
77.	Dominga Chavarría
78.	Dominga Sánchez
79.	Domingo or José Domingo Claros
80.	Domitila Orellana
81.	Donatila Pereira
82.	Dora Márquez Chicas
83.	Doré Chicas Martínez
84.	Doré López Martínez
85.	Dorila Márquez Chicas
86.	Doris Claros Márquez or María Doris Guevara Díaz
87.	Doris Ilda or Doris Hilda Argueta
88.	Edgar Marín López Martínez
89.	Edilfonso Argueta
90.	Edis del Carmen Pereira Márquez
91.	Eduardo Díaz Claros
92.	Efraín Romero Romero
93.	Eladio Claros

94.	Elgar Martínez
95.	Elmer Nicolás Márquez
96.	Eloisa Portillo
97.	Elsa Marisol Pereira
98.	Elsa Márquez
99.	Elsa Márquez Chicas
100.	Elsi Concepción Claros Márquez or Elsy Guevara Díaz
101.	Elvira Hernández Argueta
102.	Emilesio Claros
103.	Emilia Claros
104.	Enemesia Luna
105.	Enemesio Mártir Rodríguez
106.	Ernesto Argueta Ramos
107.	Estanislao Argueta Alvarenga
108.	Estanislao Díaz (Sáenz)
109.	Esteban Martínez Argueta
110.	Estela Díaz
111.	Estela Márquez Chicas
112.	Etelvina Mejía Ramírez
113.	Eufemia Márquez Márquez
114.	Eugenia Díaz
115.	Eusebia Díaz
116.	Evelio Rodríguez Pereira
117.	Fabio López
118.	Facunda Martínez Romero
119.	Federico Martínez
120.	Felicita Díaz
121.	Felipa Claros Amaya
122.	Felipa Martínez
123.	Félix del Cid Vigil
124.	Félix Díaz Portillo
125.	Félix Rodríguez
126.	Fernando Guevara
127.	Fernando Hernández
128.	Fidel Romero Márquez
129.	Fidencio or Cedencio Argueta Ramos
130.	Filma Imelda or María Milma Claros Romero
131.	Florencio Márquez Márquez
132.	Florentina Pereira <sup>1</sup>
133.	Florentina Pereira <sup>2</sup>
134.	Florentina Vigil
135.	Florinda del Cid de Guevara
136.	Francisca Chavarría
137.	Francisca del Cid
138.	Francisca Reyes Argueta

<sup>1</sup> Mother of María Teófila Pereira Argueta.

<sup>2</sup> Mother of Sofía Romero Pereira.

139.	Francisca Sánchez
140.	Francisco Claros
141.	Francisco Díaz Argueta
142.	Francisco Ramírez
143.	Francisco Vigil Argueta
144.	Gaspar Claros Márquez or Gaspar Fredi Guevara Díaz
145.	Genoveva Díaz
146.	Gerardo Argueta
147.	Gervasio Chicas Argueta
148.	Gil Humberto Pereira
149.	Gilberto Hernández Argueta
150.	Gregorio Sánchez
151.	Guillerma Márquez
152.	Heriberto Martínez López
153.	Hermenegilda Márquez
154.	Herminio Márquez
155.	Hernán Rodríguez Pereira
156.	Hilaria Hernández
157.	Hilda Hortensia Márquez Argueta
158.	Hipólita Claros Romero
159.	Hortensia or María Hortensia Romero
160.	Inés Pereira Márquez
161.	Irma Janet Díaz Pereira
162.	Isabel Argueta
163.	Isidoro Chicas Argueta
164.	Isidra Claros
165.	Ismael López
166.	Israel Márquez
167.	Jacinta Guevara or Díaz
168.	Jacinto Sánchez <sup>3</sup>
169.	Jacinto Sánchez <sup>4</sup>
170.	Jeremías Díaz Argueta
171.	Jesús Chicas Argueta
172.	Jesús Salvador Romero Pereira
173.	Joaquín López Martínez
174.	Jorge Márquez Márquez
175.	Jorgen Martínez
176.	José Abilio Vigil
177.	José Adán Márquez
178.	José Alejandro Antonio Díaz
179.	José Aníbal Pereira Márquez
180.	José Anunciación Chicas Martínez
181.	José Aristides Pereira Márquez
182.	José Armando Pereira
183.	José Atilio Pereira Márquez
184.	José Benjamín Márquez Chicas

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<sup>3</sup> 80 years old.

