



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 0 6 EEUU

March 8, 2011

Ref.: Case No. 10.720
The Massacres of El Mozote and Neighboring Locations
El Salvador

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 10.720, *The Massacres of El Mozote and Neighboring Locations v. the State of El Salvador* (hereinafter "the State," "the Salvadorian State" or "El Salvador"), before the jurisdiction of the Inter-American Court of Human Rights. The case concerns consecutive massacres committed between December 11 and 13, 1981 within a military operation by the Atlacatl Battalion, together with associated military units, in seven different locations in the north of the Department of Morazán. Thus, the indiscriminate attack against the civilian population commenced in the small village of El Mozote, continued in the Canton of La Joya, the townships of Ranchería, Los Toriles and Jocote Amarillo, and concluded in the Canton of Cerro Pando and the Cave of the Ortiz Hill (Cerro Ortiz.) As a result of these facts, about a thousand people lost their lives. While an investigation of these events was initiated, they remain unpunished after the dismissal of the case rendered on September 27, 1993, in the light of the General Amnesty Law for the Consolidation of Peace, which remains in effect in El Salvador. In later years, some exhumations were carried out but they did not cause the reactivation of the investigations, despite repeated requests to the relevant authorities.

The State ratified the American Convention on Human Rights on June 23, 1978, and accepted the contentious jurisdiction of the Court on June 6, 1995. In addition, the State ratified the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women on December 5, 1994 and January 26, 1996, respectively.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica

Enclosures

The Commission has designated Commissioner Paulo Sérgio Pinheiro, and Executive Secretary of the IACHR, Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Isabel Madariaga and Silvia Serrano Guzmán, attorneys at the Executive Secretariat of the IACHR will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of Report 177/10 prepared in accordance with Article 50 of the American Convention, as well as three annexes related to the identification of the victims by the Commission until the time of the adoption of the above-mentioned report. The Commission is also enclosing a copy of the entire file before the Inter-American Commission (Appendix I) and the annexes used in drafting Report 177/10 (Annexes). Said merits report was notified to the El Salvadorian State by means of communication of November 22, 2010, granting it a two-month term to report on the implementation of the recommendations. When deciding on the merits of the case, the Inter-American Commission concluded that the State of El Salvador is internationally responsible for:

- a) The violation of the rights to life, to humane treatment and to personal liberty enshrined 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 executed extrajudicially;
- b) The violation of the special obligations with respect to children established in Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the children who were executed extrajudicially;
- c) The violation of the rights to humane treatment and privacy enshrined in Articles 5 and 11 of the American Convention, to the detriment of the women who were raped in the village of El Mozote;
- d) The violation of the Right to property enshrined in Article 21 of the American Convention in relation to article 1(1) thereof, to the detriment of the murdered victims who were stripped of their property, as well as the survivors whose homes were destroyed or whose means of livelihood were stolen or eliminated;
- e) The violation of the right to humane treatment enshrined 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;
- f) The violation of the right to freedom of movement and residence enshrined in Article 22 of the American Convention in relation to Article 1(1) thereof, to the detriment of the persons who were forcibly displaced; and

- g) The violation of the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention in relation with the obligations established in articles 1(1) and 2 thereof, with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and with Article 7 of the Convention of Belém do Pará, to the detriment of the survivors and relatives of the executed victims.

With regard to the identification of the victims of these violations, Report 177/10 includes three separate annexes which consist of the list of: i) the victims extrajudicially executed; ii) the survivors and relatives of the executed victims; and iii) the victims forcibly displaced. In its merits report (paras. 203-214), the Inter-American Commission stated the criteria taken into account for the identification of the victims, in order not to exclude *a priori* the victim-condition of any person so identified as deceased in the massacres or as surviving next-of-kin, taking into account the exceptional characteristics of this case. However, the IACHR clarifies now that much of the data about name, age, sex or family ties are approximate and imprecise. In this case, the IACHR adopted "flexible criteria for the identification of the victims," under the understanding that, as indicated in one of the recommendations of Report 177/10, it corresponds to the State of El Salvador to carry out the complete identification of the victims executed in the Massacres of El Mozote and neighboring locations, as well as the next-of-kin of the executed victims, within the framework of the proper investigation that it is required to perform.

Report 177/10 was notified to the State of El Salvador by means of communication of December 8, 2010, granting it a two-month term to inform on the implementation of the recommendations. To this date, the State has not replied to the request made by the Commission.

As a result, the Commission submits the instant case to the jurisdiction of the Inter-American Court due to the need to obtain justice and the State's failure to comply with the recommendations.

Specifically, the Commission submits to the jurisdiction of the Court the State acts and omissions that occurred after June 6, 1995, the date of the acceptance of the Court's jurisdiction by El Salvador. As indicated in Report 177/10, part of the set of facts that are within the temporal jurisdiction of the Court, includes: the validity of the General Amnesty Law for the Consolidation of Peace; the omission in the reopening of the investigations; the absence of continued and sustained efforts to exhume a greater number of mortal remains; the lack of judicial follow-up of the exhumations carried out and the information obtained in the framework of the same; the absence of a response to the requests for the reopening of the investigations; the effects of the massacres and their impunity on the surviving next-of-kin of the victims; the lack of reparation in favor of them; and the situation of displacement of some victims.

The afore-mentioned, without prejudice that the State of El Salvador might accept the jurisdiction of the Court to study the entire case, in accordance with the terms of Article 62(2) of the American Convention.

The Commission requests that the Court orders the following measures of reparation:

- a) Make adequate reparations for the violations of human rights, both in their material and their moral aspect, including the establishment and dissemination of the historic truth of the events, suitable commemoration of the victims who died, and implementation of an appropriate program of psycho-social care for the surviving relatives;
- b) Establish a mechanism to ensure that the victims executed in the massacres at El Mozote and neighboring locations are identified as fully as possible and take the necessary steps to pursue the continuity of the exhumation, identification and return of the remains of those victims in accordance with the desires of their families. This mechanism must also facilitate the complete identification of the relatives of the executed victims, so that they can be eligible for the reparations called for in the previous recommendation;
- c) Render ineffective the General Amnesty Law for the Consolidation of Peace as it prevents the investigation, trial and sanction of those responsible for human rights violations and the rights of victims to truth, justice, and reparation. Also, any other *de jure* or *de facto* obstacles, such as judicial or investigative practices, must be eliminated;
- d) Regardless of the above, the State should proceed immediately to investigate in an impartial, effective manner and within a reasonable time with the purpose to establishing the facts in a complete form, identify the intellectual and material authors and impose the sanctions that correspond. In the immediate fulfillment of this obligation, the Salvadorian authorities cannot invoke the validity of the General Amnesty Law for the Consolidation of Peace;
- e) Take the corresponding administrative, disciplinary or criminal actions to sanction the actions or omissions of the State officials who contributed to the denial of justice and the impunity in which are the facts of the case or who participated in actions to hinder the processes designed to identify and punish those responsible; and
- h) Take the measures necessary to prevent similar events in the future, in observance of the duty to respect and guarantee human

rights recognized in the American Convention. In particular, implement permanent programs on Human Rights and International Humanitarian Law in the Armed Forces Training Schools.

The violations that occurred in this case affect the inter-American public interest and continue to date due to the generalized impunity of the acts.

The IACHR concluded in Report 177/10 that the Massacres of El Mozote and neighboring locations were committed precisely during the cruelest period of the wrongly denominated "counterinsurgency" operations performed by the Salvadorian army, in a massive way, against civilians during the armed conflict, and in open disregard of the most basic principles underlying the International Law of Human Rights and International Humanitarian Law.

These massacres were committed indiscriminately and with extreme cruelty, to a regrettable balance of approximately 1,000 people, including an alarming number of children. The systematic and generalized nature of those actions, the purpose of which was to sow terror among the population, has been recognized on several occasions, and it may be concluded that the massacres constituted one of the most aberrant manifestations of crimes against humanity committed at that time by the Salvadoran military.

However, due to the force of the General Amnesty Law for the Consolidation of Peace, as well as repeated omissions by the Salvadoran State, these serious events remain unpunished. To date, the massacres have not been judicially clarified, nor have any sanctions been established, even when a significant number of perpetrators have been identified by various sources, including the report of the Truth Commission, 'From Madness to Hope' (*De la Locura a la Esperanza*.)

As the IACHR stated in its merits report, it is an urgent duty of the State of El Salvador to settle the historical debt with the memory of the victims, the surviving next-of-kin, and with society at large, who after almost 30 years of the occurrence of the facts, have not been able to know the truth and to obtain justice through the punishment of those responsible for these crimes against humanity.

As a result of the above, the IACHR's offers the following expert declarations on the mentioned aspects that concern the inter-American public interest, and in accordance with Article 35(1)(f) of the Rules of Procedure of the Inter-American Court:

1. Expert whose name will be informed soon, who will refer to the context of armed conflict in El Salvador, especially in the time to which the facts of the case refer. The testimony will refer to the human rights violations occurring during said time, including the massive and indiscriminated attacks against the civilian population and the *modus operandi* followed under the "*tierra arrasada*" operations.

2. Michael Reed Hurtado will testify about the General Amnesty Law for the Consolidation of Peace, its background, scope and effect as a factor in the impunity

for crimes against humanity committed during the conflict by the Salvadoran Armed Forces. Also, the testimony will refer to attempts at interpretation by the Supreme Court of Justice, the effects of such interpretations, as well as the internal mechanisms to render ineffective the abovementioned law.

3. Tal Linda Ileen Simmons who will testify about the internationally accepted parameters to be observed in the conduct of exhumations in cases such as this, as well as an analysis of the exhumations conducted internally in the light of these standards.

The *currícula vitae* of the experts proposed by the Inter-American Commission are attached.

The representatives of the victims in the filing before the Inter-American Court are the Office of the Legal Guardianship of the Archibishopric (*Oficina de Tutela Legal del Arzobispado*) and the Center for Justice and International Law (CEJIL). The Commission informs the Court that after the notification of Merits Report 177/10, the representatives provided some details about the list of victims and added the names of new victims. In accordance with what is stated in the present note about the flexible criteria of the identification of the victims, the Commission considers that the dimensión and nature of the violations that occurred in this case, people added by the representatives should also be regarded as victims.

Finally, the Commission informs the Court that the information available about the representatives is:

Office of the Legal Guardianship of the Archibishopric of San Salvador
Tutela Legal del Arzobispado de San Salvador
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Please accept renewed assurances of my highest regards.

Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary

REPORT No. XX/10
CASE 10.720
MERITS
THE MASSACRES OF EL MOZOTE AND NEIGHBORING LOCALES
EL SALVADOR¹
November 3, 2010

I. SUMMARY

1. On October 30, 1990, the Inter-American Commission on Human Rights (hereinafter referred to as the "Inter-American Commission," the "Commission" or the "IACHR") received a petition from the Oficina de Tutela Legal [Legal Aid Office] of the Archdiocese of San Salvador² (hereinafter referred to as "the petitioners") alleging that the Republic of El Salvador ("the State", the "Salvadoran State", or "El Salvador") had violated various provisions of the American Convention on Human Rights ("the American Convention", or "the Convention"). The petitioners alleged a series of extrajudicial mass executions carried out on December 11, 12 and 13, 1981 in the village of El Mozote and in neighboring localities in the municipal jurisdiction of Meanguera, Department of Morazán, in the context of the armed conflict than being waged in El Salvador. As well, they alleged that these deeds had gone unpunished because of the absence of a diligent investigation and application of the General Amnesty Law for Consolidation of the Peace.

2. For its part, the Salvadoran State alleged that, in the context of the armed conflict, it had made every effort within its power to protect the civilian population and to provide it with the needed humanitarian assistance, without distinction. It argued that the victims had presented their complaint several years after the facts, which made it difficult to obtain the results of the investigations. According to the State, the judicial authorities performed the steps considered necessary and were reasonable in their application of the General Amnesty Law, which it called the "basis for national reconciliation". It mentioned that in October 2000 the Constitutional Chamber of the Supreme Court of Justice declared that this law was not in itself unconstitutional, and that it was consequently up to each judge to apply it or not. The State argued that, while further evidence had been obtained from subsequent exhumations, that evidence was merely circumstantial and could not serve to identify the guilty parties.

3. After reviewing the position of the parties, the Inter-American Commission has concluded that the State of El Salvador was responsible for violating the rights to life, to humane treatment, to personal liberty and to privacy, as well as the rights of the child, the right to property, the right to a fair trial, the right to freedom of movement and residence, and the right to judicial protection, enshrined in articles 4, 5, 7, 11, 19, 21, 22, 8 and 25 of the American Convention, taken in conjunction with the obligations of articles 1.1 and 2 of that instrument, as well as articles 1, 6 and 8 of the American Convention to Prevent and Punish Torture and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

II. PROCEEDINGS BEFORE THE COMMISSION

¹ Pursuant to the provisions of article 17.2 of the Commission's rules of procedure, Commissioner Maria Silvia Guillén, of Salvadoran nationality, did not participate in the discussion or in the decision on this report.

² The Center for Justice and International Law (CEJIL) constituted itself as a co-petitioner in a subsequent stage.

4. The Oficina de Tutela Legal of the Archdiocese of San Salvador (hereinafter “the Tutela Legal”) presented the initial petition in a communication dated October 30, 1990. The processing of that case from presentation of the petition until a decision on admissibility is described in detail in the admissibility report³ issued on March 2, 2006.

5. On March 22, 2006, the Commission notified the parties of that report and, pursuant to article 38.1 of the rules of procedure then in force, set a time limit of two months for the petitioners to present their additional observations on the merits. On May 23, 2006, the State presented written documentation and, after an extension was granted, the petitioners submitted their observations on the merits on July 7, 2006. On May 3 and on December 10, 2007 the petitioners presented additional observations. For its part, the State presented additional observations on October 17, 2007. In a communication dated December 27, 2007 the Commission sent the last communication from the petitioners to the State, but had received no reply as of the date of approval of this report.

6. On August 24, 2010 the Commission contacted both parties to report on procedural questions related to the case. On September 24, 2010 the petitioners presented additional information, which was transmitted to the State for its observations. At the time this report was approved, no response had been received from the State.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners allege that the State is responsible for violating the rights enshrined in articles 4, 5, 7, 8, 11, 19, 21, 22 and 25 of the American Convention, in relation to articles 1.1 and 2 thereof, by the massacre of more than 765 persons⁴, including children, women and elderly persons, on December 11, 12 and 13, 1981, in the locales known as El Mozote, La Joya, Ranchería, Los Toriles, Cerro Pando, and Jocote Amarillo, in the jurisdiction of Meanguera, Department of Morazán.

8. According to the petitioners, between December 11 and 13 of 1981, in the context of the armed conflict in El Salvador, troops of the Atlacatl Rapid Deployment Infantry Battalion (hereinafter the “Atlacatl Battalion”) invaded the villages and townships mentioned and carried out the mass and indiscriminate execution of the civilians they found there. According to the description by the petitioners, these deeds were perpetrated with extreme cruelty and were preceded by torture. The petitioners claim that these deeds have gone unpunished, that investigations were opened only in 1990, years after the massacre, and that they were not conducted in a serious manner, a situation reinforced by application of the General Amnesty Law for Consolidation of the Peace (hereinafter “LAGCP”), which has impeded continuity of the investigations.

9. The details of the events and judicial proceedings will be discussed in the section of this report dealing with the evidence in the case, based on the information contributed by both parties. The present section summarizes the main arguments of law outlined by the petitioners with respect to the rights that were included in the Commission’s admissibility report or that were put forth subsequent to that report.

³ IACHR, Report 24/06, Case 10.720 (Admissibility), El Mozote Massacre, El Salvador, March 2, 2006.

⁴ The petitioners maintain that there is no exact count of the victims who died in and near El Mozote. “The report of the Truth Commission found a total of more than 500 victims, the Tutela Legal counted more than 765 victims, and the IDHUCA report of November 1990 set the total at between 900 and 1,200 persons massacred by the Atlacatl Battalion.”

10. The petitioners maintain that the State violated the right to life enshrined in article 4 of the Convention, by allowing civilians to be massacred during the military operation in the vicinity. Those massacres were planned and executed in a cruel and inhumane manner by the armed forces of the Salvadoran State who, despite knowing that the people in that area had no ties to the outlaw bands, treated them as "potential support for guerrilla movements, whose social base they intended to eliminate." The petitioners claim moreover that this "aberrant military strategy, of a genocidal nature" was applied at various places in the country during the first years of the Salvadoran armed conflict. They maintain that the operation was carried out by the Atlacatl Battalion, with the support of two other units of the Armed Forces.

11. The petitioners argue that El Salvador violated the rights to humane treatment, to privacy, and to property, enshrined in articles 5, 11 and 21 of the Convention, through acts that preceded and accompanied the massacres. In particular, persons were "detained in places fixed by the soldiers, without food or basic necessities, nor with any information as to what would happen to them." In many cases people were interrogated, beaten and threatened before they were killed, indicating that the victims experienced, during and before the mass execution, extreme psychological and mental suffering that in itself constituted inhumane treatment. In the village of El Mozote, "many young women were taken from the place they were being held to the outskirts of the village, where the soldiers raped them before killing them." The children were not only cruelly murdered but also suffered anxiety and uncertainty constituting psychological torture when they were separated from their parents. As well, the operation included the destruction of dwellings, property, work tools, farm crops, and the slaughter of domestic animals, which reduced the subsequent livelihoods of the survivors to the minimum." The petitioners allege that the "scorched earth" policy that inspired the military offensives implied that the soldiers had complete license for total destruction.

12. With respect to the right to personal liberty established in article 7 of the Convention, the petitioners maintain that many victims were detained without a judicial order issued in advance by a competent authority, with no information on the grounds for their detention, and without being brought before a Court. On the contrary, they claim, "witness testimony reveals that, in El Mozote, the soldiers arrived on December 10, 1981 (...), took with them various persons who had been captured in the vicinity (...) when they were trying to flee the place as a result of the bombardment that had begun some hours earlier". In El Mozote, the soldiers dragged people from their houses and interrogated the men as they lay facedown on the ground, stripping them of valuables and subsequently ordering them to lock themselves up in their houses, under pain of death. The following morning, the soldiers returned to take the people from their homes, to torture them and ultimately to execute them.

13. The petitioners allege that the State failed to fulfill its obligations under article 19 of the American Convention, as the main victims of the massacre were children. While there are no exact data on the number of children killed, the exhumations performed in 1992 identified 143 corpses, of which 136 were those of children. Moreover, the children who survived the massacres were subjected to cruel and inhumane treatment, and like the rest of the surviving population had to suffer forced displacement in order to save their lives.

14. The petitioners argue that the survivors of the massacres suffered other forms of torture, cruel, inhuman and degrading treatment, in that they were forced to flee and evade the military operation in order to save their lives, taking themselves into the mountains or hiding in caves for several months. In some cases their fear from what had happened, together with the destruction of their means of physical subsistence, forced them into several years of exile, a further factor that the petitioners deem a violation of the right

enshrined in article 22 of the Convention⁵. Moreover, the survivors were forced to watch helplessly as their homes, families and communities were destroyed, and some of them were subsequently forced to bury their relatives in common graves or inappropriate places. Some relatives of the victims who were not present at the place of the deeds also suffered psychological torture, for they had to bear uncertainty and anxiety for more than 15 years until the bodies of their relatives were identified. Nevertheless, in most cases no proper obsequies have been possible, because the remains of the victims have not yet been exhumed and identified.

15. With respect to the rights to a fair trial and judicial protection enshrined in articles 8 and 25 of the Convention, the petitioners maintain that the events of December 1981 were public knowledge, nationally and internationally, and that although the offenses were prosecutable *ex officio* under domestic law no action was taken to investigate them, to punish the perpetrators, or to make reparation to the victims. On the contrary, the State denied the massacres and ensured their impunity. The investigation was opened only in 1990, when some relatives, after returning from their places of refuge, decided to launch judicial action. From the beginning, the judicial process was tainted by grave failings and irregularities that obstructed impartial and objective proceedings, reflecting the existence of "a *de facto* judicial system incapable of satisfying the right to justice for the victims of grave violations of human rights, especially when those abuses originated with the State." According to the petitioners, the judge handling the case unjustifiably delayed such actions as inspecting the scene of the crimes, taking testimony, and exhuming the victims' remains, on the grounds that the area was rendered unsafe by landmines.

16. Moreover, according to the petitioners, the President of the Supreme Court of Justice of the time interfered arbitrarily in the proceedings, publicly declaring that the demands for inspections and exhumations at the site of the massacres were politically motivated. Other senior officials, including the President of the Republic and the Minister of National Defense, General René Emilio Ponce, exerted improper pressure on the examining judge. The then-President of the Republic and Commander-in-Chief of the Armed Forces, Alfredo Cristiani, refused to provide key information during the criminal investigation, specifically on the military operations conducted in December 1981, and the roster of soldiers attached to the units involved. The examining judge, it is claimed, declared that he was under pressure from senior officials to postpone the date of the exhumations and to dismiss the case by virtue of the amnesty law.

17. The petitioners argue that, in effect, application of the LAGCP produced impunity and nullified judicial guarantees and protection. Despite repeated appeals to the Second Court of First Instance of San Francisco Gotera, it was not possible to obtain the file, despite the fact that in October 2000 the Supreme Court of Justice, in its ruling on an appeal for nullity against the LAGCP, opened a window for the relatives of the victims to seek justice in this case.

18. In the context of the massacre, the petitioners allege that at least 16 children under the age of 15 were the victims of forced disappearance. "While it is true", say the petitioners, " that the Salvadoran State has not ratified the Inter-American Convention on the Forced Disappearance of Persons, that Convention may be used as an instrument of interpretation in this case, as its article II defines the concept of forced disappearance". They add that there is valid proof that at the time of the massacre there was a pattern of forced disappearance of children in areas deemed to be conflict zones in El Salvador.

⁵ The petitioners did not initially allege violation of article 22, and it is not included in the admissibility report.

19. In general terms, the petitioners argue that the State failed to fulfill its obligations under article 1 of the Convention, as it did not prevent the deeds nor offer any measures of reparation, and it did not guarantee the right to the truth through a full, exhaustive, public and impartial judicial process. They maintain that "the right to the truth entails a dual aspect of protection: it is an individual right for the victims and their relatives, which offers an important way of repairing the damage suffered when there is a violation; and it is a collective right of all society, as an important instrument for preventing future violations, while contributing to the development of democratic systems". The State, they allege, took no steps to protect the civilian population; on the contrary, it incited, condoned and carried out the murder of hundreds of people, whose deaths were preceded by serious violations of human rights.

20. Finally, the petitioners argue that the State violated article 2 of the American Convention by promulgating and applying the LAGCP of March 20, 1993, the objective of which was "to guarantee impunity of State agents involved in the criminal deeds committed during the armed conflict", and in particular in criminal proceedings concerning the massacre at El Mozote and vicinity. Application of the amnesty law in this case was an impediment to the investigation, trial and punishment of those who planned and carried out the massacre, as well as to any possibility for reparations, and thus jeopardized the entire peace process and true national reconciliation.

B. The State

21. The Salvadoran State has rejected, in general terms, the allegations of the petitioners with respect to violation of various provisions of the American Convention.

22. It argues that, pursuant to article 1.1 of the Convention, it took the steps necessary to guarantee enjoyment and exercise of fundamental rights by Salvadoran society, during and after the armed conflict. As proof it points to "the peace accords signed during the dialogue for consolidation of peace (...) the Chapultepec peace accords, and (...) the various international human rights instruments ratified by the State of El Salvador". During the internal armed conflict, it claims, "the State protected and provided assistance as far as possible, through its institutions, to the civilian victims of the armed confrontations, seeing to their physical, mental and moral integrity, as well as the use and enjoyment of their property, providing the required humanitarian aid, without any discrimination".

23. As to the rights to a fair trial and judicial protection, the State points out that the events took place in the context of an internal armed conflict and that the victims turned to the judicial system only on October 26, 1999, when Pedro Chicas Romero filed a complaint before the Second Court of First Instance of San Francisco Gotera. Despite the difficult working conditions caused by the violence of the time, the responsible judge conducted the appropriate initial investigations. The delay in taking criminal action impeded the investigations, the collection of evidence, the location and summoning of witnesses, and the taking of expert testimony, "making the case more complex for reasons that had nothing to do with the authorities involved". According to the State, "under the 1973 code of criminal procedure, not only did the judge have the power to initiate proceedings but any person could use the 'notification' procedure to report a crime to the police or to the public prosecutor's office."

24. Once the investigation was opened, the State maintains, the judicial authority for criminal case 238-90 conducted investigations by taking "multiple testimony, perhaps not all that the petitioners would have wished (...), but this did not bespeak malice or negligence on the part of the judge, but represented what he considered appropriate at

the time". In addition to taking testimony, the State conducted inspections and exhumations at three sites in the village of El Mozote, from October 1992 to January 1993, with the investigative means available to it at the time. The judge also requested the President of the Republic to provide information on the military operations that took place in the zone in December 1981, and on the persons belonging to the units that carried them out. Despite this, claims the State, because of the time that had elapsed the corresponding records could not be found. Given the circumstances of the armed conflict, the investigations were conducted within a normal timeframe.

25. The State claims that the judicial effort was impeded not only by the prevailing violence but also by the lack of funds⁶ and the fact that the judges were working under fear of execution by the guerrillas. Moreover, the court had a heavy workload, being responsible not only for criminal cases but also for those relating, for example, to civil, family, commercial and labor law

26. The State referred to the alleged statement by the examining judge to the effect that he was being pressured by senior State officials, noting that such statements could not be confirmed because the judge had died. The State therefore requested that any reference in this respect must be weighed in light of that fact.

27. The State argues that in a country governed by the rule of law, as is the Republic of El Salvador, the branches of government enjoy full independence. Article 172 of the Constitution provides that "magistrates and judges, in the exercise of their jurisdictional function, are independent and subject solely to the Constitution and the laws." In this case no irregularities could be claimed, as the judicial authority had acted in accordance with the law, with full transparency and with active participation by the public prosecutor, the victims and their representatives.

28. The State emphasizes that the file on the case contained 10 documents and more than 2,000 pages, recording all the judicial action taken and demonstrating the determination to process the complaint and clarify the facts. Although the case was closed definitively, after 1994 the examining judge took many actions at the request of the relatives and also at his own initiative, to arrange the exhumations and identification of persons who had died during the massacre, and to deliver their remains to their families. Despite those efforts, to date the perpetrators of the massacre had not been identified because of the lack of evidence. Although new evidence had come to light with the exhumations conducted in 2000 and 2001, that was merely circumstantial and not sufficient to identify the individuals who took part in the massacre.

29. The State argues that "not every ruling unfavorable to the petitioners implies a denial of justice. The judges are bound by the evidence available and submitted in the process, and while they have broad powers some circumstances are beyond their control, such as the loss of records or files, which cannot be replaced by other means."

30. With specific regard to application of the LAGCP by the examining judge, the State argued that this was reasonable by virtue of the constitutional presumption of innocence and the principles of legality and juridical security, as the perpetrators of the massacre had not been individualized and identified in the criminal proceedings. Moreover, the amnesty was an integral and essential part of the peace process, it was constitutional,

⁶ The State said that during the years of the conflict, "most of the budget was devoted to defending the country and to rebuilding bridges, highways, access roads, electricity towers, protecting dams which on various occasions had been attacked and destroyed by the guerrillas, and consequently the judiciary had only a minimal portion of the national budget and its resources were very limited".

and was covered by international humanitarian law, specifically the four Geneva Conventions of 1949 and their additional protocols of 1977 to which El Salvador was party. The peace process in El Salvador was successful and without the amnesty it would not have been possible to establish guarantees for the cessation of hostilities and to reintegrate members of the Farabundo Marti National Liberation Front (hereinafter "the FMLN") into the country's legal, civil, institutional and political life. The State insists that "amnesty is a sovereign grace, a collective grace to guarantee social and political peace, for it constitutes the juridical expression of a political act that opens a democratic process and favors national consensus, with the primary objective of avoiding an internal crisis situation". The State also provided a detailed account of the peace accords and the positive assessment of the United Nations Secretary-General during commemoration of the 10th and 15th anniversaries of the El Salvador peace accords.

31. The State notes that in October 2003 Constitutional Chamber of the Supreme Court of Justice declared that the LAGCP was not unconstitutional *per se* and that it was up to the judge in each case to apply it or not to certain persons. That ruling, consequently, opened the way for the petitioners to use the judicial mechanism, but they did not do so.

32. As to the right to life, the State recognizes that "as a result of the armed confrontations that took place during the Salvadoran conflict there was a lamentable loss of human lives as collateral damage from the confrontations." Nevertheless, "at no time during the conflict was the civilian population considered a military target. On the contrary, people were protected and assisted, to the extent possible, by the government institutions responsible for providing the needed humanitarian aid, without distinction of any kind."

33. As to the rights of the child, the State has asked the Commission to recognize that the State could not be held responsible for "the lamentable deaths of children during the armed conflict in the country, and especially in the El Mozote area during the 1980s", as it signed the Convention on the Rights of the Child only on July 10, 1990. It was unacceptable to allege violation of a convention that had no legal force at the time the alleged offense occurred. In the same vein, the State notes that the Inter-American Convention to Prevent and Punish Torture was ratified on October 17, 1994, many years after the alleged offense.

IV. EVIDENCE

A. Background

1. The armed conflict in El Salvador and the counterinsurgency campaign in the period from 1980 to 1983

34. Between 1980 and 1991, El Salvador was submerged in an armed conflict that left a sorry toll of thousands of civilian and noncombatant victims⁷. After long years of violence, the peace negotiations conducted under United Nations auspices culminated on January 16, 1992 with signature of a peace accord between the government and the FMLN in Chapultepec Castle, Mexico City. During the course of the negotiations, which extended over three years, it was agreed to create a Commission on the Truth for El Salvador (the

⁷ IACHR. Report 37/00. Case 11.481. Monseñor Oscar Arnulfo Romero y Galdámez. El Salvador. 13 April 2000. Para. 31. Citing. IACHR, Annual Report 1980-1981, OEA/Ser.L/V/II.54, Doc. 9 rev. 1, 16 October 1981, pp. 111-112; Annual Report 1981-1982, OEA/Ser.L/V/II.57, Doc. 6 rev. 1, 20 September 1982, pp. 120-122; UN, Report of the Economic and Social Council, "Situation of Human Rights in El Salvador", A/36/608, 28 October 1981; and "Situation of Human Rights and Fundamental Freedoms in El Salvador", A/37/611, 22 November 1982.

"Truth Commission"), whose mandate was to investigate "serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth."⁸

35. From the onset of the conflict in 1980 the IACHR followed the human rights situation in El Salvador closely, consistently expressing its concern over the growing number of complaints about extrajudicial executions and forced disappearances⁹. As well, in the context of legal proceedings, the Inter-American Commission and subsequently the Inter-American Court¹⁰ have emphasized the context of the armed conflict, basing many of their conclusions on the United Nations Truth Commission's report, entitled "From Madness to Hope", of April 1, 1993.¹¹

36. The bulk of the IACHR's concerns had to do with violations of human rights by various units of the Salvadoran armed forces in the so-called anti-subversion campaign. Thus, in 1983 the Commission expressed its "serious misgivings in regard to the continued climate of violence prevailing in El Salvador, where illegal executions and disappearances of persons have continued. As it pointed out in earlier reports, most of these acts are the work of security forces who are able to act outside the law with impunity, and of paramilitary groups who, in the absence of an effective and appropriate investigation of these crimes, would seem to be acting with the Government's tacit consent. According to information the Commission has obtained from various reliable sources, more than 2,000 Salvadorans have perished in the period covered by this report."¹²

37. These concerns were consistent with the findings of the Truth Commission, which in effect divided its study into four periods: 1980-1983; 1983-1987; 1987-1989; and 1989-1991. The first period, within which the facts of the present case occurred, was characterized by the Truth Commission as the period of "the institutionalization of violence", in which "the fragmentation of any opposition or dissident movement by means of arbitrary arrests, murders and selective and indiscriminate disappearances of leaders became common practice."¹³

38. The Truth Commission Report describes the period in the following terms:

⁸ Article IV of the Mexico Accords of April 27, 1991 and article 2 of the Annex to the Mexico Accords of 27 April 1991.

⁹ For an account of the pronouncements of the Inter-American Commission in its annual reports from 1980 to 1993, see IACHR, Report on the Situation of Human Rights in El Salvador, 1994. February 11, 1994. Section 1.1. El Salvador: from conflict to the quest for peace. The position of the Inter-American Commission on Human Rights during the armed conflict.

¹⁰ IACHR, report 37/00, case 11,481. Monsignor Oscar Ranulfo Romero y Galdámez, April 13, 2000; and Inter-American Court, Serrano Cruz Sisters, judgment of March 1, 2005, series C. no 120.

¹¹ Report of the UN Truth Commission on El Salvador, "From Madness to Hope". In its report 37/00, case 11,481 (op. cit.), para. 41, the IACHR noted the seriousness of the methodology used by the Truth Commission, as well as the guarantee of impartiality and good faith derived from its composition, in which the State itself had a say. Furthermore, according to the agreement by which it was created, the Truth Commission was a national entity. In consideration of the foregoing, the IACHR considers that the results of the Truth Commission's investigation into this case merits faith, and, as such, shall consider it in relation to the facts alleged and items that have been introduced into evidence in this case. It should be noted that the State has not called into question the conclusions of the Truth Commission.

¹² IACHR, Annual Report 1982-1983, OEA/Ser.L/V/II.61, Doc. 22 rev. 1, September 27, 1983, page 11.

¹³ Report of the UN Truth Commission on El Salvador (op. cit.).

Violence was a fire which swept over the fields of El Salvador: it burst into villages, cut off roads and destroyed highways and bridges, energy sources and transmission lines; it reached the cities and entered families, sacred areas and educational centres; it struck at justice and filled the public administration with victims; and it singled out as an enemy anyone who was not on the list of friends. Violence turned everything to death and destruction, for such is the senselessness of that breach of the calm plenitude which accompanies the rule of law. (...) The victims were Salvadorians and foreigners of all backgrounds and all social and economic classes, for in its blind cruelty violence leaves everyone equally defenceless. The main characteristics of this period were that violence became systematic and terror and distrust reigned among the civilian population.¹⁴

39. The Truth Commission found that the military counterinsurgency operations took a high toll among civilian noncombatants in lives and displacements. According to the Commission, "all the complaints indicate that this violence originated in a political mind-set that viewed political opponents as subversives and enemies (...). This situation is epitomized by the extrajudicial executions, enforced disappearances and murders of political opponents (...). Counter-insurgency policy found its most extreme expression in a general practice of 'cutting the guerrillas' lifeline' (...). Roughly 50 per cent of all the complaints analysed concern incidents which took place during the first two years, 1980 and 1981; more than 20 per cent took place in the following two years, 1982 and 1983. In other words, over 75 per cent of the serious acts of violence reported to the Commission on the Truth took place during first four years of the decade (...) and 95 per cent of complaints concerned incidents in rural areas."¹⁵

40. In its general overview, the Truth Commission "registered more than 22,000 complaints of serious acts of violence that occurred in El Salvador (...). Over 60 per cent of all complaints concerned extrajudicial executions, over 25 per cent concerned enforced disappearances, and over 20 per cent included complaints of torture. Those giving testimony attributed almost 85 per cent of cases to agents of the State, paramilitary groups allied to them, and the death squads. Armed forces personnel were accused in almost 60 per cent of complaints, members of the security forces in approximately 25 per cent (...). The complaints registered accused FMLN in approximately 5 per cent of cases."¹⁶

41. With specific reference to the year 1981, in which the events of this case occurred, the Truth Commission found that "individual extrajudicial executions continued and mass executions in rural areas increased"¹⁷ (...). The increasing flow of resources was intended to train, modernize and expand the structure of a number of elements of the armed forces. The Rapid Deployment Infantry Battalions, specialized in anti-guerrilla warfare", began to be created, including the Atlacatl Battalion, created in March 1981.¹⁸

42. With respect to this Battalion, various reports relate that most of its thousand members were trained at military bases in the United States in a first effort to

¹⁴ Report of the UN Truth Commission, op. cit.. Cited in IACHR: report 37/00, case 11,481, op. cit.

¹⁵ Report of the UN Truth Commission, op. cit.

¹⁶ Report of the UN Truth Commission, op. cit., page 41. The Truth Commission notes that these complaints do not cover every act of violence, as it was able to receive only a significant sample in its three months of gathering testimony.

¹⁷ Report of the UN Truth Commission, op. cit.

¹⁸ Report of the UN Truth Commission, op. cit., page 29.

reorganize the Salvadoran armed forces to carry out a counterinsurgency war at all levels.¹⁹ On this Battalion's links to the mass murders at the time of the armed conflict, the statements of its commander in chief, Colonel Domingo Monterrosa referring to a massacre in Chalatenango may be cited: "It is natural that in these subversive redoubts the armed men are not there alone... that is to say, they need their 'masses,' people, women, old people, or children... they are all mixed up with the subversives themselves ... so in the clashes and in the distinct operation we carried out, it's natural that there were a series of people killed, some without weapons, including some women, and I understand, some children".²⁰

43. According to the human rights ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) of El Salvador, "the massacres were a deliberate practice as part of a strategy systematically planned by the armed forces of El Salvador (...) they were not the result of any abuses by certain units of the Salvadoran army or of overly zealous middle ranking officers. The extermination of civilians was a State policy, an aberrant and extreme expression of the military counterinsurgency strategy applied by the Salvadoran State primarily during the period from 1980 to 1982, and which was known as the 'scorched earth' [*tierra arrasada*] policy".²¹ In a report on civilian massacres during the armed conflict in El Salvador, the human rights ombudsman explains the characteristics of the "scorched earth" strategy:

The modus operandi here was the indiscriminate annihilation of one or more settlements in the context of a single operation. At the same time the crops, houses and property of those who had been executed or forced to flee were destroyed or burned.²²

44. The Truth Commission, for its part, pointed to a pattern of conduct in these massacres, and declared that "it is impossible to blame this pattern of conduct on local commanders and to claim that senior commanders did not know anything about it (...). Massacres of the peasant population were reported repeatedly."²³

2. The National Reconciliation Act, the General Amnesty Act for Consolidation of the Peace, and decisions of the Supreme Court of Justice

45. On January 23, 1992, after signature of the Chapultepec Peace Accord on January 16, Legislative Decree 147, the National Reconciliation Act, was issued. Article 1 of the decree provides: "Amnesty shall be granted to all persons who participated as direct or indirect perpetrators or as accomplices in committing political crimes, related common crimes or common crimes carried out by at least 20 persons, prior to January 1, 1992, excepting in all cases the common crime of kidnapping, covered by article 220 of the criminal code".²⁴

¹⁹ IDHUCA, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote*. Number 451 of November 7, 1990; and Americas Watch. *The Massacre at El Mozote: The Need to Remember*. March 4, 1992. (Annexed to the petitioners' communication of April 24, 1992)

²⁰ Americas Watch. *The Massacre at El Mozote: The Need to Remember*. March 4, 1992. (Annexed to the petitioners' communication of April 24, 1992), citing Washington Post, June 10, 1982, "US tactics failed to prevent Salvadoran deaths."

²¹ Special Report of the Human Rights Ombudsman on civilian massacres by State agents during the internal armed conflict in El Salvador between 1980 and 1992, March 7, 2005 (Annex 2 to the petitioners' communication of May 3, 2007).

²² Special Report of the Human Rights Ombudsman, op. cit.

²³ Report of the UN Truth Commission, op. cit.

²⁴ National Reconciliation Act, Legislative Decree 147 of January 23, 1992.

46. Article 6 of the decree established exceptions to the amnesty as follows:

This amnesty shall not apply to persons who, according to the report of the Truth Commission, participated in grave acts of violence committed after January 1, 1980, whose impact on society urgently demands that the public know the truth, regardless of the sector to which they belonged (...)²⁵

47. On March 20, 1993, five days after the Truth Commission presented its report, the Legislative Assembly adopted the General Amnesty Act for Consolidation of the Peace, repealing article 6 of the National Reconciliation Act. Article 1 of the LAGCP valid at that date provides:

Absolute, full and unconditional amnesty shall be granted to all persons, whether nationals or aliens, who participated in any manner in committing political crimes, related common crimes or common crimes carried out by at least 20 persons, prior to January 1, 1992, whether or not such persons have been convicted or have had proceedings initiated against them, and this amnesty shall extend to all persons who have participated as direct or indirect perpetrators or as accomplices in those criminal acts. The amnesty extends to the persons mentioned in article 6 of the National Reconciliation Act, contained in Legislative Decree 147 of January 23, 1992 and published in the Official Gazette no. 14 volume 314 of that date.²⁶

48. On May 20, 1993 the Constitutional Chamber of the Supreme Court of Justice declared itself incompetent to review the constitutionality of LAGCP, on the grounds that amnesty constituted "an eminently political act".²⁷

49. In December 1998, various human rights organizations presented a new challenge to the constitutionality of the LAGCP. On October 2, 2000 the Constitutional Chamber of the Supreme Court of Justice declared that law constitutional, arguing that it admitted of an interpretation consistent with the Constitution. In summary, it held that the law was not unconstitutional *per se*, and that judges would have to decide in each case whether application of the law was unconstitutional.²⁸

B. The massacres

50. 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, where the events of this case occurred, are located within the municipal jurisdiction of Meanguera, in the northern part of the Department of Morazán, El Salvador.

1. The Atlacatl Battalion operation

51. The Atlacatl Rapid Deployment Infantry Battalion conducted a large-scale military offensive between December 8 and 16, 1981 in the northern part of the Department

²⁵ Ibid.

²⁶ General Amnesty Law for Consolidation of the Peace, Legislative Decree No. 489 of March 20, 1993.

²⁷ Constitutional Chamber of the Supreme Court of Justice, Decision of May 20, 1993.

²⁸ Constitutional Chamber of the Supreme Court of Justice, Decision of October 22, 2000.

of Morazán²⁹. “Operation Rescue” was intended to eliminate guerrillas from a small sector in that area³⁰. Various statements by survivors indicate that the Atlacatl Battalion’s participation in the operation³¹ in which the events described below occurred was public knowledge.

52. The operation began when helicopters of the Salvadoran armed forces carried several hundred soldiers to the medical center in the village of Perquin, where they organized their military offensive. The soldiers were divided into five companies of some 125 men each, and each company was under the immediate command of a captain³². Reports from civil society organizations indicate the names of some of the officers in charge of the operation. The available information consistently points to Domingo Monterrosa, commander-in-chief of the Atlacatl Battalion, as the leader of the operation. Those reports also mentioned the participation of other military units, in particular of the Salvadoran Air Force³³.

53. According to the Tutela Legal, the following were in charge of the operation: Lieutenant Colonel Domingo Monterrosa, commander-in-chief of the Atlacatl Battalion; the Commander of the Military Detachment of San Francisco Gotera; the Commander in chief of the San Miguel infantry brigade; Major Cáceres Cabrera of the Atlacatl Battalion; Captain Salazar of the Atlacatl Battalion; and for captains of the Atlacatl Battalion. In its report, Americas Watch indicates that, based on the information available, the head of the third brigade at the time was Lieutenant Colonel Jaime Ernesto Flores Grijalva and the head of the fourth military detachment was Elmer González Araujo.

54. When the operation was over, the troops of each company of Atlacatl Battalion regrouped in the canton of Guacamaya, where the operation leaders expressed satisfaction with the results. According to testimony collected by the Tutela Legal, Domingo Monterrosa spoke to the commanders and used the phrase “mission accomplished”.³⁴

2. The massacre in the village of El Mozote

²⁹ Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002).

³⁰ Special Report of the Ombudsman, *op. cit.*

³¹ Supplementary testimony by Pedro Chicas Romero before the Second Court of First Instance of San Francisco Gotera. 31 October 1990. Court record. (Annex 2 to the petitioners’ communication of 7 July 2006); statement by María Teofila Pereira before the Second Court of First Instance of San Francisco Gotera. 23 January 1991. Court record. (Annex 2 to the petitioners’ communication of 7 July 2006); statement by Domingo Vigil Amaya before the Second Court of First Instance of San Francisco Gotera. 30 January 1991. Court record. (Annex 2 to the petitioners’ communication of 7 July 2006); and statement by Sotero Guevara Martínez. 7 May 1991. Court record. (Annex 2 to the petitioners’ communication of 7 July 2006). In addition, the Second Court of First Instance of San Francisco Gotera, considered that there was sufficient evidence of the Atlacatl Battalion’s participation. See Decision of the of the Second Court of First Instance of San Francisco Gotera of 27 September 1993 (annexed to the communication of the State of October 14, October 1993).

³² Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002).

³³ According to the Tutela Legal, the following were in charge of the operation: Lieutenant Colonel Domingo Monterrosa, commander-in-chief of the Atlacatl Battalion; the Commander of the Military Detachment of San Francisco Gotera; the Commander in chief of the San Miguel infantry brigade; Major Cáceres Cabrera of the Atlacatl Battalion; Captain Salazar of the Atlacatl Battalion; and for captains of the Atlacatl Battalion. In its report, Americas Watch indicates that, based on the information available, the head of the third brigade at the time was Lieutenant Colonel Jaime Ernesto Flores Grijalva and the head of the fourth military detachment was Elmer González Araujo.

³⁴ Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002).

55. The village of El Mozote is located in Guacamaya canton, jurisdiction of Meanguera, Department of Morazán. At the time of the events it consisted of approximately 20 houses located on open ground and grouped around a central square. Facing the square was a church and a small building known as “the convent”. Close by was the school.³⁵ After the massacre the village of El Mozote was abandoned for several years, and then a resettlement process began, and by 2001 it was fully inhabited, with new buildings.³⁶

56. Counterinsurgency operations were a common occurrence in 1981, and consequently some of the residents no longer lived permanently in their homes but took hiding in the bush during the times of greatest danger.³⁷

57. In or around the first week of December 1981, a merchant by the name of Marcos Diaz made public a warning given by armed forces officers to the effect that a large-scale operation would soon be launched in the area. The soldier recommended that he tell the villagers to gather together in El Mozote, for if they were found together they would not be harmed. As a result of these rumors, many people abandoned their homes and moved into the center of the village, and in particular into the house of Marcos Diaz.³⁸

58. On December 9, 1981 there were skirmishes with the guerrillas a few kilometers from El Mozote. On December 10, troops of one of the Atlacatl Battalion companies arrived in El Mozote after bombardment by the Salvadoran Air Force.

59. Late on December 10, 1981 members of the five Atlacatl Battalion companies appeared³⁹. According to testimony received by the Tutela Legal, the soldiers took people out of their houses, including the people who had gathered at the home of Marcos Diaz, forcing them to lie face-down on the ground and questioning them as to whether there were any guerrillas in the zone. People were stripped of their belongings and ordered to return home and lock themselves in, and “not to stick their nose out”, for otherwise they would be shot.⁴⁰

³⁵ Truth Commission report, op. cit.

³⁶ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 2001 (Annex F. to the petitioners’ communication of November 11, 2002)

³⁷ Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002). Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* (“Considerations on Impunity with Respect to the El Mozote Massacre”), No. 451 of November 7, 1990.

³⁸ Tutela Legal, op. cit. On this point, Mrs. Rufina Amaya, a survivor of the El Mozote massacre, declared that “in early December of 1981, a man named Marcos Diaz was told to advise people to group themselves together in the village of El Mozote because soldiers of the Atlacatl Battalion were going to enter that place in an operation and anyone found on the outskirts of El Mozote would be killed. Mr. Diaz told people that if they were found together nothing would happen, but if they scattered they would be killed.” See statement by Rufina Amaya to the Tutela Legal, October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote*, No. 451 of November 7, 1990.

³⁹ Tutela Legal, op. cit.

⁴⁰ Tutela Legal, op. cit. According to Rufina Amaya: “on December 10, 1981, at around 10 a.m., we began to hear heavy mortar fire, bombardment and machine gun fire on the outskirts of the village of El Mozote, from aircraft and helicopters of the Salvadoran Air Force. When they heard this, people hid under their beds and tables, with their children who were weeping with fear. The explosions continued until four in the afternoon. On that same day, at 6 p.m., a great number of properly uniformed soldiers of the Atlacatl Battalion arrived by land, there were too many to count. The soldiers had with them several captives (those soldiers took this group of people and led them to the street in front of the shop of Marcos Diaz, and then those same soldiers took all the people out of their houses and out of the shop and made them all lie on the ground, face down, asking them if there were

60. At around 5 a.m. on December 11, 1981 the soldiers took all the people from their houses, and herded them together in the village square. There were several hundred people, including men, women and children and older people. In the square the soldiers ordered them to form two lines, one for men and the other for women and children, telling them they would have to stay there until it was decided what to do with them. Two hours later, the people were divided into two groups, one for men and older children, and the other for women and younger children.⁴¹

61. At 8 a.m. began the mass execution of the people gathered in the square. The available information indicates that the first to be killed were those in the place known as "the chapel", mainly men and older boys⁴². According to the testimony of Rufina Amaya:

The next morning, December 11, 1981, at five o'clock, the soldiers came back and took out all the people, numbering about 800, including men, women, children and older people, and took them to the village square, in front of the "chapel". When all the people were there, the soldiers ordered them to form two files, one for men and the other for women and children, telling them that they would stay there until it was decided what to do with them. They stood there until seven in the morning, when they were ordered to regroup, with the men in the chapel and the women and children in the house of a Mr. Alfredo Marquez, who had abandoned his home some days earlier. At that time, in the place where the people were forming a file, a helicopter of the Salvadoran Air Force landed and after half an hour that helicopter took off again and three minutes later several soldiers entered where the women were (including me) asking them whether they were guerrilla collaborators and if they knew where the men kept the weapons. They replied that they had no weapons, but the soldiers said if they did not tell the truth they would be killed, then they left the house, leaving the door to the patio open.⁴³

62. The testimony of Rufina Amaya, who survived the massacre, indicates that before the killings the soldiers of the Atlacatl Battalion tortured the assembled people cruelly⁴⁴. In her words:

Through the window I saw that the soldiers had tied up all the men by their feet, with their hands bound behind their backs. Inside the chapel, with its

guerrillas around. The people said no, and then the soldiers said they were going to register them, and took all their rings, necklaces, money and other things that they had. After the soldiers had taken everything that people had with them, they told them all to go and barricade themselves in their houses and to stay there, warning them that they should not even stick their nose out of doors, because if they did they would be shot. So this is how they spent the night, with no sleep, and with the children crying from fear and hunger."

See statement by Rufina Amaya to the Tutela Legal, October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote*, No. 451 of November 7, 1990.

⁴¹ Tutela Legal, op. cit.

⁴² Ibid

⁴³ Statement by Rufina Amaya to the Tutela Legal, October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote*, No. 451 of November 7, 1990

⁴⁴ Tutela Legal, op. cit.

doors open, all the men were lying facedown on the floor, and I also saw the soldiers standing over them, and pulling their heads back, and then the men shouted with pain, and then I saw the soldiers pick them up from the floor and cut their heads off, one by one, and then throw the bodies and the heads toward the convent, and there was a pile of dead bodies, but when some of the men tried to escape they were machine-gunned.⁴⁵

63. At noon, after having killed the people who were in the chapel, several soldiers entered the home of Alfredo Marquez, where the women and younger children were, telling them “okay ladies, we’ve already released the men, and only you remain. We’re going to take you out by groups, because we’re send you home by groups, to Gotera or wherever you want”⁴⁶. Thereafter the women were taken out in groups, and forced to abandon their children there, some of whom were mere babies⁴⁷. As Rufina Amaya tells the story:

Then the soldiers took out the first group, who were the younger women, taking away all their children and leaving those children locked up with the women who remained. The groups they took away did not return, and all we heard was constant machine-gun fire. The soldiers came back to get the other group, and in this way they took away all the women in groups, taking first the younger ones and ending with the older ones. All the children were left in the house above the store, and they were of all ages, starting at only two days old, and they were the ones that cried the most.