<sup>4</sup> 4 years old.

185.	José Carlos Díaz
186.	José Cayetano Argueta
187.	José Cleofás López Martínez
188.	José Concepción Márquez Chicas
189.	José Daniel Claros
190.	José Díaz Chavarría
191.	José Efraim Márquez
192.	José Evangelista Márquez Gutiérrez
193.	José Germán Díaz Chica
194.	José Horacio Márquez Márquez
195.	José Humberto Claros Márquez or José Edilberto Claros
196.	José Ignacio Pereira
197.	José Jesús Pereira Márquez
198.	José Marcos Díaz Márquez
199.	José María Hernández Argueta
200.	José María Márquez
201.	José María Márquez Argueta <sup>5</sup>
202.	José Mario or Mario Márquez Márquez
203.	José Mario Pereira Guevara
204.	José Maximiliano or Maximiliano Argueta
205.	José Nilo Márquez Vigil
206.	José Orlando Márquez Chicas
207.	José Rafael or Rafael Martínez
208.	José Raymundo Claros
209.	José René or René Díaz
210.	José Romero Márquez
211.	José Rinaldo Márquez
212.	José Santos Argueta Márquez
213.	José Santos Mejía Márquez
214.	José Vicitación Mejía Márquez
215.	José Vigil
216.	José Virjino or José Virginio Mejía Márquez
217.	José Wilfredo Vigil
218.	Josefina Hernández or Guevara Hernández
219.	Juan Ángel or Juan de los Ángeles Claros
220.	Juan Ángel Pereira
221.	Juan Bautista Claros Márquez
222.	Juan Chicas
223.	Juan Evangelista Sánchez
224.	Juan Francisco Márquez Chicas
225.	Juan Martínez
226.	Juana Argueta Ramos
227.	Juana Díaz del Cid
228.	Juana Elvira Márquez Chicas
229.	Julgencia Argueta
230.	Julia Claros

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<sup>5</sup> Husband of Hilda Hortensia Márquez Argueta.

231.	Julia del Cid
232.	Julio Cesar Argueta
233.	Justina Guevara or María Justa Rufina
Guevara	
234.	Justiniana N. de Argueta
235.	Justiniano Chicas Martínez
236.	Justo Martínez
237.	Leonarda Márquez
238.	Leonarda Martínez or Martínez
Membreño	
239.	Leonardo Márquez del Cid
240.	Leonilda Díaz or Leonisia Claros
241.	Leonesia Romero
242.	Lidia Márquez
243.	Lilian Rodríguez Pereira
244.	Lino José Rodríguez Márquez
245.	Lorenza Márquez
246.	Lorenzo Argueta
247.	Lorenzo Argueta Argueta
248.	Lorenzo Vigil
249.	Lucas Guevara
250.	Lucía Mártel Chicas de Márquez
251.	Luciano Chicas Argueta
252.	Luciano Díaz Argueta
253.	Lucino Romero
254.	Lucio Argueta Reyes
255.	Lucrecia Chicas
256.	Lucrecia Chicas Chicas
257.	Luis Vigil
258.	Macario Díaz or Díaz Márquez
259.	Manuel Santos Pereira Argueta
260.	Marcos Amílcar Díaz Pereira
261.	Margarita Márquez
262.	Margarita Márquez Claros
263.	Margarita Martínez Romero
264.	María Amelia Chicas
265.	María Andrea Márquez
266.	María Angélica Sánchez
267.	María Antonia Amaya
268.	María Antonia Vigil Argueta
269.	María Argueta <sup>6</sup>
270.	María Argueta <sup>7</sup>
271.	María Bernarda Márquez
272.	María Candelaria Márquez
273.	María Clementina Márquez Márquez
274.	María Concepción Claros del Cid
275.	María Concepción Romero

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<sup>6</sup> 30 years of age.

<sup>7</sup> Wife of Matías Márquez.