Then it was my turn, they took me out with a group of several women, leaving the children with maybe 20 women. At five in the afternoon they took me together with 22 women, and I was the last in line, because I tried to stop them from taking my eight-month-old daughter, whom I was holding in my arms, and I didn’t want them to take the sling that I had across my chest, as the soldiers were taking everything from the people, but in the end they forced me, and to soldiers took my little girl and separated me from my three small children, whom I did not want to leave. The soldiers handed my little baby to the biggest boy, so she wouldn’t be left on the ground. And so, weeping bitterly, I was forced to leave my children, who shouted at me not to go. They took the group of women, including me, to the home of Israel Marquez, and when I got there I saw the house was full of dead bodies of

⁴⁵ Statement by Rufina Amaya to the Tutela Legal, October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote*, No. 451 of November 7, 1990

Rufina Amaya also declared that at that time she could see when her partner and the father of her children had been murdered. “I saw when they took out my partner, Domingo Carlos and a man named Segundo Chicas from the chapel and took them to my house, and the two tried to run away, whereupon the soldiers machine-gunned them and then cut off their heads. At that time my oldest son, Cristino, said “mommy they’re taking daddy away” and when he saw them kill his father he broke into tears, crying “mommy, let’s go because they’re going to kill us too”, but I merely answered “and how are we going to go, don’t you see they have us surrounded?”

⁴⁶ Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002). Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* (“Considerations on Impunity with Respect to the El Mozote Massacre”), No. 451 of November 7, 1990.

⁴⁷ Tutela Legal, op. cit.

the people they had taken away, and there was blood all over the floor. When they saw such atrocity, the women, except me, hugged each other, shouting, weeping and begging the soldiers not to kill them. At that point the soldiers turned to the woman and told them, "don't cry ladies, here comes the devil, he'll take you". And while the soldiers were dealing with the hysterical women, I slipped away into a little clump of bushes (...) and I managed to hide there for the whole afternoon, where I could see the group of women that had been with me. They were taken into the house of Israel Marquez and machine-gunned, and then I saw when they took the last group of women and killed them with machine guns. The last group of women that the soldiers brought had the children with them, and at about 7 p.m. they were also shot.⁴⁸

64. Before they were killed, several of the younger women were taken to the outskirts of the village, specifically to the hills of El Chingo and La Cruz, where the soldiers raped them. According to the report of the Tutela Legal, several soldiers said that during the El Mozote operation they had raped many young women before killing them.⁴⁹

65. The bodies of those killed were piled up in various dwellings and burned by the soldiers. When the chapel was set on fire there were still wounded people inside it, and we could hear shouting and wailing.⁵⁰

66. As indicated, Rufina Amaya was one of a group of women who had been assembled and during the massacre she managed to flee and hide⁵¹. From her hiding place, while the home of Israel Marquez was burning, she could hear soldiers talking in the following terms: "we've killed all the adults, but there are still the kids that we rounded up, and we don't know what to do with them, whether to kill them or what. But hey, some of

⁴⁸ Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* ("Considerations on Impunity with Respect to the El Mozote Massacre"), No. 451 of November 7, 1990.

⁴⁹ Tutela Legal, op. cit.

⁵⁰ Tutela Legal, op. cit. According to Rufina Amaya, "at that time, when they had killed all the adults, some 400 persons, they set fire to the chapel, to the home of Isidra Claros, José María Marquez and Israel Marquez, which were all full of dead bodies." See: Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* ("Considerations on Impunity with Respect to the El Mozote Massacre"), No. 451 of November 7, 1990.

⁵¹ Rufina Amaya described her experience over the next few days in the following terms: "I buried my face and wept bitterly over the death of my children, and so the soldiers would not hear me weeping. At that time I felt no physical pain, only the great pain in my heart which would not even let me pass water.(...). On December 16 of the year I heard the voices of two children she knew, the daughters of a lady named Matilda who lived in the village of Jocote Amarillo, Guacamaya Canton. So I went down the road to their house to see them and then, when the girls saw me, they were frightened and they cried out to their mother, "mommy, there's Rufina Amaya", and then Mrs. Matilda del Cid (...) came to me and asked about my family, because her brothers lived in El Mozote. I told her: "I think everyone died because they killed even my children", and then we both began to cry and then Matilda took me to a cave where the family was hiding. (...) I went with the other families to the Colomoncagua refuge in Honduras, where I spent eight years (...) until February 14, 1990."

See: Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* ("Considerations on Impunity with Respect to the El Mozote Massacre"), No. 451 of November 7, 1990.

the kids are cute and maybe we could take them with us." Another soldier replied, "but look, you know that we are acting on orders, the Colonel's orders are to kill everyone here, because this is a scorched-earth operation. If you won't kill the kids, we'll have to do it."⁵²

67. At that time the children, of whom there were several hundred, were still assembled at the home of Alfredo Martinez. Rufina Amaya could hear their cries as they were being killed, and she could even distinguish the voices of her own children, shouting "mommy, they're killing us", "they're choking us", "they're knifing us". After committing these murders, the soldiers burned the house. One child was heard crying for its mother, and Rufina Amaya heard a soldier say, "go and kill that kid, you didn't do it properly". Then she heard shots and there was no more crying.⁵³

68. The report of the Tutela Legal recounts the cruelty with which the murders were committed. According to statements by other soldiers who were in the vicinity, the troops hesitated to kill the children, until Major Caceres Cabrera, the commander of the operation, killed the first one by throwing him in the air and catching him on the point of a knife as he fell.⁵⁴

69. With respect to the persons who lost their lives in these events, the statement of Rufina Amaya indicates:

That all the men who were killed were farmers and woodcutters, and the women were housewives (...). That year there were never any guerrillas around. All the people died and they were burned in those houses, they were not buried, and there was certainly no judicial recognition (...). I can't remember the names of all those killed, such was my state of mind at the time, and I can recognize none of the soldiers who perpetrated that genocide. But I know that the Colonel who gave the order for the massacre was Colonel Domingo Monterrosa.⁵⁵

70. In addition to Rufina Amaya, the survivors of subsequent massacres, whose testimony is given below, said they had gone to El Mozote after the massacre to look for relatives living there, and they found corpses and burned houses⁵⁶. In reference to El Mozote, for example, Rosa Ramirez Hernandez said that "I went to see the scene of the

⁵² Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners' communication of November 11, 2002). Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* ("Considerations on Impunity with Respect to the El Mozote Massacre"), No. 451 of November 7, 1990.

⁵³ Ibid.

⁵⁴ Tutela Legal, op. cit.

⁵⁵ Statement of Rufina Amaya before the Tutela Legal on October 10, 1990 (annexed to the initial petition of October 30, 1990). The statement of Mrs. Rufina Amaya was also cited in a report by the Human Rights Institute of the Central American University José Simeón Cañas (IDHUCA). See IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* ("Considerations on Impunity with Respect to the El Mozote Massacre"), No. 451 of November 7, 1990.

With respect to other possible witnesses of the massacre, Rufina Amaya said: "I remember that a child came running out heading for the hills, and his name was Chepito Marquez, the son of Marcelina Marquez and Gertrudis Guevara, and if he's alive he would be another witness to the massacre."

⁵⁶ Statement of Juan Bautista Márquez before the Second Court of First Instance of San Francisco Gotera, January 30, 1991, Court File (Annex 2 to the petitioners' communication of July 7, 2006)

events, and I saw the bodies of children and adults, burned, there were many bodies (...)⁵⁷. In a similar vein, Maria Teofila Pereira said she did not witness the killings but she did see bodies lying on the ground in El Mozote⁵⁸. Anastasio Pereira Vigil said he learned about the El Mozote murders "via the grapevine" and he went there to look for his sister, and found the bodies of family members in her house⁵⁹. He added that "besides the bodies of my relatives, in the church there were bodies lying around, but I cannot say how many because I didn't go into the church, as the smell was so bad"⁶⁰. Juan Bautista Marquez and Raquel Romero Claros also declared that several of their relatives had died in the village of El Mozote.⁶¹

71. The exhumation work conducted to date has provided elements consistent with these descriptions. For example, during the exhumations of 1992, the expert from the Argentine Forensic Anthropology Team (EAAF), Luis Fondebrider, said that "what we are finding is that more than 90% of the remains are of children under the age of 13 (...) some had bullet holes (...) many head skull fractures and in many cases the bones were more decomposed because they were not completely formed, they were children's bones."⁶²

72. The report of the Argentine Forensic Anthropology Team on the exhumations at one of the sites mentioned by the survivor in 1992 concluded that "the evidence points to a mass crime", where "there was no evidence that could point to any possible confrontation". As to the number of children who died, the report says that "around 85% of the remains retrieved were those of children under 12 years old". As well, it notes "the number of bullet fragments that impacted the bodies" and the subsequent burning of the bodies.⁶³

73. In a similar vein, the forensic examination report from those exhumations mentions that "there is no evidence to support the argument that the victims, nearly all of whom were small children, had taken part in combats or had been caught in cross-fire between combating forces." On the contrary, it says that "the physical evidence obtained from the exhumation in the convent of El Mozote confirms the reports of a mass murder."⁶⁴

74. The two reports agree on the likelihood that the number of persons killed was greater than that recorded⁶⁵.

⁵⁷ Statement of Rosa Ramírez Hernández before the Second Court of First Instance of San Francisco Gotera, January 30, 1991, Court File (Annex 2 to the petitioners' communication of July 7, 2006)

⁵⁸ Statement of María Teofila Pereira before the Second Court of First Instance of San Francisco Gotera, February 18, 1991, Court File (Annex 2 to the petitioners' communication of July 7, 2006)

⁵⁹ Statement of Anastasio Pereira Vigil, June 2, 1992, Court File (Annex 2 to the petitioners' communication of July 7, 2006)

⁶⁰ Ibid.

⁶¹ Statement of Juan Bautista Márquez, March 11, 1990, Court File (Annex 2 to the petitioners' communication of July 7, 2006) and Statement of Raquel Romero Claros Viuda de Claros, June 2, 1992, Court File (Annex 2 to the petitioners' communication of July 7, 2006).

⁶² Press report of October 22, 1992, "Mortal remains verify death of Salvadoran children: military battalion accused in the massacre of 1981".

⁶³ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D to the petitioners' communication of November 11, 2002).

⁶⁴ Forensic Examination Report. El Mozote. El Salvador. B. Clyde Snow. Robert H. Kirschner, Douglas D. Scott and John F. Fitzpatrick. (Annex D to the petitioners' communication of November 11, 2002).

⁶⁵ Forensic Examination Report. El Mozote. El Salvador. B. Clyde Snow. Robert H. Kirschner, Douglas D. Scott and John F. Fitzpatrick. (Annex D to the petitioners' communication of November 11, 2002) and Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D to the petitioners' communication of November 11, 2002).

75. Approximately 494 victims were identified. See. Annex of the present report.

3. Massacre in La Joya canton

76. The canton of La Joya lies approximately 3 km southeast of the village of El Mozote⁶⁶. In October 1981 the inhabitants of La Joya had been threatened by soldiers of the Armed Forces, who said they would be looking for guerrillas in Guacamaya but warned them that the soldiers who would be coming “had blacker hearts, they were from the Atlacatl Battalion and they were going to kill everyone”.⁶⁷

77. On December 9, 1981, several residents heard over the radio that a large-scale armed forces operation was under way in the north of Morazán. Just after noon on December 10, a number of helicopters of the Salvadoran armed forces overflew the Canton and landed at Arada Vieja de Los Quebrachos, carrying troops. During the afternoon military personnel opened fire on the canton, throwing the local people into panic⁶⁸.

78. Reactions to the attack varied. Some sought safety immediately, while others waited until nightfall to flee, and some decided not to leave their homes. The men who withdrew did not think that their wives and children would be harmed⁶⁹. However, at around 8 a.m. on December 11, 1981, uniformed soldiers entered La Joya and proceeded to kill the people they found there⁷⁰.

79. The report of the Tutela Legal contains stories from some of the survivors, corroborating statements made before the Second Court of First Instance of San Francisco Gotera between 1990 and 1992. Those statements indicate what people saw and heard while they were hiding in the bush, the problems they faced while they were there, their return to La Joya, finding the bodies of their relatives, and the subsequent search for refuge⁷¹. Generally speaking, these stories reveal that those who survived in La Joya were forced to flee and evade the military operation, taking to the bush and hiding in nearby caves for many days. Those persons witnessed the destruction of their homes, their families and their people. On repeated occasions the survivors said they could hear shouts and wailing from people who were being killed⁷².

80. Pedro Chicas Romero, for example, said that on his return he found in La Joya the remains of “approximately 200 persons, including children, women and old people”. He said that he could identify only one person, as the other bodies “had been burned and devoured by buzzards”. People’s livestock were also killed⁷³.

81. Mrs. Lucila Romero Martinez recounted that on December 11, 1981, she was in her house in La Joya when she heard a helicopter land, and she could see several

⁶⁶ Tutela Legal. The mass executions in El Mozote and neighboring locales, July 23, 1992 (Annex A to the petitioners’ communication of November 11, 2002).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Supplementary statement of Pedro Chicas Romero before the Second Court of First Instance of San Francisco Gotera, October 31, 1990. Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

soldiers. She hid and she could hear gunshots and cries from people begging not to be killed. She met a boy who said his family had been killed. She did not see when the people were killed, but she could hear their cries and she heard the soldiers boasting of sexual assaults on the girls. Whenever she went looking for food in those days, she found bodies⁷⁴. She saw “the bodies of eight people lying in one house, but I don’t know whether they were buried or not”.⁷⁵

82. Rosa Ramirez Hernandez stated that on November 11, 1981, at 8 a.m., she saw the army take Lorenzo Vigil from his house in La Joya, and they shot him dead about 200 m from the house. She related that on that day, between 9 and 10 in the morning, she saw the soldiers set fire to the houses of La Joya with cans of tar-like oil⁷⁶. She stayed several days in caves to protect herself from mortar fire⁷⁷.

83. Eustaquio Martinez Vigil said that on December 10, 1981 he was at home in La Joya when around 20 helicopters flew over and at about 5 p.m. he “saw men in olive-green uniforms who started shooting toward the canton of La Joya”, and then he saw a big cloud of smoke. When he returned on December 12, he found the bodies of his wife and his children, killed by bullets, hidden under some mango boughs. He buried his relatives in the same place 10 days later. He said that upon fleeing he had left his wife and children behind because he thought nothing would happen to them⁷⁸. He added that “I buried the bodies of 16 people, women and children, all in one day, in two ditches” the locations of which he was able to indicate. He said that he saw another 24 bodies in different parts of La Joya.⁷⁹

84. Genaro Sanchez recounted that on December 10, 1981 “a contingent of government troops opened fire on La Joya (...). The shooting lasted an hour, although there was no return fire (...)”. He thereupon decided to leave with his family at four in the morning on December 11, 1981. “At around seven in the morning the troops descended on La Joya, shooting as they came, and all day long there was thick smoke coming from the houses that had been set on fire”⁸⁰. When he returned, he found several people weeping because their families have been killed. He went to the home of one of those persons where he found bodies.⁸¹

⁷⁴ Statement of Lucilla Romero Martinez before the Second Court of First Instance of San Francisco Gotera, January 24, 1991. Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁷⁵ Statement of Eustaquio Martinez Vigil and Lucila Romero Martinez, May 14, 1992, Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁷⁶ Statement of Rosa Ramírez Hernández before the Second Court of First Instance of San Francisco Gotera, January 30, 1991. Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁷⁷ Ibid.

⁷⁸ Statement of Eustaquio Martinez Vigil before the Second Court of First Instance of San Francisco Gotera, March 14, 1991, Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁷⁹ Statement of Eustaquio Martinez Vigil and Lucila Romero Martinez, May 14, 1992, Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁸⁰ Statement of Genaro Sanchez, April 4, 1991. Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁸¹ Ibid.

85. Sotero Guevara Martinez said that on December 11, 1981, men of the national army killed several members of his family, along with other persons⁸². In his statement he said that “on December 10 of that year he heard gunfire from 10 o’clock in the morning onwards in La Joya, where he lived with his family, but as the village was big he specified that the shots were coming from Los Quebrachos canton”⁸³. Fearful, he took his entire family off toward the La Joya River, but as the shooting died down he decided to return with his family. The next day he went with two of his children to the home of his partner, with her younger daughter. When his partner and her daughter did not show up during the day he became concerned and he left his two sons with another person and went out to look for them. He found the house burned with “several bodies piled up, and on top was the body of my daughter Catalina”. Some days later he went back with other survivors to bury the bodies, and at that time he could see whose bodies they were.⁸⁴

86. He also reported that a group of approximately 50 persons, residents of La Joya, sought refuge in the hills known as “El Perico”, some 500 m from the village houses. From that place they could see columns of smoke and hear the soldiers shooting. After wandering in the bush for several days, most decided to seek refuge in Honduras⁸⁵.

87. According to statements taken by the Tutela Legal, after the massacre there was a message scrawled on a wall: “The Atlacatl Battalion was here”⁸⁶. As well, at the end of December 1981 an airplane flew over the village of San Fernando, in the north of Morazán Department, dropping pamphlets reporting that all the people of La Joya and Cerro Pando and the village of El Mozote were dead⁸⁷.

88. Approximately 152 victims were identified. See. Annex of the present report.

4. The massacre in the village of Ranchería

89. The village of Ranchería was located a few kilometers to the northwest of El Mozote, and contained 17 dwellings⁸⁸.

90. In the early hours of December 12, 1981, the third company of the Atlacatl Battalion moved in this direction, heading for Ranchería and Los Toriles, where they continued the mass murder of the local population⁸⁹. By 8 a.m. troops of the Atlacatl Battalion had already killed the majority of the residents of Ranchería⁹⁰. According to

⁸² Statement of Sotero Guevara Martínez, May 7, 1991. Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Tutela Legal, op. cit. on this point, Hilario Sanchez Gomez said that he hid on El Perito hill together with some 50 persons, and stayed there six days. From there, on December 12, 1981, he was able to observe “columns of soldiers dressed in olive-green uniforms, who were setting fire to all the houses, and they also heard gunfire. When they came down from the hill they found all their houses destroyed.”

See statement of Hilario Sanchez Gomez before the Second Court of First Instance of San Francisco Gotera, February 14, 1991, Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

⁸⁶ Tutela Legal, op. cit.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

survivors' testimony, and the manner in which the bodies were found, in this village the victims were killed in their houses as whole families. The killings began in the house of Vicente Marquez, continued in the house of Catarino Rodriguez, and proceeded family by family during several hours. Many of the houses were burned after the killings.⁹¹

91. Those who managed to escape and hide could hear the shooting, the shouts of the persons begging for their lives, and the weeping of the children. Many survivors returned to the site in search of their families, and found bodies, some of them mutilated or with their throats slit.⁹²

92. Mrs. Irma Ramos Marquez declared that on December 12, 1981 she was at her home in Ranchería, when at around 8 a.m. she saw soldiers go into the house of Vicente Marquez. She then heard the wailing of women and children, followed by gunfire and a cloud of smoke, as the house had been set on fire. After that she saw nothing but she heard heavy gunfire. At around 9 a.m. soldiers arrived at the house of Catarino Rodriguez and after dragging out his entire family they took them to the house of Maximo Rodriguez, where the witness heard gunfire and the shouting of women. She saw around 30 dead people, women, men and children. She added that the soldiers killed 16 cows⁹³.

93. On a subsequent occasion, Irma Ramos Marquez declared that:

In the village of Ranchería, on December 12, 1981, I saw some 25 dead people, 13 of which were lying under some orange trees, and the others were in an adobe house. I don't know if those people were buried or not, but I suppose that the animals ate them, because I could already see some dogs and pigs gorging on them.⁹⁴

94. Juan Bautista Marquez, a survivor from Jocote Amarillo, declared that he went to Ranchería to look for other relatives, and found their bodies⁹⁵. On another occasion, he declared that "in the village of Ranchería, on around 16 December 1981, I saw 13 dead people lying under trees, and further on there were four more dead people in the house, and four more in another house, and in another house, and nearby four more dead people, for a total of 26 bodies. I don't know whether they were buried or not, I just know they were shot, and they included men, women and children"⁹⁶.

95. Approximately 56 victims were identified. See. Annex of the present report.

5. The massacre in the village of Los Toriles

96. The village of Los Toriles was located immediately next to the village of Ranchería. The testimony gathered by the Tutela Legal indicates that on December 12, 1981 "families were assembled and then machine-gunned, including women with newborn

⁹¹ Ibid.

⁹² Ibid

⁹³ Statement of Irma Ramos Marquez before the Second Court of First Instance of San Francisco Gotera, October 31, 1990, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

⁹⁴ Statement of Juan Bautista Marquez and Irma Ramos Marquez, May 14, 1982, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

⁹⁵ Statement of Juan Bautista Marquez before the Second Court of First Instance of San Francisco Gotera, March 11, 1990, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

⁹⁶ Statement of Juan Bautista Marquez and Irma Ramos Marquez, May 14, 1982, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

children. These murders continued until around midday. The survivors who were in hiding could hear people shouting and weeping and the soldiers answering “not to get upset because it wasn’t going to hurt.”⁹⁷

97. One of the survivors said he saw a family assembled in the yard of their home and heard a soldier shout: “this is where the guerrillas eat, you swine, we saw them come here yesterday (...). Because you are lying you are going to die here.” Another soldier came up and said “why are you telling these swine so much? Shut them up for good! You know what your orders are”. According to this testimony, some people were still alive but wounded after the shooting, and the soldiers exploded five grenades in their midst.⁹⁸

98. Maria Teofila Pereira testified that on December 12, 1981 she was in her home in Los Toriles when a helicopter landed and she saw a soldier get out. She went outside with her mother and her youngest child in her arms. Upon hearing shooting, her mother went back to the house, and Maria followed with her child, hiding near an almond tree and a stone fence “because the shooting was very heavy and I could even hear bombs, and at around 10 o’clock in the morning I heard a boy shouting and then there was shooting and I heard nothing more. (...). At around 100 m from where I was hiding with my child in my arms, they killed a dozen people and I suppose they were soldiers, because the radio was announcing that the Atlacatl Battalion was about to launch an operation.”⁹⁹

99. She reported that at 7 p.m. she saw dead people, including children with their throats cut. She had to bury her mother there. She also buried other persons she found and she had to sleep in the bush with her child, forgoing basic necessities, because all the houses had been burned.¹⁰⁰

100. When the families had been killed, the Atlacatl Battalion third company left the villages of Los Toriles and Ranchería and went to Guacamaya. On the road to Guacamaya, Captain Salazar, in command of the company, assembled his soldiers to give them encouragement. According to testimony gathered by the Tutela Legal, he asked them not to talk about the massacre with anyone, not even their families. He explained that “war is hard” and that if a soldier had to kill his mother he would do it.¹⁰¹

101. Approximately 82 victims were identified. See. Annex of the present report.

6. The massacre in the village of Jocote Amarillo

102. The village of Jocote Amarillo was located about 2 km to the south of El Mozote. The inhabitants of Jocote Amarillo already knew about the military operation and the murders that had occurred in other places, and so many of them fled into the bush before the soldiers arrived. However, other persons took refuge in this place, precisely because it was further away and they did not believe the soldiers would get there. Those who remained were in for a bad surprise.¹⁰²

⁹⁷ Tutela Legal, op. cit.

⁹⁸ Tutela Legal, op. cit.

⁹⁹ Statement of Maria Teofila Pereira before the Second Court of First Instance of San Francisco Gotera, January 23, 1991, Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

¹⁰⁰ Ibid.

¹⁰¹ Tutela Legal, op. cit.

¹⁰² Ibid.

103. According to survivors' testimony, military personnel began killing people in Jocote Amarillo at around 7 a.m. on December 13, 1981. They stayed about two hours in the village. There was constant firing, cries of fear and pain, and "the clamor of people being killed"¹⁰³. When those who had been able to flee returned home they found the burned bodies of their relatives.¹⁰⁴

104. Domingo Vigil Amaya, for example, testified that the national armed forces killed four members of his family. As to how he found his relatives, he said that "in the patio under an orange tree lay my wife with my little girl, Maria Bernalda, in her arms, both completely dead, my wife had half her face nearly torn away by a bullet, and the girl had a bullet hole below the ear. Then, inside the house, I found my other two children, dead and burned."¹⁰⁵

105. Approximately 23 victims were identified. See. Annex of the present report.

7. The massacre in the canton of Cerro Pando

106. The canton of Cerro Pando is about 4 km to the south of the village of El Mozote¹⁰⁶. Although when the soldiers arrived on December 13, 1981 many people had taken hiding in the countryside, more than 100 were killed, and their relatives found many of their bodies "carbonized".¹⁰⁷

107. In his statement on the massacre, Bernadino Guevara Chicas said that on December 13, 1981 he was at home in Cerro Pando when he saw a green helicopter fly over and, within half an hour, he heard shooting about 10 blocks from his house. He saw a big cloud of smoke rising from all the houses in the village. Around noon a group of about 50 men wearing olive-green uniforms came to his house and one of them ordered him to leave the house, asking what his religion was, to which he answered Catholic. The soldier told him that because of that he would be saved. He left with his family and when he came back he saw that his house was already being consumed by flames. Subsequently he encountered his six-year-old nephew, who told him that his mother and his sisters had been killed. The witness saw the burned bodies of some 90 people.¹⁰⁸

108. Approximately 143 victims were identified.¹⁰⁹ See. Annex of the present report.

109. In the context of this massacre, about 20 people took refuge in a cave in the hills of Cerro Ortiz, but they were discovered by the soldiers who, without any warning,

¹⁰³ Ibid. Juan Bautista Marquez declared that in Jocote Amarillo he succeeded in hiding with his wife and children near the house of a resident, where they heard gunfire at around 7 a.m..

Statement of Juan Bautista Marquez before the Second Court of First Instance of San Francisco Gotera, October 30, 1990, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

¹⁰⁴ Tutela Legal, op. cit.