276.	María de Jesús Martínez
277.	María de la Paz Pereira Márquez
278.	María de los Ángeles Guevara
279.	María de los Ángeles Romero
280.	María del Rosario Claros Márquez
281.	María Dolores Amaya Claros
282.	María Dominga Vigil
283.	María Eliberta or Heriberta Ramos de Argueta
284.	María Elvira Márquez
285.	María Ernestina or María Enemila Romero Claros
286.	María Estela Chica Argueta
287.	María Esther Martínez
288.	María Eugenia Claros
289.	María Eugenia Martínez
290.	María Eugenia Sánchez
291.	María Faustina del Cid Membreño
292.	María Francisca Márquez de Pereira
293.	María Gloria Pereira Márquez
294.	María Gregoria Maradiaga or Martínez
295.	María Guevara
296.	María Heriberta Martínez Torres
297.	María Inés Martínez or Martínez Vigil
298.	María Irma Sánchez
299.	María Isabel Amaya Claros
300.	María Juana Claros Amaya
301.	María Luna Ramírez
302.	María Marcelina Díaz Barrera
303.	María Marta Chicas
304.	María Marta Martínez
305.	María Martha Márquez
306.	María Mártir Claros Márquez
307.	María Mártir Márquez
308.	María Mejía Argueta
309.	María Modesta Argueta
310.	María Nelly Romero Pereira
311.	María Onofre Márquez de Mejía
312.	María Petronila Barrera del Cid
313.	María Reyes Ramos
314.	María Rosa Márquez Chicas
315.	María Rosana Márquez
316.	María Santos Argueta Vigil
317.	María Santos Claros Márquez
318.	María Santos Márquez or Guevara
319.	María Santos Pereira de Rodríguez
320.	María Saturnina Argueta
321.	María Silvia Márquez Chicas
322.	María Vicenta Romero
323.	María Wendy Rivera López
324.	Mariana Sánchez

325.	Marina Argueta
326.	Marino Chicas Martínez
327.	Marta Lilian Amaya Claros
328.	Marta Martínez
329.	Mártil Vigil Argueta
330.	Martina Argueta <sup>8</sup>
331.	Martina Chicas
332.	Martina Romero Claros
333.	Mártir Portillo
334.	Marto Vigil
335.	Marto Vigil Argueta
336.	Matea Vigil
337.	Mateo López
338.	Matías Márquez
339.	Maura Claros
340.	Mauricio or Domingo del Cid
341.	Maximiliano Márquez Márquez
342.	Máximo Argueta Reyes
343.	Máximo Márquez Vigil
344.	Máximo Rodríguez
345.	Melecio Claros
346.	Melesio Argueta Alvarenga
347.	Mercedes Argueta Vigil
348.	Mercedes Pereira Márquez
349.	Miguel Argueta
350.	Milton Vigil Guevara
351.	Miriam Márquez
352.	Modesto Márquez
353.	Moisés Claros
354.	Moncho Márquez
355.	Narcisa Márquez <sup>9</sup>
356.	Narcisa Márquez Márquez <sup>10</sup>
357.	Natalia Guevara
358.	Natividad Argueta
359.	Natividad Luna or Luna de Pérez
360.	Nazaria Argueta
361.	Neli Argueta Ramos
362.	Nicolasa Chicas Argueta
363.	Norberta Márquez
364.	Octaviana Luna u Octavia Luna Pérez
365.	Orbelina Márquez
366.	Pablo Chicas Martínez
367.	Pedro Advíncula or Adavíntola Chica
368.	Pedro Argueta Claros
369.	Pedro Vigil Argueta
370.	Perfecto Sánchez

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<sup>8</sup> Wife of Eduardo Concepción Argueta Márquez

<sup>9</sup> Wife of Catarino or Catalino Rodríguez.

<sup>10</sup> Daughter of Israel Márquez.