¹⁰⁵ Statement of Domingo Vigil Amaya before the Second Court of First Instance of San Francisco Gotera, March 5, 1991, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

¹⁰⁶ Tutela Legal, op. cit.

¹⁰⁷ Ibid.

¹⁰⁸ Statement of Bernardino Guevara Chicas before the Second Court of First Instance of San Francisco Gotera, January 23, 1991, Court record (Annex 2 to the petitioners' communication of July 7, 2006).

¹⁰⁹ Tutela Legal, op. cit.

threw a grenade into the cave and then went away. Those victims who could walk abandoned the cave.¹¹⁰

110. Approximately 15 victims were identified.¹¹¹ See. Annex of the present report.

8. Subsequent days and cover-up of the massacres

111. According to statements by survivors, in the days following the massacres, those people who had been able to take refuge in the countryside returned to their homes in search of their relatives. Some of them found bodies that were burned, dismembered or in an advanced stage of decomposition, which made it difficult to identify their loved ones. Other persons were able to identify the bodies of their relatives, friends and neighbors, and proceeded to bury them in common or individual graves, depending on the circumstances. As a result, when it came time to cooperate in the subsequent exhumations, some of the survivors were able to indicate exactly where their relatives and acquaintances were buried¹¹², while others were quite unsure of where the bodies had been laid.¹¹³

112. Following the massacres some of the few survivors – terrorized, their houses destroyed and their means of livelihood gone – took refuge in Honduras, where they attempted to start a new life. The available statements indicate that some returned to El Salvador in the early 1990s¹¹⁴. There is no complete list of the persons who had to flee to Honduras as a result of the massacres. Nor is there more detailed information on how many people returned to El Salvador and how many remained outside the country.

113. From the evidence on the file, the persons who moved to Honduras as a result of the massacres were:

114. Approximately 10 identified victims.

115. For several years the massacres at El Mozote and neighboring locales were covered up. According to the IDHUCA report, “an Army spokesman, Colonel Alfonso Coto, insisted that the stories of a massacre committed by military personnel were ‘totally false’ and had been invented by subversives”¹¹⁵. There is no evidence that investigations of any kind were initiated into the massacres prior to 1990.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Statements of Domingo Vigil Amaya, Juan Bautista Márquez, María Teófila Pereira, Rufina Amaya Amaya, Sotero Guevara Martínez, Genaro Sánchez, and María Amanda Martínez, all of May 14, 1992, Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

¹¹³ Statements of Bernardino Guevara Chicas and Hilario Sanchez Gomez, both of May 14, 1992, Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

¹¹⁴ Statements of Juan Bautista Marquez, October 30, 1990; Irma Ramos Marquez, October 31, 1990; Hilario Sanchez Gomez, November 28, 1990; Bernardino Guevara Chicas, January 23, 1991; Lucila Romero Martinez, January 24, 1991; Domingo Vigil Amaya, January 30, 1991; and Juan Bautista Marquez, March 11, 1990, all given before the Second Court of First Instance of San Francisco Gotera, Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

See also: publication of November 13, 1991, “Church demands investigation of brutal killing of campesinos in 1981.” Carlos Mario Marquez, referring to a report of the Tutela Legal.

¹¹⁵ IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* (“Considerations on Impunity with Respect to the El Mozote Massacre”), No. 451 of November 7, 1990 (quoting “Weakness and deceit, 1984 Raymond Bonner, p. 340”).

116. The denial of these events extended to the international community, which failed to react to reports about the massacres. For example, the journalists Alma Guillermoprieto of the Washington Post and Raymond Bonner of the New York Times both published reports on January 27, 1982, offering the first evidence that the Salvadoran army had “engaged in a brutal slaughter of civilians”. The documentation refers to more than 700 people murdered, primarily children, women and older adults¹¹⁶. Both press stories were dismissed as “FMLN propaganda” by other US media. For its part, the US government held that there was no evidence “to confirm that government forces systematically massacred civilians in the operation zone”, adding that “there were probably no more than 300 people living in El Mozote at the time of the massacre”. The available information indicates that these versions were based on a report that by the US Embassy in San Salvador prepared without visiting the scene of the events.¹¹⁷

C. The criminal investigation

117. Between 1981 and 1990 there was no judicial investigation into the massacres at El Mozote and nearby locales.¹¹⁸

118. As noted earlier, most of the survivors of the massacre took refuge in Honduras for several years. Because of this, it was only in the early 1990s, when many had returned to El Salvador, that they took the initiative to submit testimony and file complaints¹¹⁹. Several witnesses said that they had abstained for a long time from complaining because they were afraid.¹²⁰

119. The first complaint was presented on October 26, 1990 by Pedro Chicas Romero, a native of La Joya, before the Second Court of First Instance of San Francisco Gotera (hereinafter “the Second Court”). On the basis of information available at the time, Pedro Chicas Romero declared the following:

On December 10, 1981, in the afternoon, a large number of soldiers from the Atlacatl Battalion entered the village of El Mozote (...), where they questioned the inhabitants and stripped them of their personal belongings. The following day, December 11, 1981, in the early morning, soldiers of the Atlacatl Battalion began to drag village residents out of their houses. In this process they formed groups, separating the men from the women; the men were led into the church of El Mozote, while the women were taken to the home of Alfredo Marquez, 36 years old. The children of the village were divided, the younger ones going with the women and the older ones with the men. Later in that same morning, the soldiers proceeded to kill the men and the children with them in the church, throwing their bodies into the convent

¹¹⁶ Americas Watch. *The Massacre at El Mozote: The Need to Remember*. March 4, 1992. (Annexed to the petitioners’ communication of April 24, 1992)

¹¹⁷ Ibid., and IDHUCA report, *Consideraciones sobre la impunidad a propósito de la masacre del El Mozote* (“Considerations on Impunity with Respect to the El Mozote Massacre”), No. 451 of November 7, 1990 (quoting “Weakness and deceit, 1984 Raymond Bonner, p. 340”). The Americas Watch Report says that, according to the International Committee of the Red Cross, there were at least 1,000 people in El Mozote at the time.

¹¹⁸ Note from the Secretary of the Second Court of First Instance of San Francisco Gotera. Court record (Annex 2 to the petitioners’ submission of July 7, 2006).

¹¹⁹ Tutela Legal, op. cit.

¹²⁰ Supplementary testimony by Pedro Chicas Romero before the Second Court of First Instance of San Francisco Gotera. 31 October 1990. Court record. (Annex 2 to the petitioners’ communication of 7 July 2006); and statement of Eustaquio Martínez Vigil before the Second Court of First Instance of San Francisco Gotera, March 20, 1991, Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

located next to the church. Around noon, after having killed all the men, the soldiers of the Atlacatl Battalion began to take the women out of the house of Alfredo Marquez and proceeded to kill them in different houses of the village, while the children who were with them were left locked up in the house of Mr. Marquez. On the same day, December 11, 1981, at around 11 p.m., after having killed the women, the soldiers proceeded to murder the children who were still in the home of Mr. Marquez. Such was the magnitude of this massacre that the only survivor was Mrs. Rufina Amaya, then 39 years of age, who managed to hide from the soldiers and witness the events from her hiding place. Moreover, those soldiers, who identified themselves at the outset of the interrogation as belonging to the Atlacatl Battalion, burned the houses in the place where the massacre had been committed. Those same soldiers took the girls into the hills of El Chingo and La Cruz near the village of El Mozote, where they raped and then killed them. On that same day, December 11, 1981, a similar massacre took place in the canton of La Joya (...), where soldiers of the Atlacatl Battalion slaughtered men, women, children and elderly people of the place. On December 12, 1981, soldiers of the Atlacatl Battalion went to the villages of Ranchería and Los Toriles, in Guacamaya canton (...), where they killed residents including children, women, men and elderly people and also destroyed and burned dwellings and killed any domestic animals they found. There were some survivors from the massacre in the village of Jocote Amarillo, including one Juan Bautista Marquez, then 41 years of age, who saw the soldiers arrive and took hiding while they carried out the killings. The bodies were buried in the same places where the massacre took place.¹²¹

120. Between October 30, 1990 and August 21, 1992, statements were received from Juan Bautista Márquez, Rufina Amaya Amaya, Irma Ramos Márquez, Pedro Chicas Romero, Hilario Sánchez Gómez, María Teofila Pereira, Bernadino Guevara Chicas, Lucila Romero Martínez, Domingo Vigil Amaya, Rosa Ramírez Hernández, Eustaquio Martínez Vigil, Genaro Sánchez, Sotero Guevara Martínez, Raquel Romero Claros Viuda de Claros, Anastacio Pereira Vigil and Lidia Chicas Mejía¹²².

121. On November 9, 1990, the judge hearing the case ordered some investigative measures¹²³. Although the prosecutor for the case had requested that the executive power be subpoenaed to provide information on the commanders and officers in charge of the military operations of December 1981 in the zone, the judge decided at that time:

To dismiss the request because the record does not indicate that it was members of the national army who participated in the crime under investigation, as the green uniform is used both by members of the national army and by members of the FMLN, nor is there sufficient proof in the fact that the witnesses and the plaintiff say the soldiers told them they were from the Atlacatl Battalion, since such a statement could have been made by

¹²¹ Complaint filed by Pedro Chicas Romero before the Second Court on October 26, 1990 (attached to the initial petition of October 30, 1990). This complaint was also mentioned in the IDHUCA report, op. cit.

¹²² Court record. (Annex 2 to the petitioners' communication of July 7, 2006).

¹²³ Communication from the State received May 29, 1992.

members of terrorist groups passing themselves off as soldiers of the national army.¹²⁴

122. On May 8, 1991 the judge of the Second Court issued a decision to the effect that he had received sufficient evidence and was suspending the taking of evidence for that reason¹²⁵.

123. On June 19, 1991, notification was sent to the President of the Republic and Commander in Chief of the Armed Forces requesting the names of the commanders and officers in charge of an operation conducted on December 10, 1981 in Meanguera, Department of Morazán, and specifically in the places where various persons were killed, allegedly at the hands of members of the Armed Forces, those places being the villages of El Mozote, Los Toriles and Jocote Amarillo, the canton of Guacamaya, and the townships of La Joya and Cerro Pando.¹²⁶

124. On that same day notification was sent to the Director of the Legal Medicine Institute and the Head of the Executive Unit of the Crime Investigation Commission, requesting their collaboration in the exhumation and autopsy of various persons for an event that took place on December 10, 1981 in those same locales.¹²⁷

125. On July 16, 1991 the Institute of Legal Medicine replied that its exhumation calendar was full for that week. Consequently, these procedures were suspended on July 18, 1991.¹²⁸

126. On November 20, 1991 the responsible judge issued a decision which, after noting the scale of the procedures and the allegations, resolved: (i) to request the Ministry of Defense to report whether there was a mine field in the zone and whether it could provide for the safety of persons conducting or witnessing the investigations; (ii) to request the national and international Red Cross offices to provide the necessary protection for their personnel; and (iii) to request the Director of the Legal Medicine Institute to provide medical,

¹²⁴ Decision of the Second Court, November 9, 1990. Court record (Annex 2 to the petitioners' communication of July 7, 2006).

¹²⁵ Decision of the Second Court, May 8, 1991. Court records (Annex 2 to the petitioners' communication of July 7, 2006). The Tutela Legal declared the reasons for the suspension unsatisfactory, as evidence could perfectly well be taken while other investigative measures were being pursued. In response, the judge said that the suspension was temporary and that as soon as the inspection and exhumations were completed other witnesses and victims could give statements. However, criminal proceedings were in fact halted for a year, as the taking of testimony was suspended and the inspections began only on May 27, 1992. See Tutela Legal, op. cit.

¹²⁶ Communication of the State received May 29, 1992; unnumbered letter sent to the President of the Republic on June 19, 1991. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹²⁷ Communication of the State received May 29, 1992; unnumbered letter to the Director of the Legal Medicine Institute and the Executive Unit of the Crime Commission, June 19, 1991. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹²⁸ Communication of the State received May 29, 1992; communication from the Legal Medicine Institute of July 16, 1991. Court record (Annex 2 to the petitioners' submission of July 7, 2006); decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993); and decision of the judge of the Second Court, July 18 1991. Court record (Annex 2 to the petitioners' submission of July 7, 2006).

paramedical and scientific personnel commensurate with the scope of the inspections to be conducted on the date indicated.¹²⁹

127. On November 28, 1991 the President of the Republic and Commander-in-Chief of the Armed Forces was again asked to provide the names of commanders and officers. The request was repeated on January 9, 1992.¹³⁰

128. On December 13, 1991 the Minister of Defense and Public Security sent a letter indicating that "the cantons and villages mentioned" had from the beginning of the armed conflict been "places of presence and persistence of terrorist criminals, who have sown mines in certain places and are alone aware of those places" and that consequently "at the present time security conditions are not suitable for conducting the inspections requested." He added that, at the Court's request, the Armed Forces could "conduct a military operation to dislodge possible terrorists who might be in the area in question and to clear the area of terrorist obstacles and mines found there, for the safety of you and your company personnel."¹³¹

129. On January 24, 1992 the Second Court asked the Director of the National Geographic Institute to provide photographs and topographical maps of the places under investigation, and this was done on February 11, 1992.¹³²

130. On March 25, 1992 Brigadier General Victor Suanzes Pardo, Chief of Military Observers and Commander of the ONUSAL Military Division, certified that on March 7, 1992 a mine sweep had been conducted and the captain heading that operation concluded that the mines had been fully removed, and consequently the zone was completely mine-free. He also said that "military observers declined to make comments of any kind, as their mission was confined to guarding combatants of the FMLN/END."¹³³

131. On March 18, 1992 the Second Court received a letter from the National Army for Democracy, Third Military Region, indicating that no explosive devices have been found and requesting that the implementation of justice be accelerated.¹³⁴

132. In an annex entitled "Internal Reports of the Tutela Legal of the Archdiocese" it is indicated that, at a meeting on March 27, 1992 between the Tutela Legal and the judge of the Second Court, the latter said that he had "higher orders to delay or stall the

¹²⁹ Communication of the State received May 29, 1992; decision of the judge of the Second Court, November 20 1991; Court record (Annex 2 to the petitioners' submission of July 7, 2006) and decision of the judge of the Second Court of September 27, 1993 (annexed to the communication of the State of October 14, 1993).

¹³⁰ Official letter to the President of the Republic of November 28, 1991 and January 9, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

¹³¹ Communication from the Ministry Of Defense and Public Security of December 13, 1991; and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993); and communication of the State received May 29, 1992.

¹³² Decision of the judge of the Second Court of January 24, 1992; communication from the National Geographic Institute of February 11, 1992; and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993). The Commission does not have the maps.

¹³³ ONUSAL certification of March 25, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

¹³⁴ Communication of the National Army for Democracy of March 18, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

investigation (...) until the Truth Commission is installed in the country and takes up the case." He also said that he had orders from the President of the Republic, the President of the Supreme Court of Justice, the Prosecutor General and the Ministry of Defense to the effect that he should not set a date for the exhumations. He added that he had once been asked to order dismissal in favor of those implicated.¹³⁵

133. On March 30, 1992 the Legal Medicine Institute sent to the Second Court information provided by the Tutela Legal containing the names of three persons proposed to conduct the exhumations¹³⁶. On April 22, 1992 the Legal Medicine Institute sent the list of professionals who would be in charge of the autopsies related to the case.¹³⁷

134. In a press release dated April 8, 1992 the Tutela Legal complained of irregularities committed to date in the investigations and posed specific questions to the government authorities. Among the irregularities, it cited the following:

- On May 8, 1991, when testimonial evidence provided thorough proof of the responsibility of the Armed Forces, the examining judge temporarily suspended the taking of testimony, on the grounds that he must devote himself to investigative work such as an inspection of the premises, exhumations and autopsies. Those procedures were ordered on November 9, 1990, but to date they have not been performed and the taking of testimony is still suspended with no legal justification.
- Once the members of the EAAF were in El Salvador, the judge systematically refused to set a date for the inspection and exhumation, giving credibility to rumors of minefields in the El Mozote area, even though local residents declared those rumors false. This has also been proven by national and foreign press visits to the zone. In addition, there is the letter signed by the Chief of the Third Military Region of the END/FMLN, reporting that on March 7, 1992 a mine sweeping exercise was conducted with members of the military component of ONUSAL, under the peace accords between the Government of El Salvador and the FMLN of January 16, 1992. That letter stated that "no explosive devices were found". Mention is also made of the certification by the Chief of Military Observers and Commander of the Military Division of ONUSAL, declaring that the zone was "absolutely mine-free".
- Through communications of June 19, 1991, November 28, 1981, and January 9, 1992, the examining judge requested the President of the Republic, Alfredo Cristiani, as Commander-In-Chief of the Armed Forces, to supply the list of soldiers and officers who took part in the military operation that produced the El Mozote massacre, but received no response.¹³⁸

¹³⁵ Internal report of the Tutela Legal of March 27, 1992 (Annex B to the petitioners' communication of November 11, 2002).

¹³⁶ Communication from the Legal Medicine Institute of March 30, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

¹³⁷ Communication from the Legal Medicine Institute of April 22, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006).

¹³⁸ Tutela Legal, press release of April 8, 1992 (annexed to the petitioners' communication of April 24, 1992).

135. Consequently, the Tutela Legal requested:

- That a date to be set for conducting the inspection and exhumations.
- That EAAF members and the US specialists Clyde Snow and Robert Kirshner be sworn in as technical agents of the Court, to assist the Legal Medicine Institute in conducting the exhumations and autopsies.
- That the Prosecutor General fulfill his obligation to conduct the investigations promptly.
- That the President of the Republic and other officials cooperate with the administration of justice.¹³⁹

136. On April 28, 1992 there was a demonstration in front of the Second Court by a delegation of communities from the north of the department, accompanied by journalists and hundreds of people, protesting delays in the administration of justice.

137. On that occasion the delegation issued a press release demanding that there be a trial for the El Mozote massacre, and complaining of:

- The judge's refusal to swear in foreign forensic experts proposed by the Tutela Legal and relatives of the victims.
- The refusal of the President of the Republic to reply to requests for information on officers and soldiers of the Armed Forces who had participated in the operation.
- The passive stance of the Attorney General.¹⁴⁰

138. On the same day a group of individuals and organizations presented a letter addressed to the judge of the Second Court, expressing the same concerns.¹⁴¹

139. On April 29, 1992 the anthropologists of the EAAF were sworn in¹⁴². On April 30, 1992 one of these experts submitted a work plan detailing the actions needed to ensure the scientific soundness of the preliminary investigation, exhumation, and analysis of the remains of the victims.¹⁴³

140. On that day the National Army for Democracy (END), Third Military Region, sent a letter to the Second Court enclosing, in order to contribute to prompt justice in the case and squelch rumors about supposed mines in the La Joya canton, the report confirming

¹³⁹ Ibid.

¹⁴⁰ Press release of April 27, 1992, " *Comunicado de los Organismos del Norte de Morazán sobre el Estancamiento y Obstrucción del Juicio de la Masacre de El Mozote*". Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁴¹ Letter from various organizations of April 28, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁴² Writs of the Second Court. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁴³ Letter from Mercedes Celina Doretti of April 30, 1992. Court record (Annex 2 to the petitioners' submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

the minefield verification and indicating that on April 23, 1992 there had been a sweep of La Joya, as a result of which it was confirmed that there were no minefields in the village.¹⁴⁴

141. On May 5, 1992 the Second Court issued summonses to the mayor of Meanguera as well as to Pedro Chicas Romero, Juan Bautista Márquez, Rufina Amaya Amaya, Irma Romero Márquez, Hilario Sánchez Gómez, María Teófila Pereira Argueta, María Amanda Martínez, Bernardino Guevara Chicas, Lucila Romero Martínez, Domingo Vigil Amaya, Eustaquio Martínez Vigil and Sotero Guevara, ordering them to indicate “the exact location of the common and individual graves containing the cadavers to which this bloody event relates”.¹⁴⁵

142. On May 7, 1992 the Second Court issued a decision ordering a legal inspection of the places where “the bloody event under investigation occurred” and establishing a timetable for the inspection. The order included nine locations for inspection between May 27 and July 20. It also ordered that various authorities, communications media and international agencies should be invited.¹⁴⁶

143. On May 14, 1992 a number of statements were received from surviving relatives indicating in most cases that they could identify the places where their neighbors and relatives had been buried.¹⁴⁷

144. On May 19, 1992 the Ministry of Defense, “acting on instructions from the President of the Republic and Commander-in-Chief of the Armed Forces”, issued a communiqué indicating:

I wish to inform you that we have found no documentation of any kind relating to a presumed military operation conducted on December 10, 1981 in the municipality of Meanguera, Department of Morazán, and therefore I cannot supply the information you have requested. However, I should draw to your attention the fact that the alleged events mentioned in your letter took place at the time of another administration, and thus any information on the case you are investigating could be requested from those officials who were in command of the Armed Forces at that time, since the President of the Republic assumed his responsibilities only in June 1989.¹⁴⁸

145. On May 26, 1992 the head of the Forensic Technical Unit sent a letter to the judge of the Second Court reporting that persons had been appointed for the planned

¹⁴⁴ Communication from the National Army for Democracy of April 30, 1992. Court record (Annex 2 to the petitioners’ submission of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

¹⁴⁵ Writ of the Second Court, of May 5, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

¹⁴⁶ writ of the Second Court, of May 7, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

¹⁴⁷ Court record (Annex 2 to the petitioners’ communication of July 7, 2006)

¹⁴⁸ Communication from the Office of the President of May 19, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)

inspections. Those persons were a soil analysis technician, two planimetric experts and a photographer. On May 27, 1992 those four persons were sworn in.¹⁴⁹

146. On May 27, 1992 the inspections began, and on June 1 the head of the operations unit submitted an album of photographs and sketches from the technical inspection conducted in the village of El Mozote¹⁵⁰. The inspection report indicated that, with the help of two survivors, Rufina Amaya and Desiderio Marquez, the inspectors had gone over the sites corresponding to the houses of some residents of El Mozote, where bodies of the victims had been buried or abandoned. In several of these locations human remains were found, as well as evidence of generalized destruction of dwellings.¹⁵¹

147. On May 29, 1992 a letter was received with reports from the minefield confirmation and verification of May 8, 26 and 27, indicating that a team of explosives experts together with the deputy commander of the third military region of the END and officials of ONUSAL had searched the villages of Jocote Amarillo, Los Toriles, Ranchería, Cerro Pando and Guacamaya to confirm whether there were any minefields, and no explosive devices had been found.¹⁵²

148. On June 3, 1992 the hill known as El Chingo, near El Mozote, was inspected. On June 9, 1992 the head of the operations unit submitted sketches and a photographic album on that visual inspection.¹⁵³

149. On June 15, 1992 the Second Court issued a decision ordering that, by June 17, the skeletal remains found in the inspection conducted in El Mozote should be sent to the laboratory of the Legal Medicine Institute.¹⁵⁴

150. On June 16, 1992 the head of the operations unit sent a photographic album and sketches of the visual inspection conducted on La Cruz hill, in El Mozote, on June 10, 1992.¹⁵⁵

151. On June 17, 1992 a report was prepared on the exhumation of human skeletons in the home of Benita Diaz, noting that a human skull was also found along with

¹⁴⁹ Communication from the Head of the Forensic Technical Unit of May 26, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵⁰ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵¹ Inspection report of May 27, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006).

¹⁵² Communication from the National Army for Democracy of May 29, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵³ Inspection report of June 3, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵⁴ Writ of the Second Court of June 15, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵⁵ Communication from the Head of the Operations Unit of June 16, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

what appeared to be a lower jaw, with some teeth. These were collected by experts of the Crime Commission and placed in separate plastic bags.¹⁵⁶

152. On June 17, 1992 a visual inspection of the village of El Potrero in the canton of La Joya was conducted. Human remains were found in what had been the home of Benita Diaz¹⁵⁷. Domingo Márquez, José Cristóbal Mejía, Pedro Chicas Romero, Pedro Advíncula Martínez and Sotero Guevara were present to provide information on the sites where their relatives were to be found.¹⁵⁸

153. On June 19, 1992 the judge of the Second Court issued a decision to again request the President of the Republic and Commander-In-Chief of the Armed Forces to advise “which commanders, officers and classes of the armed forces participated in a military operation on December 10-13, 1981 in El Mozote (...) and vicinity”.¹⁵⁹

154. On July 1, 1992 a visual inspection of the canton of La Joya was conducted. Pedro Chicas Romero was present to provide information on the location of the bodies.¹⁶⁰

155. On July 8, 1992 a visual inspection was conducted in the canton of Guacamaya. On July 14, 1992 the sketches and photographs from that inspection were delivered.¹⁶¹

156. On July 13, 1992 the Second Court issued a decision requesting the Director of the Dr. Roberto Masferrer Legal Medicine Institute to send to professor Josset Daves [sic] at the Maples Center for Forensic Medicine in Miami, Florida, the skeletal remains found in El Mozote, and particularly in the house of Benita Diaz, for analysis and study to determine whether they belonged to the same person, and to establish that person’s age and sex, the time of death, and if possible the cause of death, as well as the length of time the bones had been interred or lying on the surface.¹⁶²

157. On July 15, 1992 a visual inspection was conducted in the village of Ranchería. The photographs and sketches from that inspection were submitted on August 19, 1992¹⁶³. The witnesses Juan Bautista Marquez and Irma Ramos Martinez participated, providing valuable information. Various bones, “apparently human”, were found.¹⁶⁴

¹⁵⁶ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵⁷ Visual inspection report of June 17, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁵⁸ Ibid.

¹⁵⁹ Writ of the Second Court. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶⁰ Visual inspection report of July 1, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶¹ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶² Ibid.

¹⁶³ Visual inspection report of July 8, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶⁴ Ibid.

158. On July 16, 1992 the Second Court issued a decision to send to the Dr. Roberto Masferrer Legal Medicine Institute for examination the remaining bones found during the visual inspection of the village of Ranchería.¹⁶⁵

159. On July 17, 1992 the Legal Medicine Institute sent a letter to the Second Court indicating that “as the Truth Commission is now in the country, it would be appropriate to proceed with the exhumation and the relevant judicial and expert proceedings in the El Mozote case. My Institute is fully prepared, both materially and technically, to carry out the inspections (...) but I believe that if the action of the Salvadoran judiciary is to be perfectly clear (...) its authorities should make an official request, through the Supreme Court of Justice, and via the Ministry of Foreign Relations, to the governments of Argentina, England and United States of America to cooperate by appointing as quickly as possible a forensic anthropologist, or at least a physical anthropologist, to act as a collaborator.”¹⁶⁶

160. On July 21, 1992 the sketches and photographs from the visual inspection of the village of Ranchería were submitted.¹⁶⁷

161. On that same day, the minister of defense sent an official letter in which, under instructions from the President of the Republic, he indicated:

I reiterate the report submitted to you on May 18 of this year referring to the criminal case concerning the death of various persons in the month of December 1981 in the canton of El Mozote (...), which report says that “upon reviewing the record of military operations by the Ministry of Defense, no military order was found to conduct military operations during the month of December 1981 in that zone (...) nor background of any kind relating to the presumed military operation.”¹⁶⁸

162. On July 22, 1992 a visual inspection was conducted in the village of Los Toriles in Guacamaya canton. The report indicates that Juan Antonio Pereira Vigil and Maria Pereira participated.¹⁶⁹

163. On July 28, 1992 the Second Court issued a resolution asking the president of the Supreme Court of Justice, through legal channels, to request and arrange the cooperation of the governments of Argentina, England and the United States in naming a forensic anthropologist or a physical anthropologist.¹⁷⁰

164. On the same day the Second Court issued a resolution to request the social media of San Salvador to advise the public not to prune or clean up the sites inspected,

¹⁶⁵ Writ of the Second Court of July 16, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶⁶ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Visual inspection report of July 22, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006).

¹⁷⁰ Writ of the Second Court of July 28, 1992. Court record (Annex 2 to the petitioners’ communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

specifically Cantón el Mozote, cerro El Chingo, cerro La Cruz, Cantón La Joya, Caserío Ranchería, Caserío Toriles, Cantón Jocote Jocote Amarillo, Cerro Pando, all in the jurisdiction of Meanguera, Department of Morazán.¹⁷¹

165. On the same day photographs and sketches from the visual inspection of various locales in the village of Los Toriles were submitted.¹⁷²

166. On July 29, 1992 a visual inspection was conducted in the village of Jocote Amarillo, with the participation of Remigio Marquez, Juan Bautista Marquez and Domingo Vigil Amaya. On August 11, 1992 the sketches and photographs from that inspection were received¹⁷³.

167. On August 12, 1992 a visual inspection of the village of El Barrial in the canton of Cerro Pando¹⁷⁴ was conducted, with the participation of the witnesses Visitacion Argueta and Lilia Chicas.

168. On September 9, 1992 the Second Court decided that, as the Truth Commission was now established, the first exhumation should take place on October 13, 1992 at El Mozote, notwithstanding the petition pending before the Supreme Court of Justice relating to the cooperation of Argentina, England and the United States. On September 16, 1992 notice was sent to various State agencies, embassies, ONUSAL and the Truth Commission advising them of the beginning of the exhumations.¹⁷⁵

169. On September 29, 1992 the Truth Commission wrote to the president of the Supreme Court of Justice indicating the importance of conducting the exhumations with the proper scientific rigor. This, it said, would require the presence of a US forensic anthropologist, three professionals from the EAAF, and two members of the Chilean anthropology group. The Truth Commission indicated that the exhumations must begin on October 19, 1992, as the results must be incorporated into the investigation process. It also undertook to bring the experts to the country.¹⁷⁶

170. On September 30, 1992 the Ministry of Foreign Relations presented a letter from the Argentine embassy with the names of the three EAAF members, and contact data for that institution.¹⁷⁷

171. On October 1, 1992 the president of the Supreme Court of Justice wrote to the Truth Commission, announcing that its petition relating to specialized experts had been remitted to the Second Court.¹⁷⁸

¹⁷¹ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁷² Ibid.

¹⁷³ Visual inspection report of July 29, 1992. Court record (Annex 2 to the petitioners' communication of July 7, 2006); and decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993)..

¹⁷⁴ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid

¹⁷⁸ Ibid

172. On October 2, 1992 the Second Court confirmed the appointment of Patricia Bernardi and Mercedes Doretti as experts and technical advisers.¹⁷⁹

173. On October 5, 1992 a note was sent to the Spanish Embassy requesting the assistance of Spanish forensic experts in the El Mozote case.¹⁸⁰

174. During the months of October, November and December excavation and exhumation work proceeded in the village of El Mozote.¹⁸¹

175. On October 28, 1992 the Truth Commission wrote to the Second Court with suggestions for improving the exhumation work, conducting the laboratory examinations, and identifying the victims. Those suggestions included:

1. Exhumation work in El Mozote should continue, as further skeletal remains have been found in the walls next to the chapel.
2. The next step should be to analyze the skeletal remains found as recommended by the EAAF experts, as the Truth Commission needed a report on exhumation findings by the end of November.
3. Samples of the skeletons found should be sent to the University of California at Berkeley for identification.
4. The experts proposed by the Commission should be authorized to interview relatives of the victims to obtain pre-mortem data.
5. The victims' remains should be returned to the place from which they were exhumed, in recognition of the relatives' rights and to allow for any subsequent studies.¹⁸²

176. The work began in the area of "El Convento" or Site 1, under the rotating responsibility of the Legal Medicine Institute of El Salvador and the Crime Commission and constant participation by the three members of the EAAF¹⁸³. There were also visits from ONUSAL and the Truth Commission. The conclusions of the EAAF on the work at Site 1 include the following:

- The type of interment may be described as a primary synchronous common grave.
- There were at least 117 anatomically articulated human skeletons. This means that the persons found at site 1 died there or their bodies were deposited there when they still retained their soft tissue. In addition, 24 concentrations of bones were found, which by their degree of destruction, carbonization or calcification could not be retrieved as individual skeletons. It is possible that the laboratory study will produce new individual skeletons that would increase these figures.
- All the bullets and casing fragments were found inside the building. More than 250 projectile fragments were retrieved, 90% of them from within the skeletons and clothing of the individuals.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D. to the petitioners' communication of November 11, 2002).

¹⁸² Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁸³ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D. to the petitioners' communication of November 11, 2002).

- The placement of the bodies and the associated evidence point to a single event that occurred at a specific point in time.
- The bone remains were in a very poor state of conservation, and many were incomplete. This reflects various factors, including the high number of children, the quantity of bullet fragments that impacted the bodies and clothing of the victims, the effect of fire, the collapse of the roof and walls of the building onto the bodies, and the degree of soil acidity.
- About 85% of the remains recovered were of children under the age of 12 years. The statement is based on the size of the bones, "the fact that their primary and/or secondary centers of ossification had not fused", the abundant "simultaneous presence of both primary or deciduous and permanent teeth" and the size of the clothing found. The immaturity of the skeletons contributed to faster-than-usual deterioration of the remains.
- The evidence shows that, subsequent to the shooting, one or more explosive or incendiary devices were thrown into the building.
- "All these facts tend to indicate the perpetration of a massive crime, there being no evidence to support the theory of a confrontation between two groups."¹⁸⁴

177. On the basis of these conclusions, scientific recommendations and suggestions were made to the Second Court and to the Truth Commission. Among other things, it was recommended that interviews be conducted with presumed relatives of the victims in order to assemble pre-mortem facts or physical data, that they should be identified genetically, for which purpose the services of the genetic laboratory of the University of California at Berkeley were offered free, and that the remains should be delivered to the families and not re-buried for at least a year.¹⁸⁵

178. The report on the forensic examination of the skeletons and artifacts retrieved included the following conclusions:

- The physical evidence from the exhumation of the convent house at El Mozote confirms the allegations of a mass murder.
- The skeletal remains of 143 bodies were identified, including 136 children and adolescents and 7 adults. The average age of the children was approximately 6 years. There were six women, ages 21 to 40 years, and a man of around 50 years.
- The number of deaths may be greater. The uncertainty results from extensive perimortem skeletal injuries, postmortem skeletal damage and associated commingling.
- The skeletons show indications of severe trauma resulting from the high speed of the bullets and postmortem damage resulting from crushing and from fire or heat.
- The specific cause of death could not be determined in all cases because of the absence of soft tissue, the damage to the skeletons, and the long time that has elapsed since death. There is no way to determine whether some of the victims were alive at the time of the fire.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

- 24 separate weapons were identified, consistent with at least 24 individual shooters. At least 11 persons fired their weapons within the building and at least 13 fired their weapons outside the building.¹⁸⁶
- There is no evidence to support the contention that these victims, almost all young children, were involved in combat or were caught in the crossfire of combat forces. Rather the evidence strongly supports the conclusion that they were the intentional victims of a mass extra-judicial execution.¹⁸⁷

179. On January 6, 1993 the judge of the Second Court appointed the forensic anthropologists Charles Lee Cecil and Roger Ediar as technical advisers¹⁸⁸. On January 6, 7, 8, 11, 12, 13, 14, 15, 18 and 19, 1993, exhumation work continued at site 2, "La Tumba"¹⁸⁹. On January 20, 21, 22, 25, 26, 27, 28 and 29, 1993, exhumation work began at site 3, "El Pozo"¹⁹⁰. On March 24, 1993, the judge of the Second Court sent to the Legal Medicine Institute 10 cases of bone remains found at site 2 in El Mozote.¹⁹¹

180. The Commission has a document summarizing the meeting of the Tutela Legal with the judge of the Second Court on March 31, 1993. It indicates that the judge sent copies of the file to the Supreme Court of Justice which, according to the judge, "ordered the case to be dismissed (...) in light of the amnesty law recently decreed by the legislative Assembly." According to that report, the judge of the Second Court declared that he had learned "through a dimwitted ex-Sergeant of the Salvadoran armed forces" that "the El Mozote massacre was an individual decision of Domingo Monterrosa". The judge refused to name the sergeant, and said that "he did not summon him to give evidence because he did not want to"¹⁹².

181. On that same day (March 31, 1993) the judge of the Second Court, together with staff of the Legal Medicine Institute withdrew the working materials used during the exhumations of the skeletal remains in the previous months. He did this because he assumed that the work of exhuming victims would be halted because of the amnesty act¹⁹³. When asked about the need to identify and return the remains to their relatives, he said "this nonsense is over with and I don't want to get involved in any more messes." However, he then agreed to receive petitions in writing from the relatives.¹⁹⁴

D. The decision on dismissal and application of the General Amnesty Act for Consolidation of Peace

¹⁸⁶ Identification of Firearms at the El Mozote Execution Site. Dr. Douglas D. Scott (Annex D. to the petitioners' communication of November 11, 2002).

¹⁸⁷ Forensic Investigation Report, El Mozote, El Salvador. B. Clyde Snow, Robert H. Kirshner, Douglas D. Scott and John F. Fitzpatrick (Annex D. to the petitioners' communication of November 11, 2002).

¹⁸⁸ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Internal report of the Tutela Legal of March 27, 1992 (Annex B to the petitioners' communication of November 11, 2002).

¹⁹³ Ibid.

¹⁹⁴ Ibid.

182. On September 27, 1993 the judge of the Second Court issued a final decision of dismissal. He divided the preamble (*consideranda*) into three sections: (i) corpus delicti; (ii) participation; and (iii) observations.¹⁹⁵

183. Under the heading “corpus delicti” the judge states that “there is no evidence of the corpus delicti”. While the preamble mentions that 119 skeletons were found, it adds that these were deteriorated by time and the nature of the terrain and no witness or injured party has been able to identify them. It also includes a quotation from article 164.2 of the code of criminal procedure, indicating that the act of exhumation must identify the body by appropriate means and, if necessary, an autopsy must be ordered.¹⁹⁶

184. Under the heading “participation” the judge declares that “there is sufficient evidence of collective participation by members of the armed forces or the Atlacatl Battalion”. However, “there is no statement of a witness or injured party to identify or implicate any person in the crime”. Finally, “the means of investigation for discovering those involved have been exhausted”.¹⁹⁷

185. In the decision itself, the judge ordered the following:

In light of the General Amnesty Act for Consolidation of the Peace decreed by the Legislative Assembly of El Salvador pursuant to Decree No. 486 published in the Official Gazette 56, [this Court orders] definitive dismissal of charges against any person belonging to the Atlacatl Battalion at the time of the event, in connection with the massacre that occurred, and [orders] the case to be filed.¹⁹⁸

E. Appeals to reopen the process

186. After the dismissal of criminal case 238-90, on November 23, 2006 the Second Court of First Instance of San Francisco Gotera was presented with “a particular accusation against those responsible for the massacres”. That petition requested that the case be reopened, that the suspended investigations be renewed, and that those responsible for the massacres should be punished, on the basis of the ruling of September 26, 2000 issued by the Constitutional Chamber of the Supreme Court of Justice, which found, in relation to the General Amnesty Law, “that this law should not be applicable to serious violations of human rights”¹⁹⁹. The details of that decision are dealt with in the section on the background.

187. On November 30, 2006 the Court admitted the submission, indicating that it was not possible to consider the petitions presented because “the original documentation for case 238/90 known as the ‘massacre at El Mozote and neighboring locales’ was currently held at the seat of the Supreme Court of Justice. Since that date there has been no further pronouncement or any forward movement in the process.”²⁰⁰

¹⁹⁵ Decision of the judge of the Second Court of September 27, 1993 (attached to the communication from the State of October 14, 1993).

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ These actions were recounted by the petitioners in the merits stage and were not disputed by the State.

²⁰⁰ These actions were recounted by the petitioners in the merits stage and were not disputed by the State

188. On August 13, 2007 the Tutela Legal reiterated its petition to reopen the investigations, and to date has received no response from the judicial authority²⁰¹. In their most recent statements the petitioners reaffirmed that “the investigations have not been reopened nor have the specific steps requested been taken to clarify the truth”. The State did not dispute this information.

²⁰¹ These actions were recounted by the petitioners in the merits stage and were not disputed by the State

F. Exhumations subsequent to the Second Court's decision of September 27, 1993

1. The exhumations conducted in 2000

189. Between April and June 2000 there was further excavation, exhumation and laboratory analysis with respect to the canton of La Joya and the village of Jocote Amarillo. The work involved six sites in La Joya and four in Jocote Amarillo²⁰². It was directed by three members of the EAAF, with the cooperation of the Legal Medicine Institutes of Santa Tecla, San Salvador and San Miguel and of Doctor Clyde C. Snow, the American forensic anthropologist²⁰³. The judge of the Court of Second Instance of San Francisco Gotera, Manuel Paz Canales and legal staff of that entity also collaborated in the investigations.²⁰⁴

190. At site 5 in La Joya eight anatomically articulated human skeletons were found. In seven of the bodies there were bullet fragments encrusted in the clothing. Many of the garments revealed holes compatible with the passage of a bullet. Together with the bones were found personal effects such as toys and shawls²⁰⁵. At site 2B nine articulated individuals were found²⁰⁶. As well, concentrations of bones or body parts of a tenth individual were found among the remains exhumed. 25 pieces of ballistic evidence were also located²⁰⁷. At site 16, at least nine individuals were found, two adults and seven children. As to ballistic evidence, only one bullet casing fragment was retrieved²⁰⁸. At site 17 at least two individuals were found. The upper member of skeleton 1 surrounded the remains of skeleton 2. Seven bullet fragments were found²⁰⁹. At site 4, an incomplete skeleton was found²¹⁰.

191. In the village of Jocote Amarillo, at site 1 two juvenile skeletons were found²¹¹; at site 3, five human skeletons were found, four juveniles and one adult. There was also ballistic evidence²¹². At site 4 small bone fragments were found, but their characteristics did not allow any positive identification²¹³.

192. The conclusions from the exhumations of 2000 may be summarized as follows:

- A total of 37 individuals were retrieved, 14 of them adults and 23 children under the age of 14. The remains were found without any soft tissue. There may have been other peri-mortem lesions affecting soft tissue that could not be recorded. In most

²⁰² Report of the Argentine Forensic Anthropology Team on exhumation works conducted in 2000 (Annex E to the petitioners' communication of November 11, 2002).

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid,

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

- cases, the bullet wounds found were sufficient in number and placement to have caused death²¹⁴.
- A total of 96 pieces of ballistic evidence and other personal effects such as clothing and toys were retrieved²¹⁵.
 - Approximately 50 relatives of the victims had previously been interviewed to collect premortem information, which was subsequently compared in the laboratory with information taken from the skeletons, in an attempt to identify them²¹⁶.
 - The remains could be positively identified in the case of 14 individuals; 22 individuals were tentatively identified, and two were deemed possibly identified²¹⁷.
 - It proved very difficult to identify the children found in the common graves. Because they were children, they generally had no significant dental traits. Nor were any birth certificates or other documentation available to certify their ages. Most of those documents were burned during the war in a fire in the town hall of Meanguera. Consequently, the ages are approximate, and their sex could not be positively identified²¹⁸.
 - These problems could eventually be resolved with the extraction of genetic material from the bones and from the presumed relatives. Currently, however, such tests are not conducted in the country and because of the great number of relatives of the victims who are also related to each other, genetic analysis would be very complicated²¹⁹.

193. On April 11, 12, 13, 26 and 28, 2000, new excavations by the EAAF were announced in the canton of La Joya. The press notices indicated that between 30 and 50 remains might be found there, and that three of the 19 potential sites would be excavated. EAAF participation was said to have been requested by the Tutela Legal. The press notice mentioned that the exhumations could provide evidence for future prosecution of officers. It also indicated that, while the main purpose of the exhumation was to recover remains for the victims' relatives, the Tutela Legal saw it as "a chance to retrieve evidence for future legal proceedings"²²⁰.

2. The exhumations conducted in 2001

194. Between September and December 2001 excavations were performed in three areas: the first in the village of El Mozote, the second in the village of Los Toriles, and the third in the canton of La Joya. The work was directed by three members of the EAAF and on some days a member of the Forensic Anthropology Team in Zimbabwe was involved²²¹

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Press notices. *La Prensa Gráfica Online*. 12 April 2000. New exhumations in El Mozote; COLATINO. 11 April 2000. Further exhumations of massacre victims in El Mozote; COLATINO. 26 April 2000. Our job is to fight against impunity and for human rights: Tutela Legal; *La Prensa Gráfica Online*. 13 April 2000. Exhumation work begins in the El Mozote massacre case; and COLATINO. 28 April 200. Three skeletons found (All annexed to the petitioners' communication received 5 April 2000).

²²¹ Report of the Argentine Forensic Anthropology Team on exhumation works conducted in 2001 (Annex F to the petitioners' communication of November 11, 2002).

195. In El Mozote, exhumation work was concentrated on one of the sites indicated as a place where women were killed²²². The skeletal remains were in very poor condition, and only fragments of bones and ashes could be retrieved. It was not possible to find articulated or semi-articulated skeletons²²³. At least 31 concentrations of skull bone fragments were found, but this did not necessarily represent the number of individuals. 95 pieces of ballistic evidence were retrieved²²⁴. Among the factors responsible for deterioration of the bone remains were the action of fire, the quantity of projectiles found that produced serious lesions in the bones, and the collapse of the roof and walls of the building onto the bodies²²⁵. The personal effects found at the site suggested that most of the bodies were of women²²⁶.

196. At Los Toriles, four graves were excavated. According to the EAAF report, as the dwellings in this place were further apart the soldiers concentrated on specific families. In the words of the EAAF, "the sad privilege of not having been piled and burned meant, in the case of Los Toriles, that all the skeletons exhumed were in a good state of conservation, allowing them to be identified and returned to their families²²⁷. At site 1, three anatomically articulated human skeletons were found, along with ballistic evidence²²⁸. At site 2 at least seven anatomically articulated human skeletons were found, along with 18 bullet fragments²²⁹. At site 3, four anatomically articulated human skeletons were found, and 33 pieces of ballistic evidence²³⁰. At site 4, a small number of fragments compatible with eight individuals were found, along with a considerable number of large, spongy bones completely disarticulated anatomically²³¹. In total, 25 skeletons were exhumed, 17 of which were complete²³².

197. In the canton of La Joya, at site 1A, three anatomically articulated human skeletons were found along with ballistic evidence²³³.

198. In the exhumations of 2001, 25 persons were identified through laboratory examinations and comparison of physical data on the victims supplied by their relatives²³⁴.

3. Exhumations conducted in 2003

199. Under the judicial authority of the Second Court of First Instance of San Francisco Gotera, forensic work was conducted between October 23 and December 10, 2003, to recover and analyze the remains of at least 81 persons who died between

²²² Ibid.

²²³ Ibid,

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.

December 11 and 13 of 1981. The work involved the EAAF, other international experts, and members of the Legal Medicine Institutes²³⁵.

200. In the villages of El Mozote, Ranchería, Los Toriles and Poza Honda (this last village located in the canton of Cerro Pando) “skeletal remains of at least 57 individuals” were recovered, “corresponding to the incidents that occurred between December 11 and 13, 1981 in those villages.” With respect to their ages, 26 were adults, nine were adolescents, nine were children or adolescents, 10 were children, two were infants, and nine were of indeterminate age. These remains were subjected to laboratory analysis, which allowed some of them to be identified while others had to be classed as “possibly identifiable”.²³⁶

201. The remains were retrieved without their soft tissue, so that wounds received at the time of death could be observed only from the bones or hard tissue. Except for the findings in Cerro Pando, the characteristics of remains found in the other graves – concentrations of incomplete and disarticulated skeletons – and the fact that there were few mandibles or maxillas with significant dental features, meant that they could not be identified.²³⁷

202. The report indicates that it was very difficult to identify the children, because of the state of conservation and decomposition in which they were retrieved and also because children generally do not have any distinguishing dental or skeletal features that allow differentiation. While age and sex are two of the most important characteristics of identification for children, there were further problems because the ages supplied were not always exact²³⁸.

IV. LEGAL ANALYSIS

A. The prior question of victim identification

203. As is clear from the “Evidence” section, the violent acts left a human toll of such extent that it has been difficult to define it completely. The Commission observes, more specifically, that in this case there are a number of complex circumstances that make it very difficult to identify the victims, both those who died and their surviving relatives.

204. Then there is the mass scale of the killings, which occurred in rural areas of difficult access using means that impeded the complete identification of the victims. As indicated in the previous section, several of the massacres were accompanied by burning of the places where the bodies were left, a situation cited by the EAAF as one of the main difficulties in identifying the murdered victims²³⁹. As well, because the surviving relatives were able to return to the area only several days or even weeks later, when they arrived they found many bodies dismembered. In some cases, this is reflected in the reports of

²³⁵ Report of the Argentine Forensic Anthropology Team on exhumations conducted in 2003.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D to the petitioners’ communication of November 11, 2002). That document indicates that the bone remains were in a very poor state of conservation, and many were incomplete. This reflects various factors, including the high number of children, the quantity of bullet fragments that impacted the bodies and clothing of the victims, the effect of fire, the collapse of the roof and walls of the building onto the bodies, and the degree of soil acidity

international experts who mention that on several occasions they found bone concentrations or “body parts”, but could not locate complete skeletons²⁴⁰.

205. Another element highlighted by the EAAF and other international experts involved in the case is the number of children who lost their lives in the massacres. According to those experts, this in itself poses a serious difficulty in terms of satisfactory identification, for in many cases the children’s bodies were burned, and at their young age their bones were still in the process of formation and were particularly fragile.²⁴¹

206. Nor are there any records or certificates containing a list of persons who lived in the cantons and villages affected. One of the EAAF exhumation reports indicates that the town hall of the municipality of Meanguera, in the jurisdiction of which the events occurred, was burned during the armed conflict.²⁴²

207. On this point, the context in which the events occurred meant that the persons who died, and their surviving relatives, had not been living in those places for very long, as displacements from one location to another were common in the atmosphere of terror created by operations similar to those described in this case. As will be discussed below, in the wake of the massacres most of the surviving relatives sought refuge elsewhere, including outside El Salvador, in Honduras²⁴³. This situation prevailed in many cases during the armed conflict, which dragged on for more than a decade. While many people reported the names of their deceased relatives, they could not recall in detail all the members of other entire families that perished.

208. As will be explained below, these difficulties were compounded by the fact that the State waited more than 10 years after the massacres before taking testimony and exhuming the bodies, and those measures were still not completed in 1992. In fact, exhumation was resumed only in 2000, and has still not been concluded.

209. The Commission considers that, because of all these elements, it must in this case adopt flexible criteria for identifying victims, both those who died and the surviving relatives.

210. With respect to the victims who died in the massacres, to date the Commission has the following elements for identification: (i) a list of 765 persons provided by the Tutela Legal in its report published in 1992²⁴⁴; (ii) some additional names gleaned

²⁴⁰ For example, from the exhumations at Site 2 in El Mozote in 2001, the EAAF concluded that the skeletal remains were in very poor condition, and only fragments of bones and ashes could be retrieved. It was not possible to find articulated or semi-articulated skeletons. At least 31 concentrations of skull bone fragments were found, but this was not necessarily the number of individuals. 95 pieces of ballistic evidence were retrieved. Among the factors responsible for deterioration of the bone remains were the action of fire, the quantity of projectiles found that produced serious lesions in the bones, and the collapse of the roof and walls of the building onto the bodies.

²⁴¹ Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 1992 (Annex D to the petitioners’ communication of November 11, 2002) and Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 2000 (Annex E to the petitioners’ communication of November 11, 2002).

²⁴² Report of the Argentine Forensic Anthropology Team on the exhumations conducted in 2000 (Annex E to the petitioners’ communication of November 11, 2002).

²⁴³ These facts are detailed in the section on the right to freedom of movement and residence, enshrined in article 22 of the convention.