371.	Petrona Chavarría
372.	Petrona Chicas Romero
373.	Presentación Márquez Gutiérrez
374.	Priscila López Sánchez
375.	Rafael Mejía Argueta
376.	Ramón Romero Márquez
377.	Raymunda Esperanza Mejía Márquez
378.	Raymundo Romero Márquez
379.	Regino Argueta Martínez
380.	Reynalda López Sánchez
381.	Rogelia Orellana Díaz
382.	Romana Pereira
383.	Roque Guevara
384.	Rosa Argueta Ramos
385.	Rosa Cándida Pereira Guevara
386.	Rosa del Cid Vigil
387.	Rosa Elia Pereira
388.	Rosa Elvira del Cid
389.	Rosa María Díaz
390.	Rosa Márquez Chicas
391.	Rosa Nidia Márquez Chicas
392.	Rosa Nohemí Claros
393.	Rosalina Mejía Márquez
394.	Rosario Argueta Ramos
395.	Rosita Márquez
396.	Rufina Romero
397.	Ruperto Dolores Argueta Chicas
398.	Salvador Márquez
399.	Santos Aníbal Argueta
400.	Santos Barrera Romero
401.	Santos Chavarría
402.	Santos Díaz Chavarría
403.	Santos Emely del Cid
404.	Santos Evenor Vigil Márquez
405.	Santos Hernández Argueta
406.	Santos Márquez Márquez
407.	Santos Obidio Pereira Márquez
408.	Santos Socorro Márquez
409.	Sara Díaz Argueta
410.	Saturnina Díaz
411.	Seferina Márquez
412.	Seferina Vigil Argueta
413.	Segundo Márquez Chicas
414.	Sergio Márquez
415.	Servanda Márquez
416.	Simeona Vigil
417.	Sinforoso Pereira or Reyes
418.	Sofía de la Paz Chicas
419.	Sofía Márquez Pereira
420.	Sonia Dinora Argueta Márquez
421.	Sonia Elizabeth Romero



422.	Sonia Gladis Díaz Pereira
423.	Sonia Marlene Márquez Márquez
424.	Susana Ramírez
425.	Teodora Ramírez
426.	Teodoro Martínez
427.	Teodoso Mejía Romero
428.	Teresa de Jesús Mejía Márquez
429.	Teresa or Teresa Amelia de Jesús
	Argueta
430.	Tiburcio Mejía Argueta
431.	Timotea Claros
432.	Timoteo Argueta
433.	Timoteo Márquez Argueta
434.	Tomás Martínez Argueta
435.	Tomasa Argueta Chicas
436.	Tomasa Martínez
437.	Tránsito Chicas Argueta
438.	Vicenta del Cid
439.	Vicente Márquez
440.	Victorina Chicas

**ANNEX "B"**  
**List of the surviving victims**

1.	Alejandro Hernández Argueta
2.	Anastacio Guevara
3.	Antolín Ramírez
4.	Antonia Guevara Díaz
5.	Bernardino or Bernaldino Guevara Chicas
6.	Bertila Márquez Sánchez
7.	César Martínez Hernández
8.	Claudia Ramos
9.	Domingo Vigil Amaya
10.	Elsa Ercilia Márquez Sánchez
11.	Eugenia Luna Luna
12.	Eustaquio Martínez Vigil
13.	Genaro Sánchez
14.	Gregorio Chicas
15.	Griscelda Ramírez
16.	Hilario Sánchez Gómez
17.	Irma Ramos Márquez
18.	José Noé Márquez Sánchez
19.	José René Márquez Sánchez
20.	Juan Antonio Pereira Vigil
21.	Juan Bautista Márquez Argueta
22.	Lucila Ramos
23.	Lucila Romero Martínez
24.	Lucio Ramos
25.	Luis Ramos
26.	María Amanda Martínez or Martínez Vigil
27.	María del Rosario López Sánchez
28.	María Dorila Márquez de Márquez
29.	María Erlinda Amaya Márquez
30.	María Florinda Sánchez
31.	María Inés Ramírez
32.	María Magdalena Chicas Díaz
33.	María Teófila Pereira Argueta
34.	Matilde del Cid Membreño
35.	Nicolás Díaz Chicas
36.	Pastora Ramírez
37.	Patricio Díaz
38.	Pedro Chicas Romero
39.	Remigio Márquez
40.	Rosa Ramírez Hernández
41.	Rosendo Hernández Amaya
42.	Rufina Amaya Vda. de Márquez
43.	Santos Jacobo Chicas Guevara
44.	Santos Ramírez
45.	Santos Ramos
46.	Sofía Márquez Sánchez
47.	Sotero Guevara Martínez