²⁴⁴ That report reads as follows: “The hundreds of campesinos massacred in El Mozote and other places constituted a population consisting for the most part of children. This was a difficulty in the investigation for determining the identities of all the victims: many of the survivors remembered the names of the adults, but few could remember those of the children. But the problem of identifying the dead was also affected by other variables: first, of course, the time elapsed since the massacre, a full decade, especially because the basis of the investigation

from the reports of the EAAF on exhumations conducted in 1992, 2000, 2001 and 2003; and (iii) a list of 971 persons provided by the petitioners in their communication of September 24, 2010. These last names come from testimony of surviving relatives taken by that entity in order to locate the places where the mortal remains might be found. The Commission will indicate the source in each section of the analysis.

211. The Commission observes that some of the victims are mentioned more than once, with certain differences of sex, age, name or surname. In these circumstances, the Commission will indicate the alternatives (using "or"). As well, the Commission notes that many persons are identified by their age, sex or family ties, but with no exact name. In these circumstances, when persons are identified at least as members of a family, the Commission will consider them as victims.

212. With respect to the surviving relatives, the Commission has the names of: (i) the persons who made statements before the Second Court of First Instance of San Francisco Gotera during judicial proceedings; (ii) some persons who testified before the EAAF and other authorities during investigations preceding the exhumations of 1992, 2000, 2001 and 2003; and (iii) a partial list of 154 persons supplied by the petitioners in their communication of September 24, 2010.

213. Finally, the Commission observes that all the evidence on the file points to the conclusion that the number of persons who died in the massacres in El Mozote and vicinity, as well as the surviving relatives, exceeds the number of persons who have been identified to date and are considered as victims in this report. As will be indicated in the recommendations, it is up to the Salvadoran State to make all possible efforts to obtain proper identification of the victims of the serious human rights violations declared in this report. It is also the State's task to provide adequate reparations to all those surviving relatives who can be identified.

214. Similarly, in the case of some violations that are known to have occurred, because of their nature and the State's failure to investigate them for more than a decade, there is no individualized list of persons, or there are reasons to believe that the true number of victims is much greater than the few persons named in the file. This is the case with the women who were victims of sexual assault in El Mozote, the persons whose property was confiscated or destroyed, and persons who had to flee their homes and seek refuge in Honduras.

B. The rights to life, humane treatment and personal liberty (articles 4, 5 and 7 of the Convention, taken in concordance with article 1.1 thereof)

215. Article 4.1 of the American Convention provides:

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

216. Articles 5.1 and 5.2 of the American Convention provide:

is witness testimony, the memory of the survivors. The second variable is the process of forced displacements suffered by the people of northern Morazán since 1980, and during the military operations of the Atlacatl Battalion many of the campesinos gathered in El Mozote spent only a few days in the village, having come from Guacamaya, Tierra Colorada, and other places, seeking refuge from the military. The survivors of El Mozote cannot identify all the displaced persons who died there, entire families that were exterminated were unknown to the survivors. As well, those who could escape the murderers in the villages through which they passed could not name all the dead people they saw." Tutela Legal, op.cit.

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.

217. Articles of 7.1 to 7.5 of the American Convention provide:

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

218. Article 1.1 of the American Convention indicates:

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

219. The right to life is a prerequisite for the enjoyment of all other human rights, and when the right to life is not respected, all other rights are meaningless.²⁴⁵ The Court has declared that:

As the Human Rights Committee created by the United Nations International Covenant on Civil and Political Rights has stated,

[t]he protection against arbitrary deprivation of life, which is explicitly required by the third sentence of Article 6.1 [of the International Covenant on Civil and Political Rights] is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, [the State] must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities.²⁴⁶

²⁴⁵ Inter-American Court, *Villagrán Morales et al ("Street Children")*, Judgment of November 19, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 63 (1999). Para. 144

²⁴⁶ *Ibid.*, para. 145.

220. The Commission recalls that observance of article 4 in relation to article 1.1 of the American Convention requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but also that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their duty to ensure full and free exercise of rights by all persons under their jurisdiction.²⁴⁷ On this point, the Court has held:

This active protection of the right to life by the State involves not just lawmakers, but the entire apparatus of the State and those responsible for protecting safety and security, whether they are police or military. States have an obligation to take the measures necessary not just to prevent, try and punish violations of the right to life that occur as a consequence of the Commission of crimes in general, but also to prevent arbitrary executions by their own security agents (...)²⁴⁸.

221. As the Commission has declared on several occasions:

Extrajudicial or summary executions [involve] the deliberate, illegitimate deprivation of life on the part of State agents, usually acting on orders or at least with the consent and acceptance of the authorities. Therefore, extrajudicial executions are illegal acts committed by precisely those persons who have been invested with the power originally conceived to protect and guarantee [people's security and lives].²⁴⁹

222. The Commission recalls as well that "the prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such as war, the threat of war, the fight against terrorism, and any other crime, martial law or State of emergency, civil war or commotion, suspension of constitutional guarantees, internal political instability, or any other public disaster or emergency".²⁵⁰ An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and is now part of international *jus cogens*.²⁵¹

223. With respect to personal liberty, the Court has pointed out before that:

while the State has the right and the obligation to guarantee its security and to maintain public order, its power is not unlimited, as it has the duty, at all times, of applying procedures that are in accordance with the Law and that respect the fundamental rights of all individuals under its jurisdiction and, in this regard, it must conduct its actions within limits and according to

²⁴⁷ I-A Court, *Vargas Areco vs. Paraguay*. Judgment of 26 September 2006. Series C No. 155, Para. 75; *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, Para. 130; and *Comunidad Indígena Sawhoyamaxa vs. Paraguay*. Judgment of 29 March 2006. Series C No. 146, Para. 152

²⁴⁸ I-A Court, *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 237; *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 231; and *Huilca Tecse vs. Perú*. Judgment of 3 March 2005. Series C No. 121, Para. 66.

²⁴⁹ IACHR, Report N° 25/02, *Plan de Sánchez Massacre*, Case 11.763, 28 February 2002, Para. 114. I-A Court, *Masacre de las Dos Erres vs. Guatemala*. Judgment of 24 November 2009. Series C No. 211

²⁵⁰ I-A Court. *Maritza Urrutia vs. Guatemala*. Judgment of 27 November 2003. Series C No. 103, Para. 89; and *Cantoral Benavides vs. Perú*. Judgment of 3 December 2001, Series C N° 88, Para. 95

²⁵¹ I-A Court. *Maritza Urrutia vs. Guatemala*. Judgment of 27 November 2003. Series C No. 103, Para. 92; *Cantoral Benavides vs. Perú*. Judgment of 3 December 2001, Series C N° 88, paras. 102 and 103

procedures that preserve both public safety and the fundamental rights of the human person²⁵²

224. Specifically, subparagraphs 2 and 3 of Article 7 protect all persons against both illegal and arbitrary detentions. In this regard,

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that - although qualified as legal - may be considered incompatible with respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion.²⁵³

225. The Commission has also held that detention for improper purposes is in itself a form of punishment that constitutes an illegal penalty and violates the guarantee to a fair trial. As the Inter-American Court has ruled, "the kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention"²⁵⁴. It is precisely to protect the individual against such transgressions that the Convention establishes "positive obligations that impose specific or special requirements both on the agents of the State and on third parties acting with their tolerance or consent".²⁵⁵

226. In the present case, the Commission has demonstrated that between December 11 and 13, 1981 an operation was carried out, primarily by the Atlacatl Battalion with the support of other military units, including the Salvadoran Air Force. During that operation successive massacres were committed in seven localities in the north of the Department of Morazán. The massacres began in the village of El Mozote, continued in the canton of La Joya and the villages of Ranchería, Los Toriles and Jocote Amarillo, culminating in the canton of Cerro Pando and the Cerro Ortiz cave.

227. Those massacres were committed with extreme cruelty, involving the use of firearms, beatings with sticks, the slitting of throats, and even fires set in places where there were still people alive, screaming in pain. In those deplorable events around 1,000 people died, including an alarming number of children. There is no possible indication that the deeds were committed in the context of a confrontation. On the contrary, the statements of the survivors concur with the findings of the forensic experts to the effect that there is no evidence to support the version of a confrontation, while the manner in which the exhumed remains were found is consistent with a mass and indiscriminate attack against the civilian population.

²⁵² I-A Court. *Juan Humberto Sánchez vs. Honduras*. Judgment of 7 June 2003, Series C, No. 99, Para. 86. See also *Hilaire, Constantine and Benjamin et al. vs. Trinidad and Tobago*. Judgment of 21 June 2002. Series C No. 94, Para. 101; *Bámaca Velásquez*. Judgment of 25 November 2000. Series C No. 70, Para. 174; *Durand and Ugarte vs. Perú*. Judgment of 16 August 2000. Series C No. 68, Para. 69; and *Castillo Petrucci et al. vs. Perú*. Judgment of 30 May 1999. Series C No. 52, paras. 89 and 204

²⁵³ I-A Court. *Hermanos Gómez Paquiyauri Brothers vs. Perú*. Judgment of 8 July 2004. Series C No. 110, Para. 83; and *Juan Humberto Sánchez vs. Honduras*. Judgment of 7 June 2003. Series C No. 99, Para. 78.

²⁵⁴ I-A Court. *Velásquez Rodríguez vs. Honduras*. Judgment of 29 July 1988. Series C No. 4 Para. 155.

²⁵⁵ I-A Court. *Juan Humberto Sánchez vs. Honduras*. Judgment of 7 June 2003. Series C No. 99, para 81.

228. The stories of the survivors highlight the brutality with which the victims were treated before they were killed. Many of them were beaten and physically mistreated. By the nature of the events it is not possible to pinpoint the distinct acts of torture to which the victims were subjected. However, the statements indicate that many people were interrogated violently about their alleged links to the guerrillas, and the majority had to look on as their loved ones, neighbors and acquaintances were murdered, while awaiting their own fate. Several of the survivors said they heard victims crying out and begging not to be killed. These facts in themselves indicate that the persons skilled were the victims of torture and cruel, inhuman and degrading treatment in the moments before their death.

229. The Commission also observes that the *modus operandi* pursued in the village of El Mozote consisted of the prior detention of groups of persons. The statements of the only survivor of the massacre, Rufina Amaya, indicate that the men and older boys were initially separated from the women and the younger children. As Mrs. Amaya witnessed, the men were detained for a time before they were killed, while the women were being held with their younger children in another place. Once the men and women had been massacred, the children remained in detention for a time until Army personnel killed them. In light of the circumstances surrounding the massacre at El Mozote, the Commission considers that all the persons killed in the place were unlawfully and arbitrarily detained before their death.

230. Consistent with the above-described context, the Commission notes that the massacres to which this case refers were committed precisely during the bloodiest period of the misnamed "counterinsurgency" operations conducted on a massive scale against civilians by the Salvadoran army during the armed conflict, in open disregard of the most basic principles of international human rights law and international humanitarian law. As described in the previous section, the systematic and generalized nature of those actions, the purpose of which was to sow terror among the population, has been recognized on several occasions, and it may be concluded that the massacres constituted one of the most aberrant manifestations of crimes against humanity committed at that time by the Salvadoran military.

231. In light of the above considerations, the Commission concludes that the State of El Salvador is responsible for violating the rights to life and humane treatment of the persons executed extrajudicially in El Mozote, La Joya, Ranchería, Los Toriles, Jocote Amarillo, Cerro Pando and the Cerro Ortiz cave. The Commission considers, furthermore, that the State of El Salvador is responsible for violating the right to personal liberty of the victims extrajudicially executed in the village of El Mozote.

232. The names of the victims extrajudicially executed who have been identified to date are included in the Annex to this report.

233. The Commission notes that the petitioners made mention in one of their submissions of the disappearance of 16 children during the massacres. However, the petitioners did not provide any factual details or evidence in this respect. While it is known that the perpetrators of mass executions such as those committed in this case also engaged in the abduction of children, the Commission does not have sufficient evidence to reach a conclusion on this point.

C. The special duty to protect children (article 19 of the Convention in relation with article 1.1 thereof)

234. Article 19 of the Convention declares:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the State.

235. Article 1.1 of the Convention declares:

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

236. According to jurisprudence of the Inter-American Court, article 19 of the American Convention must be understood as an additional and complementary right established by the Treaty for persons who, in light of their physical and emotional development, require special protection²⁵⁶. Children, then, have in addition to the human rights that correspond to all persons some special rights deriving from their condition, and these entail specific duties on the part of the family, the society and the State. That is to say, children must be accorded special measures of protection.²⁵⁷

237. The IACHR recalls the principle of the higher interest of the child, which is based on the characteristics of children, on the need to foster their development, with full achievement of their potential, and on the very dignity of the human being²⁵⁸. The rights of children must be safeguarded both because of their status as human beings and because of the special situation in which they find themselves, and therefore special measures must be taken to protect them. This additional obligation of protection²⁵⁹ and these special duties must be considered determinable in light of the needs of the child as a person endowed with rights.²⁶⁰

238. The Inter-American Court has moreover established that the special vulnerability inherent in the condition of children is even more evident in a situation of

²⁵⁶ I-A Court, *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, para. 106; *Baldeón García vs. Perú*. Judgment of 6 April 2005. Series C No. 147, para. 244; *Masacre de Mapiripán vs. Colombia*. Merits, Judgment of 15 September 2005. Series C No. 134, para. 152; and especially: *"Instituto de Reeducación del Menor" vs. Paraguay*. Judgment of 2 September 2004. Series C No. 112, para. 147 and *Servellón García et al. vs. Honduras*. Judgment of 21 September 2006, para. 113

²⁵⁷ In its Advisory Opinion OC-17/02, the Court held that "Adoption of special measures to protect children is a responsibility both of the State and of the family, community, and society to which they belong." See I-A Court, *Judicial status and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A, no. 17, para. 62.

²⁵⁸ I-A Court, *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, Para. 244. See also I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 134; *Niñas Yean and Bosico vs República Dominicana*. Judgment of 8 September 2005. Series C No. 130, Para. 134; and *Comunidad Indígena Yakye Axa vs. Paraguay*. Judgment of 17 June 2005. Series C No. 125, Para. 172

²⁵⁹ I-A Court, *"Instituto de Reeducación del Menor" vs. Paraguay*. Judgment of 2 September 2004. Series C No. 112, para. 160; *Hermanos Gómez Paquiyauri Brothers vs. Perú*. Judgment of 8 July 2004. Series C No. 110, paras. 124, 163-164, and 171; *Bulacio vs. Argentina*. Judgment of 18 September 2003. Series C No. 100, paras. 126 and 134; and *"Street Children" (Villagrán Morales et al.) vs. Guatemala*. Judgment of 19 November 1999. Series C No. 63, paras. 146 and 191; and *Comunidad indígena Yakye Axa vs. Paraguay*. Judgment of 17 June 2005, para. 172. In a similar vein see *Judicial status and human rights of the child*, *Advisory Opinion OC-17/02 28 August 2002*. Series A No. 17, paras. 56 and 60

²⁶⁰ I-A Court, *Comunidad Indígena Sawhoyamaya vs. Paraguay*. Judgment of 29 March 2006, para. 154.

internal armed conflict, as in the present case, for children are least prepared to adapt or respond to such a situation “and, sadly, it is they who suffer from it the most”.²⁶¹

239. The Inter-American Court has referred in previous cases to the body of law on the human rights of children²⁶². The Commission, for its part, has referred to this notion in the following terms:

For an interpretation of a State’s obligations vis-a-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere²⁶³

240. Specifically, the Court has held that both the American Convention and the Convention on the Rights of the Child²⁶⁴ form part of an international *corpus juris* for the protection of the rights of persons under the age of 18. This means that the Court may use that *corpus juris* to establish the content and scope of the general provision established in Article 19 of the American Convention. In fact, in several cases involving children, the Court has used specific provisions of the Convention on the Rights of the Child to interpret article 19 of the American Convention.²⁶⁵

241. In this connection the Commission notes provisions 6 and 38 of the Convention on the Rights of the Child²⁶⁶, taking into account the context of armed conflict in which the events of the present case took place.

242. It has been proven that an appalling number of children were murdered in the massacres at El Mozote and vicinity. In the village of El Mozote, specifically, an initial group of boys were taken with the men to a place where they were subjected to distinct acts of torture. As related in the previous section, Rufina Amaya could see when this group were forced to lie face-down as the soldiers stood over them and pulled their heads back until they screamed with pain. In that same massacre another group of younger children remained

²⁶¹ I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 156

²⁶² I-A Court *Villagrán Morales et al. (“Street Children”)*, Judgment of November 19, 1999, Series C No. 63, para. 194.

²⁶³ IACHR, Report 41/99, case 11,491, Minors in Detention, Honduras, March 10, 1999, para. 72.

²⁶⁴ Ratified by the State of El Salvador on July 10, 1990

²⁶⁵ I-A Court, *“Street Children” (Villagrán Morales et al.) vs. Guatemala*. Judgment of 19 November 1999. Series C No. 63, Para.194; See also *“Instituto de Reeducación del Menor” vs. Paraguay*. Judgment of 2 September 2004. Series C No. 112, Para.148; and *Gómez Paquiyauri Brothers*. Judgment of 8 July 2004, Para. 166

²⁶⁶ Article 6.1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 38.1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. [...] 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.

with the women. The statements indicate that in this group there were boys and girls of very tender age, including babies two days old, who were separated from their mothers when the latter were taken outside to be killed. This group of children suffered separation from their mothers and the fear of being left to the mercy of the soldiers. Moreover, the statement of the survivor Rufina Amaya demonstrates the cruelty with which this group of children were killed, one after the other, with those still alive watching what was happening.

243. As to the other massacres, in which the *modus operandi* was to break violently into houses, killing entire families inside, it is clear that many children were murdered along with their parents. Statements indicate that some children even witnessed the killing of their parents and siblings: before they were executed all family members were taken into the patio of the house and interrogated about alleged links to the guerrillas. The extrajudicial execution of a large number of children in the villages and cantons near El Mozote has also been proven by the findings from the exhumations at various places, as well as by a series of statements by male survivors who say they fled the respective places, leaving the women and children behind, because they thought "nothing would happen to them". As related in the Evidence section, those survivors returned in search of their families, only to find the lifeless corpses of their children in many cases.

244. The Commission must note the seriousness of the human rights violations committed against children in this case. The murder of children was not accidental or isolated. By their very nature, "scorched earth" operations of this kind are planned to kill everyone found in the places identified, including children. Knowing that, the Salvadoran high command deliberately organized this operation in the northern part of Morazán with no thought to saving the lives of children but indeed ordering their murder in order to achieve the goal of wiping out the entire civilian population in places where there were thought to be guerrillas. The statement of Rufina Amaya, cited earlier, provides evidence of this: she overheard a conversation between the soldiers, who were discussing "what to do" with the children who were still locked up in El Mozote after the killing of the women. One of the soldiers explained to the other that this was a "scorched earth" operation and that the "order" was "to kill kids". The report of the Tutela Legal also recounts the statements of military personnel who said they hesitated to kill the children, and so one of the majors in charge of the operation set an example by murdering the first child with a knife.

245. In light of the foregoing considerations, the Commission concludes that, in addition to violating the rights to life, humane treatment and personal liberty in the terms described in the preceding section, the State of El Salvador deliberately ignored its obligation to provide special protection for children, enshrined in article 19 of the American Convention, taken in concordance with article 1.1 of that instrument, to the detriment of all the children who were extrajudicially executed in the massacres perpetrated in El Mozote and vicinity, according to the list of victims annexed to this report.

D. The rights to humane treatment and privacy (articles 5 and 11 of the American Convention in relation to article 1.1 thereof)

246. Articles 5.1 and 5.2 of the American Convention provided as follows:

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.

247. Articles 11.1 and 11.2 of the American Convention indicate:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

248. Article 1.1 of the American Convention declares:

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

249. The IACHR recalls that sexual assault committed by members of the security forces of a State against the civilian population constitutes in all cases a severe violation of the human rights protected by articles 5 and 11 of the American Convention²⁶⁷. On this point the Commission notes the complementarity of those articles in cases of sexual assault, as such assault constitutes not only an attack on the physical, mental and moral integrity of the victims but also an affront to their dignity and an invasion of one of the most intimate spheres of their lives – their physical and sexual space – and it denies their capacity to take independent decisions with respect to their bodies.

250. In particular, the Inter-American Court has held that the consequences of sexual violence are physically, emotionally and psychologically devastating for women victims²⁶⁸. The Court has also recognized that the rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim²⁶⁹. It has also held that rape is an extremely traumatic experience that can have severe consequences²⁷⁰ and cause great physical and psychological damage that leaves the victim “feeling debased and violated, physically and emotionally”, a condition that does not respond to the passage of time as quickly as other forms of physical and mental violence.²⁷¹

251. The IACHR recalls that torture and the infliction of cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights

²⁶⁷ IACHR, Report No. 53/01 (Merits), Case 11.565, *Ana, Beatriz and Celia González Pérez*, Mexico, 4 April 2001, Para. 45. At: <http://www.IACHR.oas.org/annualrep/2000sp/CapituloIII/Merits/Mexico11.565.htm>

²⁶⁸ I-A Court, *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 313, citing United Nations, Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, including its causes and consequences, in accordance with Resolution 1997/44 of the Commission, E/CN.4/1998/54, January 26, 1998, paras 13 and 14.

²⁶⁹ I-A Court, *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 311

²⁷⁰ I-A Court. *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 311, citing United Nations Commission on Human Rights, “Question of Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights Resolution 1995/37. Doc. E/CN.4/1995/34 del 12 January 1995, Para. 19.

²⁷¹ I-A Court. *Penal Miguel Castro Castro vs. Perú*. Merits, Judgment of 25 November 2006. Series C No. 160, Para. 311, citing Eur.C.H.R., *Aydin v. Turkey* (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, para. 83

law²⁷². It has been established at both the universal and the regional levels that once rape by State agents is proven, whether within or outside detention centers, this constitutes torture on the basis of two elements: the nature of the perpetrator and the purpose of the act.

252. At the international level, the International Criminal Tribunal for the Former Yugoslavia held that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international law”²⁷³. Some years later, the Appeals Chamber of that Tribunal ruled that, to find that the crime of torture has been committed, it is sufficient to establish that the perpetrator intended to act in a way which, in the normal course of events, would cause severe pain or suffering, whether physical or mental, to his victims, even if his motivation was entirely sexual.²⁷⁴

253. In the inter-American system, the Commission has determined that for torture to exist in cases of sexual violation, three elements must be present: “(i) it must be an intentional act through which physical and mental pain and suffering is inflicted on a person; (ii) it must be committed with a purpose; and (iii) it must be committed by a public official or by a private person acting at the instigation of the former”²⁷⁵. The IACHR has also stressed the physical and mental suffering inherent in rape and how it can be used as a method of psychological torture because its objective, in many cases, is to humiliate not only the victim but also her family or her community²⁷⁶. The Commission has declared that:

Rape causes physical and mental suffering in the victim (...). The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.²⁷⁷

254. The Inter-American Court has ruled that acts of sexual violence against female detainees constitute torture²⁷⁸. In its analysis, the Court found explicitly that the women were under the complete control of State agents, and absolutely defenseless.²⁷⁹

255. On the basis of evolving international and regional standards, the Commission considers, as it has considered in other cases²⁸⁰, that rape by a State official

²⁷² I-A Court. *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 271.

²⁷³ ICTY. *Celebici* Case N° IT-96-21 T, Ruling, para. 476, November 16, 1998. Taken from Louis Henkin *et al*, Human Rights. Foundation Press, New York, 1999, pages 380 and 381

²⁷⁴ ICTY. Appeals Chamber, *Prosecutor v. Kunarac, Kovak and Vukovic*, Judgment of 12 June 2002, Para. 153.

²⁷⁵ IACHR, Report No. 5/96, *Raquel Martín Mejía*, Case 10.970, 1 March 1996. At: <http://www.IACHR.oas.org/annualrep/95span/cap.III.peru10.970.htm>.

²⁷⁶ IACHR, Report No. 5/96, *Raquel Martín Mejía*, Case 10.970, 1 March 1996. IACHR, Report on the Merits, No. 53/01, Ana, Beatriz and Cecilia González Pérez (Mexico). At: <http://www.IACHR.oas.org/annualrep/2000sp/CapituloIII/Merits/Mexico11.565.htm>

²⁷⁷ IACHR, Report No. 5/96, *Raquel Martín Mejía*, Case 10.970, 1 March 1996.

²⁷⁸ I-A Court. *Penal Miguel Castro Castro vs. Perú*. Judgment of 25 November 2006. Series C No. 160, Para. 312

²⁷⁹ *Ibid.*, Para. 307.

²⁸⁰ IACHR, Petition, Case 12.579 *Valentina Rosendo Cantú vs. Mexico*, at <http://www.IACHR.oas.org/demandas/12.579%20Valentina%20Rosendo%20Cantu%20Mexico%202ago09.pdf>

always results in intimidation, humiliation or coercion of the victim, among other prohibited intents and purposes identified under the international standards relating to torture²⁸¹. This is due to the severe and lasting physical and mental suffering inherent in all acts of sexual violence, because of their nonconsensual and invasive nature and their impact on the victim, her family and her community. This situation is made worse when the perpetrator is a State official, because of the physical and psychological power that the aggressor can exercise abusively over the victim through his position of authority.

256. In the present case, the Commission has demonstrated that in El Mozote many of the young women, before being executed, were taken to the outskirts of the village, specifically to the El Chingo and La Cruz hills, where they were raped. This assertion is based on statements taken by the Tutela Legal, which included some soldiers who declared that they had “raped many young women before killing them” in the village of El Mozote.

257. This information is consistent with the manner in which the massacre in that village was conducted: in contrast to what happened in the other, nearby places, the women were separated from the men and were killed in several groups, beginning with the youngest, according to the statement of Rufina Amaya, who was present in one of the groups but was able to escape.

258. The Commission notes the difficulties in obtaining proof in a case such as this. Those difficulties are compounded by the fact that the rapes were committed in the only village from which there was only one survivor. Moreover, approximately 12 years elapsed after the massacres before an investigation was opened and when that finally occurred no proper methods were employed to exhume the remains of the victims and conduct forensic examinations into these issues. In light of the situation, the Commission considers that the statements taken by the Tutela Legal constitute proof, which the State has not contradicted through serious and diligent investigations, that an indeterminate group of women were raped in the village of El Mozote on December 11, 1981, prior to their extrajudicial execution.

259. Having analyzed the allegations of the parties, and the questions of law involved, the Commission concludes that the State of El Salvador is responsible for violating the rights enshrined in articles 5.1, 5.2 and 11.2 of the American Convention, taken in concordance with the obligations of article 1.1 of that instrument, to the detriment of an indeterminate group of women who were in the village of El Mozote at the time of the massacre.

260. As discussed subsequently in this report, it is the duty of the State to complete the required investigations and to identify the victims of rape.

E. The right to property (article 21 of the Convention in relation to article 1.1 thereof) for the survivors and relatives of the victims

261. Article 21.1 of the American Convention establishes:

and IACHR, petition, Case 12.580 Inés Fernández Ortega vs. Mexico, at <http://www.IACHR.oas.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%207mayo09.pdf>.

²⁸¹ Ibid.

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.

262. Article 1.1 of the American Convention declares:

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

263. The goods to which the right to property apply have been defined by the Inter-American Court as "those material objects that may be appropriated, and also any right that may form part of a person's patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value."²⁸²

264. The Commission observes that, by their nature, counterinsurgency operations such as those that resulted in the massacres examined in this report, were qualified as "scorched earth" and had the purpose of "cutting the guerrillas' lifeline". Those operations sought not only to kill people but also to destroy their homes and eliminate all possible means of livelihood, so that the places would remain abandoned or depopulated and the few survivors would be unable to continue living there. These characteristics of the operations involved in this case are consistent with the statements of the survivors and the findings of the exhumations conducted to date.

265. In fact, several of the dwellings in El Mozote, La Joya, Ranchería, Los Toriles, Jocote Amarillo and Cerro Pando were burned to the ground by the same soldiers who perpetrated the massacre. In El Mozote, the walls of several properties were knocked down, and the bodies were left in the midst of the ruins. In some places the soldiers stripped the victims of the belongings they had with them or those found in their homes. As well, several survivors declared that, upon returning from their hiding place to look for their relatives, they found the dead carcasses of the animals that had been their means of subsistence. The Commission considers that these acts constitute an additional violation of the right to property, enshrined in article 21.1 and 21.2, in relation to the obligations established in article 1.1, to the detriment of the victims executed, who were stripped of their property, and also of the survivors who lived in the villages and cantons where the massacres were committed and whose homes were destroyed or their means of subsistence stolen or eliminated.

F. The right to humane treatment (article 5.1 of the American Convention in relation to article 1.1 thereof) for the relatives and survivors

266. Article 5.1 of the American Convention provides:

1. Every person has the right to have his physical, mental and moral integrity respected.

267. Article 1.1 of the American Convention indicates:

²⁸² I-A Court, *Ivcher Bronstein vs. Peru*. Judgment of 6 February 2001. Series C No. 74, Para. 122; and *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, Para. 174

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

268. The Commission recalls that the Inter-American Court has repeatedly stated that the next of kin of victims of human rights violations may themselves be victims²⁸³. In cases involving massacres, the Court has held that it is not necessary to prove the mental anguish caused to the relatives of the victims executed²⁸⁴. In specific reference to forced disappearances, the Court has held that:

(...) the violation of those relatives' mental and moral integrity is a direct consequence of [the] forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate.²⁸⁵

269. According to the facts that the Commission has taken as proven, in the massacres of El Mozote and nearby places several of those who survived were next of kin of the victims executed. The Commission notes that, by the order and manner in which the massacres were committed, the number of surviving relatives varies substantially between El Mozote and the other places. Thus, in the village of El Mozote the only survivor was Mrs. Rufina Amaya. According to various statements, because of the rumors of a massacre in El Mozote and the radio news broadcasts to the effect that the Atlacatl Battalion would be conducting a large-scale operation in the area, several persons who found themselves in La Joya, Ranchería, Los Toriles, Jocote Amarillo and Cerro Pando decided to flee in advance of the Army's arrival. This explains why in the other massacres the number of survivors was greater in comparison to El Mozote. In various statements, the surviving males declared that they had left their spouses and young children behind, assuming that they would not be harmed.

270. The Commission considers that the loss of loved ones in circumstances such as those described in this report is sufficient to infer suffering incompatible with article 5.1 of the American Convention. In addition, the Commission has information on particular circumstances that, by the nature of the facts, the surviving relatives must have suffered during and after the massacres. That information is based on statements received by the Tutela Legal in 1992, testimony given before the Second Court in the course of judicial proceedings, and interviews prior to the exhumations conducted in 1992, 2000, 2001 and 2003. From those sources of information, already described in detail in the Evidence section, it is possible to identify a number of elements that exemplify the experience of the surviving relatives.

271. On one hand, many surviving relatives took hiding in the bush, near the place where the massacres occurred. Thus they could hear and in some cases see the brutal

²⁸³ I-A Court. *Castillo Páez vs. Peru*. Judgment of 27 November 1998. Series C No. 43, Para. 88. See also I-A Court. *Masacre de Pueblo Bello vs. Colombia* Judgment of 31 January 2006. Series C No. 140, Para. 154.

²⁸⁴ I-A Court, *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, Para. 262. See also I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 146

²⁸⁵ I-A Court, *Blake vs. Guatemala*. Judgment of 24 January 1998, Para. 114

manner in which their relatives, neighbors and acquaintances were massacred by the soldiers. In several statements the surviving relatives said they had listened helplessly to the shooting and the cries for help, and watched the cloud of smoke unleashed by the use of firearms and the burning of houses.

272. As well, in the majority of declarations the surviving relatives said they stayed for several hours and even days in the bush, in the hope of avoiding attack, and that once they saw that the soldiers had withdrawn they returned to the scene where their relatives and neighbors had been, finding in most cases the lifeless bodies of their loved ones, piled up, burned and in some cases mutilated, dismembered or eaten by animals. Under these circumstances, various surviving relatives described the manner in which they identified some of the bodies and buried them whenever possible. According to statements, various surviving relatives who had family members and friends in the different villages and townships in which the massacres took place wandered from one place to the next in search of their bodies. Other statements indicate that various surviving relatives stayed for many days roaming about the bush, some with small children, suffering hunger and cold and in constant fear of being found by the soldiers. To this must be added the total destruction of their houses and means of livelihood, which must necessarily have increased the pain, the fear, the impotence and the feeling of absolute helplessness that the surviving relatives had to experience.

273. In addition to this picture, and as examined in detail below, all the massacres have gone unpunished, and as yet the facts have not been clarified, the persons responsible have not been identified and prosecuted, and no measures of reparation have been taken. Thus, it is reasonable to infer that with the passage of time the cover-up, the inaction and the indifference that have characterized the stance of the Salvadoran authorities have aggravated the severe mental and moral suffering of the surviving relatives.

274. By virtue of the foregoing considerations, the Commission concludes that the State of El Salvador is responsible for violating the right to mental and moral integrity enshrined in article 5.1 of the American Convention, in concordance with the obligations established in article 1.1 thereof, to the detriment of the surviving relatives who are named in the list attached to this report.

G. The right to freedom of movement and residence (article 22 of the American Convention in relation to article 1.1 thereof)

275. Article 22.1 of the American Convention establishes:

1. Every person lawfully in the territory of the State party has the right to move about in it and to reside in it subject to the provisions of the law.

276. Article 1.1 of the American Convention indicates:

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

277. The Inter-American Court has held that article 22.1 of the Convention “protects the right not to be forcibly displaced within a State party.”²⁸⁶ The Court has also ruled that “liberty of movement is an indispensable condition for the free development of a person”²⁸⁷. Furthermore the Court has recognized that:

By reason of the complexity of the phenomena of internal displacement and the broad range of human rights that it affects or jeopardizes, and in light of the circumstances of special vulnerability and defenselessness in which displaced persons generally find themselves, this situation may be understood as a de facto lack of protection. This situation, according to the American Convention, obliges States to take positive measures to reverse the effects of their condition of weakness, vulnerability and defenselessness, including vis-à-vis the actions and practices of other individuals.²⁸⁸

278. The Commission considers that the phenomenon of forced displacement cannot be viewed in isolation from other violations, by virtue of its complexity and the broad range of human rights that it affects or jeopardizes, and in light of the circumstances of special weakness, vulnerability and defenselessness in which displaced persons generally find themselves²⁸⁹. The Inter-American Court has declared itself on the phenomenon of forced displacement in the following manner:

The circumstances of the present case and the special and complex situation of vulnerability that affects those persons include but go beyond the content of the protection that States are bound to provide pursuant to article 22 of the Convention. In effect, displacement originates in the lack of protections suffered during the massacre and reveals its effects in violations of their personal integrity (...) and in the consequences of the failure to investigate the facts, which have led to impunity (...). Beyond the normative content of article 22 of the Convention, the situation of displacement examined here has also affected the right (...) of the victims to a decent life (...) in relation to failure to fulfill the obligations to respect and guarantee the rights enshrined in those rules.²⁹⁰

²⁸⁶ I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 188.

The Court has also coincided with the view of the United Nations Human Rights Committee in its General Comment No. 27, which declares that the right to freedom of movement and residence consists, inter alia, of the following: a) the right that 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; b) the right of every person to return to and remain in his or her own country. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.

²⁸⁷ I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 168; *Moiwana Village vs. Surinam*. Judgment of 15 June 2005. Series C No. 124, Para. 110, and *Ricardo Canese vs. Paraguay*. Judgment of 31 August 2004. Series C No. 111, Para. 115. UN Human Rights Committee, General Comment no. 27 of 2 November 1999, paras. 1, 4, 5 and 19.

²⁸⁸ I-A Court, *Chitay Nech et al. vs. Guatemala*. Judgment of 25 May 2010, Para. 141

²⁸⁹ I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 177

²⁹⁰ I-A Court, *Masacre de Mapiripán vs. Colombia*. Judgment of 15 September 2005. Series C No. 134, Para. 186; *Comunidad Indígena Yakye Axa vs. Paraguay*. Sentencia 17 June 2005. Series C No. 125, paras. 162 and 163; and *Instituto de Reeduación del Menor vs. Paraguay*. Judgment of 2 September 2004. Series C No. 112, Para. 164, and *“Street Children” (Villagrán Morales et al.)*, Para. 191

279. In the case of the *Moiwana Village vs. Suriname*, the Court held that the fear that the displaced survivors felt for their safety and the lack of a criminal investigation of the facts deprived them of their rights to movement and residence.²⁹¹

280. As indicated in the Evidence section, and as a consequence of the terror sown among the population as well as the total destruction of the places where the massacres occurred and the consequent impossibility of continuing to live there, many persons left for the Republic of Honduras where they took refuge, returning to El Salvador in the early 1990s.

281. The Commission considers that the situation of these persons fits within the definition of forced displacement, and that, because it occurred as a direct consequence of the massacres perpetrated by the Salvadoran army, the State is responsible for violating the rights enshrined in article 22.1 of the American Convention, in concordance with the obligations established in article 1.1 of that instrument, to the detriment of the persons who sought refuge in the Republic of Honduras.

282. The list of victims attached to this report includes persons identified to this date as victims of forced displacement.

²⁹¹ I-A Court., *Moiwana Village vs. Surinam*. Judgment of 15 June 2005. Series C No. 124, paras. 107 to 121; See also I-A Court, *Ricardo Canese*, Judgment of 31 August 2004. Series C No. 111, paras. 113 to 120.

H. The rights to a fair trial and to judicial protection (articles 8 and 25 of the American Convention in relation to articles 1.1 and 2 thereof); 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.

283. Article 8.1 of the American Convention declares:

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

284. Article 25.1 of the American Convention establishes:

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

285. Article 1.1 of the American Convention indicates:

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

286. Article 2 of the American Convention establishes:

Where 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.

287. Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the IACPPT") read as follows:

Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6. (...) 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.

Article 8. 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.

288. Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”) declares:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

289. The Inter-American Court has upheld the right of all persons affected by a human rights violation to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the American Convention.²⁹² Those State duties are in turn part of the general obligation contained in article 1.1 of the Convention to respect and guarantee the rights recognized in that international instrument.²⁹³

²⁹² I-A Court, *Barrios Altos vs. Peru*. Judgment of 14 March 2001. Series C No. 75, Para. 48.

²⁹³ Article 1.1 provides: “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.”

290. In determining a possible violation of article 8 of the Convention it must be examined whether the judicial proceedings respected the affected party's right to due process of law²⁹⁴. Article 25.1 of the American Convention incorporates the principle of the effectiveness of the procedural instruments or means available to guarantee human rights²⁹⁵

291. The close interrelationship between articles 1, 8 and 25 of the American Convention has been repeatedly stressed by the Court. Thus, Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society" That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees, for the determination of his rights, whatever their nature.²⁹⁶

292. Similarly, the Court has held that:

According to the American Convention, States parties are obliged to provide effective judicial remedies for the victims of human rights violations (article 25), remedies that must be substantiated in accordance with the rules of due process (article 8.1), all within the general obligation of States to guarantee the free and full exercise of the rights recognized by the Convention for all persons within their jurisdiction (article 1.1).²⁹⁷

293. Accordingly, States have a duty to investigate human rights violations in a serious manner, identifying those responsible, making reparations to the victims, and taking measures to avoid impunity, which the Court has defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention"²⁹⁸. In this respect, the Court has held that the American Convention guarantees every person's right of access to justice to enforce his rights, and it is incumbent on the State to prevent, identify, try, and punish the perpetrators and the persons responsible for the cover-up of human rights violations.²⁹⁹

294. According to the *corpus juris* of international law, a crime against humanity is in itself a grave violation of human rights and affects mankind as a whole. In *Almonacid Arellano et al vs. Chile* the Court recognized that crimes against humanity include inhuman acts, such as murder, committed in the context of a generalized or systematic assault on the civilian population.³⁰⁰

²⁹⁴ I-A Court, *Genie Lacayo vs. Nicaragua*. Judgment of 29 January 1997. Series C No. 30, Para. 74.

²⁹⁵ I-A Court, *Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87, October 6, 1987

. Series A No. 9, Para. 24

²⁹⁶ I-A Court, *Loayza Tamayo vs. Peru*. Judgment of 27 November 1998. Series C No. 42, Para. 169

²⁹⁷ I-A Court, *Masacres de Ituango vs. Colombia*. Judgment of 1 July 2006. Series C No. 148, Para. 287

²⁹⁸ See I-A Court, *Gómez Paquiyauri Brothers vs. Peru*. Judgment of 8 July 2004. Series C No. 110, Para. 148; *"19 Merchants" vs. Colombia*. Judgment of 5 July 2004. Series C No. 109, Para. 175; and *Bámaca Velásquez vs. Guatemala*. Judgment of 22 February 2002. Series C No. 91, Para. 64

²⁹⁹ I-A Court, *Myrna Mack Chang vs. Guatemala*. Judgment of 25 November 2003. Series C No. 101, Para. 275; *Juan Humberto Sánchez vs. Honduras*. Judgment of 7 June 2003, Series C No. 99, Para. 186; *Blake vs. Guatemala*, Judgment of 22 January 1999, Series C No. 48, Para. 65

³⁰⁰ I-A Court, *Almonacid Arellano et al. vs. Chile*. Judgment of 26 September 2006. Series C No. 154, Para. 96

295. The Commission wishes to point out that in its analysis of this chapter it must take into account the particular gravity of the facts. Through the massacres perpetrated in this case, members of the Salvadoran army committed crimes against humanity and violated mandatory rules of international law, making it all the more urgent to activate the means, instruments and mechanisms for effective prosecution of such conduct and the punishment of its perpetrators, in order to avoid impunity. To establish the full scope of the international responsibility of the State given the nature of the proven events, the Commission, observing the principle that *iura novit curia* ("the court knows the law"), will offer considerations with respect to the Inter-American Convention to Prevent and Punish Torture³⁰¹ and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, the "Convention of Belém do Pará"³⁰². On this point, the Court has held that "such provisions specify and complement the obligations of the State to respect the rights enshrined in the American Convention as well as the international *corpus juris* dealing with protection of personal integrity".³⁰³

296. On this point the Inter-American Court has held that:

The failure to investigate serious violations of humane treatment such as torture and rape in armed conflicts and/or as a systematic pattern³⁰⁴ constitutes breach of the State's obligations in the face of grave human rights violations, which contravene mandatory rules³⁰⁵ (*jus cogens*, "compelling law") and generate obligations for states³⁰⁶, such as the duty to investigate and punish those practices, in accordance with the American Convention, and in this case in light of the IACPPT and the Convention of Belém do Pará³⁰⁷.

³⁰¹ The State of El Salvador ratified the Inter-American Convention to Prevent and Punish Torture on December 5, 1994

³⁰² The State of El Salvador ratified the Convention of Belém do Pará on January 26, 1996.

³⁰³ I-A Court, *Masacre de las Dos Erres vs. Guatemala*. Judgment of 24 November 2009. Series C No. 211, Para. 137 and *Penal Miguel Castro Castro vs. Peru*, Judgment of 25 November 2006. Series C No. 160. paras. 276, 377 and 379

³⁰⁴ In this respect it should be noted that, in international law, various tribunals have pronounced themselves on this point. For example, the International Criminal Tribunal for the Former Yugoslavia deemed rape to be comparable to torture and other cruel, inhuman and degrading treatment when it is committed as a systematic practice against the civilian population with the intent of obtaining information, punishing, intimidating, humiliating or discriminating against the victim or a third person. ICTY, *Trial Ch II. Prosecutor v. Anto Furundzija*. Judgment, Dec. 10, 1998. paras. 267.i, 295; ICTY, *Trial Ch II. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Nov. 16, 1998. paras. 941; ICTY, *Appeals Ch. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Feb. 20, 2001. paras. 488, 501; and ICTY, *Trial Ch II. Prosecutor v. Kunarac et al*. Judgment, Feb. 22, 2001. paras. 656, 670, 816. Similarly, the International Criminal Tribunal for Rwanda has also equated rape with torture, holding that rape may constitute torture when committed by or with the acquiescence, consent or instigation of a public official.. ICTR, *Trial Ch I. Prosecutor v. Akayesu, Jean-Paul*. Judgment, Sep. 2, 1998. paras. 687, 688. For its part, the European Court of Human Rights has ruled that rape may constitute torture when committed by State officials against persons in their custody. *ECHR. Case of Aydin v. Turkey*. Judgment, Sep. 25, 1997. Paras. 86, 87, and *Case of Maslova and Nalbandov v. Russia*. Judgment. Jul. 7, 2008. Para. 108.

³⁰⁵ I-A Court, *Goiburú et al. vs. Paraguay*. Judgment of 22 September 2006. Series C No. 153, Para. 128; *Masacre de la Rochela vs. Colombia*, Judgment of 11 de May 2007. Series C No. 163, Para. 132; and *Anzualdo Castro vs. Peru*, Judgment of 25 November 2006. Series C No. 160, Para. 59

³⁰⁶ I-A Court, *Goiburú et al. vs. Paraguay*. Judgment of 22 September 2006. Series C No. 153 párr. 131

³⁰⁷ I-A Court, *Masacre de las Dos Erres vs. Guatemala*. Judgment of 24 November 2009. Series C No. 211, Para. 140

297. The State's obligation to investigate and punish violations of human rights must be taken seriously. The Court has held:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.³⁰⁸

298. The IACHR also recalls that the International Criminal Court for the Former Yugoslavia declared that the "condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official."³⁰⁹

299. Lastly, the Commission recalls that the clarification of the facts is a right of the relatives of the victims of grave violations of human rights. In this respect, the Court has held that:

The next of kin of the victims and society as a whole must be informed of everything that happened in relation to such violations³¹⁰. The right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8, 25 and 1.1 of the Convention³¹¹

300. The Commission will now analyze the response of the Salvadoran State to the massacres in El Mozote and vicinity, in light of the foregoing standards, and in the following order: (i) the obligation to open an investigation *ex officio*; (ii) the judicial process initiated on October 30, 1990; (iii) the dismissal of proceedings under the General Amnesty Law for Consolidation of the Peace; and (iv) actions subsequent to the dismissal.

1. The obligation to open an investigation *ex officio*

³⁰⁸ I-A Court, *Velásquez Rodríguez vs. Honduras*. Judgment of 29 July 1988. Series C No. 4, Para. 177. In a similar vein, the Constitutional Court of Colombia has declared that "in international law it is considered insufficient for the effective protection of human rights to grant the victims and injured parties mere indemnification for their injuries; truth and justice are necessary if situations that generated grave violations of human rights are not to be repeated in a society and, moreover, recognition of the intrinsic dignity of the equal and inalienable rights of all human beings demands that judicial remedies must be designed by states to produce full reparation to victims and injured parties, which must include economic compensation, access to justice to know the truth about what has occurred, and to seek through institutional channels fair punishment for those responsible." Judgment C.-228/02 April 3, 2002.

³⁰⁹ *Celebici* Case No. IT-96-21-T, Judgment of 16 November 1998, Para. 495,. In: Louis Henkin *et al.*, *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381

³¹⁰ I-A Court. *Carpio Nicolle et al. vs. Guatemala*. Judgment of 22 November 2004. Series C No. 117; Para. 128; *Plan de Sánchez Massacre vs. Guatemala*. Judgment of 19 November 2004. Series C No. 116, Para. 97; and *Tibi vs. Ecuador*. Judgment of 7 September 2004. Series C No. 114, Para. 257.

³¹¹ I-A Court, *Bámaca Velásquez*. Judgment of 25 November 2000. Series C No. 70. Para, 201

301. The Commission accepts it as proven that initial reports of the massacres were dismissed by the military as terrorist propaganda. The Salvadoran authorities did not take the initiative to open an investigation into the massacres, with the result that from December 13, 1981 until October 30, 1990, when one of the survivors filed a complaint, no official action was taken to verify the facts.

302. Thus, the investigations into the massacres began nine years after the event, and were launched not at the initiative of the Salvadoran State but as the result of a complaint submitted by Pedro Chicas Romero, a survivor from the canton of La Joya. This failing cannot be laid to any lack of public knowledge of the events, for as early as 1982 the international media were carrying accounts of the massacres and, moreover, those massacres were systematically planned and carried out by the State in a context of known excesses in the fight against subversion during the period referred to by the Truth Commission "institutionalization of violence".

303. The Commission considers that the State's failure to investigate the massacres ex officio constitutes in itself a violation of the rights enshrined in articles 8.1 and 25.1 of the American Convention in relation to the obligations established in article 1.1 thereof, to the detriment of the relatives of the victims.³¹²

2. The judicial proceedings initiated on October 30, 1990

304. The evidence shows that, as a result of the complaint filed by Pedro Chicas Romero on October 30, 1990, a judicial investigation was opened by the Second Court of First Instance of San Francisco Gotera. In the course of that investigation, most of the court's time was devoted to hearing statements from survivors or relatives, and to the initial exhumations conducted in 1992. From a reading of the complete file, the Commission has identified a series of omissions and irregularities that impeded clarification of the events, the identification of those responsible, and the possibilities of returning the victims' remains to the next of kin after a serious effort at identification.

305. The Commission notes, for example, that between October 30, 1990 and August 21, 1992 statements were received from 16 persons, all of them relatives or survivors. The Second Court did not summon any governmental authority who might have been able to provide information on the military operation or respond to the facts related by the witnesses.

306. The only efforts to obtain official information on the operations and their perpetrators were represented by the subpoenas sent to the President of the Republic as Commander-in-Chief of the Armed Forces on June 19, 1991 and November 28, 1991. In the absence of a response from the President of the Republic, the Second Court took no compelling steps whatever to ensure timely submission of information that was essential for moving forward with the investigations and identifying the persons responsible.

307. It was only on May 19, 1992 that the Minister of Defense, on instructions from the President of the Republic, responded to the subpoenas saying he had no knowledge of any military operation in the area on December 10, 1981. He added that the "alleged events" occurred under a previous administration and that any information on the case under investigation should be sought from the officials who were commanding the Armed Forces at that time. In light of this obviously inadequate and evasive response, the

³¹² In a similar vein, see IACHR. Petition presented to the Inter-American Court of Human Rights, *Rainer Ibsen Cardenas and José Luis Ibsen Peña* case, May 12, 2009, paragraph 275.

Second Court made no effort to reiterate its demand for information, to use other mechanisms such as judicial inspections in military installations, or to subpoena the governmental authorities of the time of the events.

308. Moreover, although the report of the Tutela Legal published in the course of the judicial investigation in 1992 included a series of references to statements by military personnel, the Second Court took no steps to obtain the names of those persons with a view to having them testify.

309. With respect to the exhumations conducted in 1992 and early 1993, the court record indicates a series of inspections in various places indicated by the survivors and the remittance of photographic albums and, in some cases, the remains of the victims. The Commission has no information on the strategy pursued by the Second Court in light of those findings. Both the Truth Commission and the Argentine Forensic Anthropology Team made recommendations to the Second Court to ensure that the exhumations would help to clarify the events, support legal action, and lead to the identification and return of the victims' remains to the next of kin.

310. Among other things, it was recommended to analyze the skeletal remains, to send samples thereof to experts for identification, and to interview the relatives to obtain pre-mortem data that would facilitate identification. While the record shows that some skeletal remains were sent to the Legal Medicine Institute in a few isolated cases, there is no evidence of any follow-up in those cases or of any efforts to comply with the recommendations of the Truth Commission and the EAAF. On the contrary, the Second Court decided to terminate the exhumations when the amnesty law was approved. The information available indicates that, in terminating the exhumations, the Second Court did not order the necessary measures to safeguard the skeletal remains found so that they could subsequently be identified and returned to the families. The absolute lack of follow-up to these actions is obvious in the fact that it was only seven years later, in 2000, that the exhumations were resumed.