**ANNEX "C"****List of next of kin of the victims who were executed**

1.	Alba Ignacia del Cid
2.	Alejandra Márquez de Pereira
3.	Alfredo Márquez
4.	Alicia Fermina Sánchez
5.	Alonzo Márquez Claros
6.	Ana Francisca Pereira Vda. de Pereira
7.	Ana Leonila Pereira Márquez
8.	Arcadia Ramírez Portillo
9.	Benita Claros
10.	Benito Argueta Claros
11.	Benito Márquez Chica
12.	Bruna García de Márquez
13.	Catalina Claros Tovar
14.	Cerapia Chica Chica
15.	Cristóbal Sánchez Mejía
16.	Deisy Nohemí Márquez Rodríguez
17.	Dionicio Díaz Barrera
18.	Domingo Díaz Barrera
19.	Dore Rutilio Argueta Ramos
20.	Eduardo Concepción Argueta Márquez
21.	Efigenia Romero Márquez
22.	Elsa Marina Argueta Argueta
23.	Esteban Saenz Díaz
24.	Eugenia Márquez Márquez
25.	Fidelia Márquez Amaya
26.	Flora Isabel Romero Pereira
27.	Florencia Claros de Argueta
28.	Francisca Chica Chica
29.	Francisca Díaz de Guevara
30.	Francisca Enma Nolasco de Pereira
31.	Gerarda Luna Ramírez
32.	Glenda Yesenia Argueta Orellana
33.	Gonzalo Mejía Sánchez
34.	Hilaria Chicas Guevara
35.	Ignacia Claros Díaz
36.	Ignacio Chica
37.	Inés Díaz Portillo
38.	Isabel Gutiérrez Chica
39.	Ismael Márquez
40.	Jacoba Mejía Sánchez
41.	José Amparo Martínez García
42.	José Antonio Márquez Claros
43.	José Castillo Guevara Claros
44.	José Cruz Vigil del Cid
45.	José Domingo Chica Márquez
46.	José Domingo Márquez Membreño

47. José Elías Romero Pereira
48. José Eliseo Claros Romero
49. José Gervacio Díaz
50. José Héctor Márquez
51. José Manuel Claros Márquez
52. José Mario Díaz Guevara
53. José Moisés Claros Márquez
54. José Orlando Márquez García
55. José Pablo Díaz Portillo
56. José Prudencio Díaz
57. José Rigoberto Claros Díaz
58. José Saturnino Guevara Romero
59. José Socorro Chica
60. Juan Bautista Hernández Argueta
61. Juan de Mata Argueta Argueta
62. Juan Francisco Claros Claros
63. Juana Bautista Guevara de Martínez
64. Juana Inocente Claros
65. Julian Romero
66. Juvencio Márquez Vigil
67. Leocadio Díaz Argueta
68. Magdaleno Martínez Argueta
69. Margarito Claros
70. María Adelinda Claros Pereira
71. María Alejandra Díaz
72. María Ángel Díaz de Barahona
73. María Avigail Amaya de Martínez
74. María Catalina Gutierrez de Márquez
75. María Catarina Claros Romero
76. María de Jesús Márquez Claros
77. María de la Cruz Argueta Guevara
78. María de la Paz Chicas de Amaya
79. María del Carmen Márquez Díaz
80. María Elena Vigil
81. María Ester González Márquez Argueta
82. María Ester Márquez Vda. de Díaz
83. María Fabia Claros Orellana
84. María Fausta Gutiérrez de Argueta
85. María Félix Claros
86. María Fernanda Barrera Viuda de Márquez
87. María Gabina Hernández Vda. de Díaz
88. María Hilda Claros de García
89. María Julia Pereira de Argueta
90. María Leonilda Claros de Cruz
91. María Luisa del Cid Vigil
92. María Luisa Guevara Claros
93. María Luz Claros Díaz
94. María Magdalena Chicas Márquez
95. María Otilia Chicas de Ramos
96. María Ramona Márquez de Chicas
97. María Regina Márquez Argueta

98. María Reyes Gutiérrez Vda. de Chicas
99. María Rosalina Claros
100. María Santana Guevara Amaya
101. María Santos Argueta de Tobar
102. María Santos Claros de Díaz
103. María Santos Márquez de Márquez
104. María Segunda Claros Márquez
105. Marta Alicia Mejía Márquez
106. Martina Argueta <sup>11</sup>
107. Martina Claros Márquez
108. Mercedes Chicas
109. Miguel del Cid Márquez
110. Modesta Mabel Benítez Ramos
111. Pedro Martínez
112. Pedro Ramos Hernández
113. Reina Dionila Portillo de Silva
114. Rina Maribel Claros
115. Rosa Celia Argueta Argueta
116. Rosa Mery Ramírez Mejía
117. Santos Alvaro Pereira Márquez
118. Santos Argueta Guevara
119. Santos Vito Mejía
120. Sebastián Vigil Romero
121. Sofía Romero Pereira
122. Teresa Márquez de Argueta
123. Virgilio del Cid
124. Virginia Luna de Argueta

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<sup>11</sup> Daughter of Pedro Argueta Claros.