311. The Commission notes that although no effort was made to carry out the recommendations referred to in the previous paragraph the Second Court ruled, in its decision of dismissal of September 27, 1993, that "there is no evidence of the *corpus delicti*", because of the state of deterioration of the skeletal remains and the absence of any "witness or injured party who has identified them". Similarly, despite having failed to pursue the requests for information from the President of the Republic or to exhaust all means of obtaining the names of the respective officials, the Second Court concluded that while there was sufficient indication of participation by members of the armed forces or the Atlacatl Battalion there was no statement by a witness or injured party to identify the perpetrators individually. The Commission emphasizes, moreover, that by the time the Second Court issued that ruling the Truth Commission had already published its report, "From Madness to Hope", in which it named some of the commanders who planned and ordered the massacres.

312. Thus the Second Court transferred the burden of proving both the *corpus delicti* and the involvement of the perpetrators of the massacre onto the shoulders of the witnesses or injured parties who came forth to testify, without taking on the investigation as its own juridical duty and consequently assessing all the available information and exhausting all means within its reach to investigate the facts properly and diligently. The Commission considers that these factors are sufficient to conclude that the lack of seriousness and diligence in the investigations conducted by the Second Court, and their ineffectiveness for clarifying the facts and identifying those responsible, constitute a violation of the rights enshrined in articles 8.1 and 25.1 of the American Convention, in

relation with article 1.1 thereof, as well as the obligations established in articles 1, 6 and 8 of the IACPPT and in article 7 of the Convention of Belém do Pará, to the detriment of the relatives of the victims listed in the Annex to this report.

3. The dismissal of proceedings under the General Amnesty Law for Consolidation of the Peace

313. As indicated in the Evidence section, on September 27, 1993 the Second Court issued a decision of dismissal, in application of the General Amnesty Law for Consolidation of Peace. In the words of that ruling:

In light of the General Amnesty Act for Consolidation of the Peace decreed by the Legislative Assembly of El Salvador pursuant to Decree No. 486 published in the Official Gazette 56, [this Court orders] definitive dismissal of charges against any person belonging to the Atlacatl Battalion at the time of the event, in connection with the massacre that occurred, and [orders] the case to be filed.

314. The Commission and the Inter-American Court have repeatedly held that it is not acceptable to apply an amnesty in the case of crimes against humanity. In the case of *Almonacid Arellano vs. Chile*, the Court recounted the international consensus on this issue in the following terms:

Recognizing that it is the individual and all mankind who are the victims of any crime against humanity, the General Assembly of the United Nations has since 1946³¹³ maintained that those responsible for such acts must be punished. Examples in this respect are resolutions 2583 (XXIV) of 1969 and 3074 (XXVIII) of 1973. In the first, the General Assembly held that “thorough investigation” of war crimes and crimes against humanity, as well as punishment of those responsible, “constitute an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of cooperation among peoples, and the promotion of international peace and security.”³¹⁴

In the second resolution, the General Assembly declared:

War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence

³¹³ I-A Court, *Almonacid Arellano et al.*, Judgment of 26 September 2006. Series C No. 154. Para. 106. Citing. UN, Extradition and punishment of war criminals, adopted by the United Nations General Assembly in Resolution 3.1 of February 13, 1946; Affirmation of the principles of international law recognized by the charter of the Nuremberg Tribunal, adopted by the United Nations General Assembly in Resolution 95.1, on December 11, 1946; Surrender of war criminals and traitors, adopted by the United Nations General Assembly in Resolution 170.2 on October 31, 1947; Question of the punishment of war criminals and of persons who have committed crimes against humanity, Resolution 2338 (XXII), adopted on December 18, 1967; Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Resolution 2391 (XXIII), adopted on November 26, 1968; Question of the punishment of war criminals and of persons who have committed crimes against humanity, Resolution 2712 (XXV), adopted on December 15, 1970; Question of the punishment of war criminals and of persons who have committed crimes against humanity, Resolution 2840 (XXVI) of December 18, 1971; and Crime Prevention and Control, Resolution 3021 (XXVII) of December 18, 1972 [Translator’s note: this is the correct number of that resolution. “Resolution 3020” (XXVII) is entitled “Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity” --?].

³¹⁴ I-A Court, *Almonacid Arellano et al.* Judgment of 26 September 2006. Series C No. 154. Para. 106. Citing. UN, Question of the punishment of war criminals and of persons who have committed crimes against humanity, Resolution 2583 (XXIV) adopted by the United Nations General Assembly on December 15, 1969.

that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.

(...)

States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.³¹⁵

As well, resolutions 827 and 955 of the United Nations Security Council³¹⁶, together with the statutes of the tribunals for the former Yugoslavia (article 29) and Rwanda (article 28) oblige all member states of the United Nations to cooperate fully with the tribunals in investigating and prosecuting persons accused of serious violations of international law, including crimes against humanity. The Secretary-General of the United Nations has indicated that, in light of United Nations norms and standards, United Nations-endorsed peace agreements can never promise amnesty for crimes against humanity.³¹⁷

The adoption and application of laws granting amnesty for crimes against humanity impedes fulfillment of the obligations indicated. The United Nations Secretary-General, in his report on establishment of the Special Tribunal for Sierra Leone, stated that:

“While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of the civil war or internal armed conflict, the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law”.³¹⁸

The Secretary-General also reported that the amnesty granted in Sierra Leone had been denied legal effect “to the extent of its illegality under international law”³¹⁹. In fact, article 10 of the Statutes of the Special Tribunal for Sierra Leone provides that an amnesty granted to any person accused of crimes against humanity, violations of article 3 common to the Geneva Conventions and of Additional Protocol II³²⁰, as well as other serious violations of international humanitarian law “shall not be a bar to prosecution.”

³¹⁵ I-A Court, *Almonacid Arellano et al.*. Judgment of 26 September 2006. Series C No. 154. Para. 106. Citing. UN, Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, Resolution 3074 (XXVIII), adopted by the United Nations General Assembly on December 3, 1973

³¹⁶ Security Council Resolution S./RES/827 establishing the International Criminal Tribunal for the Former Yugoslavia, March 25, 1993, and Security Council Resolution S./RES/955 establishing the International Criminal Tribunal for Rwanda, November 8, 1994.

³¹⁷ *The rule of law and transitional justice in conflict and post-conflict societies*, report of the Secretary-General, S./2004/616, August 23, 2004, para. 10.

³¹⁸ Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S./2000/915, October 4, 2000, para. 22.

³¹⁹ *Ibid.*, para 24.

³²⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

315. The Court has also held that crimes against humanity violate a series of non-derogable rights recognized in the American Convention, which may not go unpunished.³²¹

316. In the *Barrios Altos* case, the Court had already ruled that “all 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.”³²²

317. In the words of the Court, amnesty laws “lead to the defenselessness of victims and perpetuate impunity” for crimes against humanity; therefore, “they are manifestly incompatible with the aims and spirit of the Convention” and assuredly affect the rights enshrined therein. They “constitute *per se* a violation of the Convention for which the State incurs international responsibility”.³²³

318. For decades the Commission has been expressing its concern over amnesty laws that impede the prosecution of crimes against humanity, and are incompatible with the American Convention.

319. For example, with respect to Laws 23.492 and 23.521 and Decree No. 1002 (known as the “due obedience” and “deadline” rules) in Argentina, the Commission found that they sought to and effectively did obstruct the exercise of the petitioners’ right under article 8.1. With enactment and enforcement of the laws and the decree, Argentina had failed to comply with its duty to guarantee the rights to which articles 8.1, 25.1 and 1.1 of the Convention refer³²⁴. Similarly, examining the Uruguayan amnesty law (*Ley de Caducidad de la Pretensión Punitiva del Estado*), the Commission concluded that it obstructed access to justice and therefore constituted a violation of the rights enshrined in articles 8.1, 25.1 and 1.1 of the Convention³²⁵. As well, with respect to Chile’s Decree Law 2191, known as the “self-amnesty” law, the Commission found it incompatible with articles 8.1, 25.1, 1.1 and 2 of the American Convention³²⁶. The Commission also concluded that the decisions of dismissal based on that law:

not only aggravate the situation of impunity but also definitively violate the right to justice to which the members of the victims’ families are entitled: to identify the persons responsible and to establish the responsibilities borne and the penalties to be paid by those persons, and to obtain legal compensation from the guilty parties.³²⁷

³²¹ I-A Court, *Almonacid Arellano et al.*. Judgment of 26 September 2006. Series C No. 154. Para. 111. Citing. *Baldeón García*, *supra* note 14, Para. 144; *19 Merchants*, Judgment of 5 July 2004. Series C No. 109, Para. 192; and *Baena Ricardo et al.* Judgment of 28 November 2003. Series C No. 104, Para. 77

³²² I-A Court, *Almonacid Arellano et al.* Judgment of 26 September 2006. Series C No. 154. Para. 112. Citing. *Barrios Altos*. Judgment of 14 March 2001. Series C No. 75. Para. 41

³²³ I-A Court, *Almonacid Arellano et al.*. Judgment of 26 September 2006. Series C No. 154. Para. 119. *Cfr. Barrios Altos*. Judgment of 3 September 2001. Series C No. 83, Para. 18

³²⁴ IACHR. Report No. 28/92. Casos 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311. Argentina. 2 October 1992. Paras. 37, 39 and 41.

³²⁵ IACHR. Report No. 29/92. Casos 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375. Uruguay. 2 October 1992. Paras. 45, 46, 49 and 51

³²⁶ IACHR. Report No. 34/96. Casos. 11.228, 11.229, 11.231 and 11282. Chile. 15 October 1996. Paras. 104 and 107

³²⁷ *Ibid.*, para 106.

320. In the specific case of El Salvador, the IACHR has expressed itself on the various amnesty laws approved in El Salvador in relation to the armed conflict. In its annual report for 1992-1993 the Commission had already declared its concern over possible approval of an amnesty law. In the Commission's words:

The Report of the Truth Commission will be decisive in consolidating the process presently underway in El Salvador, and implementation of its recommendations will help effect a true reconciliation among Salvadorans. The atrocities committed during the war will be made public to the people of El Salvador, who will have an opportunity to reflect upon them in peacetime and learn a lesson for the future about the sorts of things that must never again be allowed to happen in their country.

The Truth Commission's Report will also have an impact on the enforcement of the National Reconciliation Law (Legislative Decree No. 147). The IACHR is disturbed by reports it has received to the effect that the Amnesty Law will have an adverse effect on the outcome of the Truth Commission's work (...).

The Inter-American Commission cannot predict the outcome of the process now underway. Nevertheless, as a State Party to the American Convention on Human Rights and by its ratification of it, El Salvador has, as the Inter-American Court of Human Rights pointed out, "a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to assure the victim adequate compensation."³²⁸

321. The IACHR continued to monitor the situation closely, and on March 26, 1993, it sent a message to the Salvadoran Government before the deadline that the President had for vetoing the recently approved law, stating that:

The Legislative Assembly's passage of a General Amnesty Law on March 20, immediately after publication of the Report of the Truth Commission, could compromise effective implementation of the Truth Commission's recommendations and eventually lead to a failure to comply with the international obligations undertaken by the Government of El Salvador when it signed the Peace Agreements.

The Commission would like to call Your Excellency's attention to the fact that the political agreements concluded among the parties in no way relieve the State of the obligations and responsibilities it has undertaken by virtue of its ratification of the American Convention on Human Rights and other international instruments on the same subject.

Under Article 27 of the Vienna Convention on the Law of Treaties, a State cannot unilaterally invoke provisions of its domestic law as justification for its failure to perform the legal obligations imposed by an international treaty. Finally, Article 144 paragraph 2 of the Constitution of El Salvador states that "the law shall not modify or derogate that agreed upon in a treaty in effect in El

³²⁸ IACHR. Report on the Situation of Human Rights in El Salvador, 199, February 11, 1994, Chapter II.4.

Salvador. In the event of a conflict between the treaty and the law, the treaty will prevail.”

The Inter-American Commission on Human Rights would also like to remind Your Excellency’s Government that El Salvador’s ratification of the American Convention on Human Rights made it a State Party and as such it has, as the Inter-American Court of Human Rights stated, “(...) a legal duty (...) to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.” In reference to Article 1 of the Convention, the Court added that “if the State apparatus acts in such a way that the violation goes unpunished (...) the State has failed to comply with its duties to ensure the free and full exercise of those rights to the persons within its jurisdiction.”³²⁹

322. Once the amnesty law came into effect, the Commission noted in its 1994 Report on the Human Rights Situation in El Salvador that “regardless of any necessity that the peace negotiations might pose and irrespective of purely political considerations, the very sweeping General Amnesty Law passed by El Salvador’s Legislative Assembly constitutes a violation of the international obligations it undertook when it ratified the American Convention on Human Rights, because it (...) applies to crimes against humanity, and because it eliminates any possibility of obtaining adequate pecuniary compensation, primarily for victims.”³³⁰

323. The Commission has also taken the opportunity to address the various amnesties in El Salvador in the context of individual cases. For example, in the case of the Massacre of Las Hojas, the Commission declared that:

Decree N° 805, passed by the Legislative Assembly on October 27, 1987, provides in that part pertinent to the present case, in Article 1 that “Full and absolute amnesty is granted in favor of all persons, whether nationals or foreigners, who have participated directly or indirectly or as accomplices, in the Commission of political crimes or common crimes linked to political crimes or common crimes in which the number of persons involved is no less than twenty, committed on or before October 22 current year”; and that as a result, the passage of the amnesty, even after an arrest warrant had been issued to Armed Forces officers, legally eliminated the possibility of an effective investigation and the prosecution of the responsible parties, as well as proper compensation for the victims and their next-of-kin by reason of the civil liability for the crime committed.³³¹

324. With specific reference to the General Amnesty Law for Consolidation of the Peace, the Commission concluded in the *Lucio Parada Cea* case that “in approving and enforcing the General Amnesty Law, the Salvadoran State violated the right to judicial guarantees enshrined in Article 8(1) of the Convention, to the detriment of the surviving victims of torture and of the relatives of Lucio Parada and Héctor Miranda Marroquín, who were prevented from obtaining redress in the civil courts; all of this in relation to Article 1(1)

³²⁹ Note from the IACHR, addressed to the State of El Salvador on 26 March 1993. Mentioned in: IACHR. Report on the Situation of Human Rights in El Salvador. 199. 11 February 1994. Chapter II.4

³³⁰ IACHR. Report on the Situation of Human Rights in El Salvador. 199. 11 February 1994. Chapter II.4.

³³¹ IACHR. Report No. 26/92. Case 10.287. Massacre of Las Hojas. 24 September 1992. Para. 11.

of the Convention"³³². It also found that El Salvador had "violated the right to judicial protection enshrined in Article 25 of the Convention, to the detriment of the surviving victims and those with legal claims on behalf of Lucio Parada and Héctor Miranda Marroquín; all of this in relation to Article 1(1) of the Convention."³³³

325. Subsequently, in the *Ignacio Ellacuría S.J et al.* case, the Commission concluded that:

the amnesty decree provides that all persons who have been convicted must be released immediately, and that those against whom proceedings are underway, or who were in any way involved in serious violations of human rights, may not be investigated, prosecuted or punished, nor sued in the civil courts, all of which surrounds these grave human rights violations with impunity. Consequently, that law legally removes the right to justice established by Articles 1(1), 8(1) and 25 of the American Convention, since it makes impossible any effective investigation of human rights violations, or the prosecution and punishment of all those persons involved and the reparation of damages caused. Therefore (...) it disregards the legitimate rights of the victims' next-of-kin to reparation. Such a measure will do nothing to further reconciliation.³³⁴

326. In the same case, the Commission also concluded that, in approving the General Amnesty Law for Consolidation of the Peace, El Salvador violated article 2 of the American Convention, in concordance with article 1.1 thereof.³³⁵

327. The Commission made a similar finding in the case of *Monsignor Oscar Arnulfo Romero*:

the application of the General Amnesty Law of 1993 is incompatible with El Salvador's obligations under the Convention, as it renders ineffective the right to judicial guarantees and judicial protection established at Articles 8(1) and 25 of the American Convention, as well as the general obligation assumed by the State to respect and guarantee the rights established in the Convention. Accordingly, the IACHR concludes that the State has violated Articles 2, 8, and 25 of the American Convention, in conjunction with Article 1(1) of the Convention.³³⁶

328. On the basis of this statement, in the *Monsignor Oscar Arnulfo Romero* case, the Commission recommended that the State of El Salvador "adapt its internal legislation to the American Convention with a view to annulling the General Amnesty Law."³³⁷

³³² IACHR. Report No. 1/99. Case 10.480. Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catalino Meléndez and Carlos Antonio Martínez Romero. 27 January 1999. Para. 123

³³³ *Ibid.*, para 129.

³³⁴ IACHR. Report No. 136/99. Case. 10.488. Ignacio Ellacuría, S.J; Segundo Montes, S.J.; Armando López, S.J; Ignacio Martín Baró, S.J; Joaquín López y López, S.J; Juan Ramón Moreno, S.J; Julia Elba Ramos, S.J; and Cecilia Mariceth Ramos. El Salvador. 22 December 1999. Para. 215.

³³⁵ *Ibid.*, para 217.

³³⁶ IACHR. Report No. 37/00. Case 11.481. Monseñor Oscar Arnulfo Romero y Galdámez. El Salvador. 13 April 2000. Para. 141.

³³⁷ *Ibid.*, para 159.

329. It may be noted that in all the cases relating to El Salvador, the Inter-American Commission has recognized the great importance of the findings of the Truth Commission. Nevertheless, the Commission has also stressed that “in establishing the facts related to the more serious violations and in promoting national reconciliation, the functions [the Truth Commission] carried out can not be considered to be an appropriate substitute for the judicial process. Neither does it replace the State’s obligation to investigate the violations which were committed within the scope of its jurisdiction, as well as to identify those responsible, impose sanctions, and assure the victim appropriate reparation (Article 1(1) of the Convention).”³³⁸

330. In light of these findings it is clear that the General Amnesty Law for Consolidation of the Peace and its application in the present case are incompatible with the international obligations of the State of El Salvador under the American Convention. The Commission therefore concludes emphatically that the amnesty law can have no legal effect and cannot continue to be an obstacle to investigation of the massacres in El Mozote and neighboring locales, nor to the identification and punishment of those responsible.

331. The Commission also notes the decision of October 2, 2000 by the Constitutional Chamber of the Supreme Court of Justice, mentioned in the Evidence section, whereby the LAGCP was held to be constitutional because it could be interpreted in a manner consistent with the Constitution. The Commission observes that in that ruling the Constitutional Chamber of the Supreme Court of Justice left it to the judge to determine in each concrete case whether the LAGCP was applicable. While that decision opened the possibility – at the discretion of the judge – to continue investigating certain cases such as the present one in which the LAGCP had been applied, the Commission observes that this has not overcome the serious past and present effects of that law on the expectations of Salvadoran society for truth, justice and reparations to the victims’ relatives. The Commission considers that the very text of the law, by allowing the inclusion of serious violations of human rights, is *per se* incompatible with the American Convention and that it must therefore be repealed or annulled as recommended in this report.

332. Notwithstanding, the Commission highlights what has been stated by the Court in the case of *Almonacid-Arellano et al. v. Chile*, in relation to the link between the Judiciary and the guarantees established in article 1(1) of the American Convention, particularly the duty to investigate and punish those responsible for human rights violations. As established by the Court:

when the Legislative Power fails to set aside and / or adopts laws which are contrary to the American Convention, the Judiciary is bound to honor the obligation to respect rights as stated in Article 1(1) of the said Convention, and consequently, it must refrain from enforcing any laws contrary to such Convention.

(...)

The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the

³³⁸ IACHR. Report No. 1/99. Case 10.480, op. cit., para 146.

enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights.³³⁹

333. In this sense, the national judicial authorities cannot rely on the validity of the Law of General Amnesty for the Consolidation of Peace in order to abstain from investigating and punishing facts such as the ones that happened in the instant case.

334. On the basis of the arguments to this point, the Commission concludes that the existence and the application of the General Amnesty Law for Consolidation of the Peace in this case constitute a violation of the rights enshrined in articles 8.1 and 25.1 of the American Convention, in relation with the obligations established in articles 1.1 and 2 thereof, to the detriment of the next of kin of the victims listed in the Annex to this report. The Commission emphasizes that this violation is ongoing and will persist until such time as the State of El Salvador annuls the General Amnesty Law for Consolidation of the Peace and pursues its investigations into the facts of the case.

4. Actions subsequent to the dismissal

335. The Commission notes that application of the amnesty law of August 27, 1993 led to the suspension of all judicial or police investigations to clarify the facts and provide reparations to the relatives. For many years the Salvadoran authorities have consistently failed to undertake a serious investigation, a fact that, together with adoption of the LAGCP, engages the international responsibility of the State.

336. It must be noted that in 1993 the Second Court decided to suspend all exhumations of human remains in the villages and cantons where the massacres occurred. It was only in the year 2000 that those activities were resumed. For seven years the Salvadoran judicial authorities failed to follow through with the work begun in 1992, which was not only important for the judicial investigation but also for making reparations to the relatives of the victims.

337. Furthermore, although it has concluded that the decision of October 2, 2000 by the Constitutional Chamber of the Supreme Court of Justice did not constitute an appropriate mechanism for remedying the violations that the continued existence of the LAGCP represents, the Commission notes that that judgment could have been used to good effect in this specific case. Thus, the Second Court or any other judicial authority could have ordered the investigations to be re-opened in light of the obvious unconstitutionality of the dismissal issued seven years earlier. What is more, the repeated petitions by relatives of the victims and by the Tutela Legal (November 23, 2006 and August 13, 2007) to reopen the case were ignored by the Salvadoran judicial authorities and the file on the massacre in El Mozote and neighboring locales remains closed to this day.

338. The Commission concludes that the State is still in omission with respect to pursuing investigations and this constitutes a violation of the rights enshrined in articles 8.1 and 25.1 of the American Convention in relation to article 1.1 thereof, as well as the obligations established in articles 1, 6 and 8 of the IACPPT and in article 7 of the Convention of Belém do Pará, to the detriment of the next of kin of the victims listed in the Annex to this report.

³³⁹ I/A Court H.R., *Case of Almonacid-Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154. Paras. 123-124.

V. CONCLUSIONS

339. From all that has been said to this point, the Commission concludes that the massacres at El Mozote and neighboring locales constituted an unconscionable breach of the most fundamental principles of the American Convention. The shocking number of men, women, children and older people who died at the hands of the Atlacatl Battalion must remain etched in the memory of Salvadoran society so that events such as those described in this report will never be repeated. The State of El Salvador has an urgent duty to pay its historic debt to the memory of the victims, their surviving relatives, and the people of the country who, nearly 30 years after the events, are still unable to heal the wounds through acknowledgment of the truth and punishment of those responsible for these crimes against humanity. Only when this happens will Salvadoran society achieve the national reconciliation it longs for.

340. On the basis of the considerations of fact and of law set forth above, the Inter-American Commission concludes that the State of El Salvador is responsible for:

(a) Violation of the rights to life, to humane treatment and to personal liberty enshrined 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 executed extrajudicially.

(b) Violation of the special obligations with respect to children established in article 19 of the American Convention, in relation to article 1.1 thereof, to the detriment of the children who were executed extrajudicially.

(c) Violation of the rights to humane treatment and privacy enshrined in articles 5 and 11 of the American Convention, to the detriment of the women who were raped in the village of El Mozote.

(d) Violation of the right to property enshrined in article 21 of the American Convention in relation to article 1.1 thereof, to the detriment of the murdered victims who were stripped of their property, as well as the survivors whose homes were destroyed or whose means of livelihood were stolen or eliminated.

(e) Violation of the right to humane treatment enshrined in article 5 of the American Convention in relation to article 1.1 thereof, to the detriment of the survivors and relatives of the murdered victims.

(f) Violation of the right to freedom of movement and residence enshrined in article 22 of the American Convention in relation to article 1.1 thereof, to the detriment of the persons who were forcibly displaced.

(g) Violation of the rights to a fair trial and judicial protection enshrined in articles 8 and 25 of the American Convention in relation with the obligations established in articles 1.1 and 2 thereof, 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 survivors and relatives of the murdered victims.

VI. RECOMMENDATIONS

341. By virtue of the foregoing conclusions,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE
STATE OF EL SALVADOR**

1. Make adequate reparations for the violations of human rights declared in this report, both in their material and their moral aspect, including the establishment and dissemination of the historic truth of the events, suitable commemoration of the victims who died, and implementation of an appropriate program of psychosocial care for the surviving relatives.

2. Establish a mechanism to ensure that the victims killed in the massacres at El Mozote and neighboring vicinities are identified as fully as possible and take the necessary steps to pursue the exhumation, identification and return of the remains of those victims in accordance with the desires of their families. This mechanism must also facilitate the complete identification of the relatives of the murdered victims, so that they can be eligible for the reparations called for in the previous recommendation.

3. Render ineffective the General Amnesty Law for the Consolidation of Peace as it prevents the investigation, trial and sanction of those responsible for human rights violations and the rights of victims to truth, justice, and reparation. Also, any other *de jure* or *de facto* obstacles, such as judicial or investigative practices, must be eliminated;

4. Regardless of the above, the State should proceed immediately to investigate in an impartial, effective manner and within a reasonable time with the purpose to establishing the facts in a completely, identify the intellectual and material authors and impose the sanctions that correspond. In the immediate fulfillment of this obligation, the Salvadorian authorities cannot invoke the validity of the General Amnesty Law for the Consolidation of Peace;

5. Annul the General Amnesty Law for the Consolation of the Peace and ensure that no similar legal mechanisms are activated to obstruct the clarification and punishment of crimes against humanity such as those that occurred in this case.

6. Take the measures necessary to prevent similar events in the future, in observance of the duty to respect and guarantee human rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law in the armed forces training schools.

VII. NOTIFICATION

342. The Commission will transmit this report to the Salvadoran State and give it a period of two months to comply with the recommendations formulated here in. That period will begin to run from the date this report is transmitted to the State, which is not authorized to publish it. The Commission will also notify the petitioners that a report has been adopted under article 50 of the Convention.