**ANNEX "D"**  
**List of forcibly displaced victims**

1.	Alejandro Hernández Argueta
2.	Antonia Guevara Díaz
3.	Bernardino or Bernaldino Guevara Chicas
4.	Bertila Márquez Sánchez
5.	Claudia Ramos
6.	Domingo Vigil Amaya
7.	Elsa Ercilia Márquez Sánchez
8.	Eugenia Luna Luna
9.	Genaro Sánchez
10.	Hilario Sánchez Gómez
11.	José Noé Márquez Sánchez
12.	José René Márquez Sánchez
13.	Juan Antonio Pereira Vigil
14.	Juan Bautista Márquez Argueta
15.	Lucila Ramos
16.	Lucila Romero Martínez
17.	Lucio Ramos
18.	Luis Ramos
19.	María del Rosario López Sánchez
20.	María Erlinda Amaya Márquez
21.	María Florinda Sánchez
22.	María Magdalena Chicas Díaz
23.	María Teófila Pereira Argueta
24.	Matilde del Cid Membreño
25.	Rosendo Hernández Amaya
26.	Rufina Amaya Vda. de Márquez
27.	Santos Jacobo Chicas Guevara
28.	Santos Ramos
29.	Sofía Márquez Sánchez

### **ANNEX "E"**

**List of person regarding whom there are indications about their condition as possible victim, but who do not appear on any list of presumed victims<sup>12</sup>**

1.	Abelino Ramírez
2.	Agustina Chicas Mejía
3.	Amadeo Martínez
4.	Ana Ramírez
5.	Anastacio Pereira Vigil
6.	Andrés Mejía
7.	Aurelio Sánchez
8.	Bruna Martínez
9.	Carlos Sánchez
10.	Catalina Argueta
11.	Cirilo Luna
12.	Cruz Díaz
13.	Cruz Peraza
14.	Delio or Evelio Díaz
15.	Dinora Ramírez
16.	Donatila Mejía
17.	Eraldo Argueta
18.	Flaminio Chicas Mejía
19.	Gabriel Ramírez
20.	Hermula López Sánchez
21.	Higinio del Cid
22.	Ildefonso or Alfonso Guevara
23.	Jorge Sánchez
24.	José Atilio Romero Pereira
25.	José de los Ángeles Mejía
26.	José Santos Pereira
27.	Josefa Ramírez
28.	Juan Ramírez
29.	Lidia Chicas Mejía
30.	Luciana Márquez
31.	Luis Guevara
32.	Macario Guevara
33.	María Lucinda Márquez Claros
34.	María Márquez Claros
35.	Martina Díaz
36.	Matilde Portillo
37.	Melecio Martínez
38.	Melida López
39.	Nelson Guevara Díaz
40.	Remigio Chicas Mejía
41.	Roberto Argueta

<sup>12</sup> According to paragraph 57 of the Judgment, this list contains the names of individuals regarding whom there are indications about their possible condition as presumed victims in this case, even though they are not on the lists provided by the parties and the Inter-American Commission, and that the State must determine whether their condition of victim and beneficiary of the instant case is admissible, in the context of the "Single List of Victims and Next of Kin of Victims of Grave Human Rights Violations during the Massacre of El Mozote."

42.	Rosalina López
43.	Santos Ceferina Sánchez Díaz
44.	Santos del Cid
45.	Santos Inocente Pereira
46.	Santos López
47.	Saturnino Hernández
48.	Sebastiana Márquez
49.	Silvina Romero
50.	Tomás Benítez Ramos
51.	Tránsito Luna
52.	Valentín Luna
53.	Visitación Argueta
54.	Wilson Valeriano Guevara