

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Maritza Ninette Urrutia Garcia v. Guatemala
Doc. Type: Judgment (Merits, Reparations and Costs)
Decided by: President: Antonio A. Cancado Trindade;
Vice President: Sergio Garcia Ramirez;
Judges: Hernan Salgado Pesantes; Maximo Pacheco Gomez; Alirio Abreu Burelli; Carlos Vicente de Roux Rengifo; Arturo Martinez Galvez

Judge Oliver Jackman abstained from taking part in the deliberation and signature of this judgment, because he had participated in several stages of the case while it was being processed by the Inter-American Commission on Human Rights, when he was a member of the latter.

Dated: 27 November 2003
Citation: Urrutia Garcia v. Guatemala, Judgment (IACtHR, 27 Nov. 2003)
Represented by: APPLICANTS: Frank La Rue and Susan Kemp

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In the Maritza Urrutia case,

the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), in accordance with Articles 29, 55, 56 and 57 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”) and with Article 63(1) of the American Convention on Human Rights (hereinafter “the Convention or “the American Convention”), delivers this judgment.

I. INTRODUCTION OF THE CASE

1. On January 9, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Court an application against the State of Guatemala (hereinafter “the State” or “Guatemala”), resulting from petition No. 11,043, received by the Secretariat of the Commission on July 28, 1992.

2. The Commission submitted the application based on Article 51 of the American Convention, so that the Court could decide whether the State had violated Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression) and 25 (Judicial Protection), all of them in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the Inter-American Convention against Torture”) to the detriment of Maritza Ninette Urrutia García (hereinafter “the alleged victim” or “Maritza Urrutia”), owing to the alleged arbitrary detention and torture to

which she was subjected when she was retained in a clandestine place of detention for eight days and obliged to issue to public opinion a communiqué which her captors had prepared previously.

3. The Commission also requested the Court to order the State to adopt all the pecuniary and non-pecuniary reparations indicated in the application, owing to the violations committed against Maritza Urrutia and her next of kin. Lastly, it requested the Inter-American Court to order the State to pay the costs arising from processing this case at the international level, before the organs of the inter-American system for the protection of human rights.

II. COMPETENCE

4. Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987. Therefore, the Court is competent to hear this case in the terms of Articles 62 and 63(1) of the Convention. Guatemala has also been a State party to the Inter-American Convention against Torture since January 29, 1987.

III. PROCEEDING BEFORE THE COMMISSION

5. On July 27, 1992, the Centro para la Acción Legal en Derechos Humanos [Center for Human Rights Legal Action] (hereinafter “CALDH”) presented a petition to the Inter-American Commission. On July 28, 1992, the Commission opened case No. 11,043 and transmitted the pertinent parts of this petition to the State, requesting it to provide information on the facts within 90 days.

6. On August 9, 2000, in the context of the process to reach a friendly settlement in several cases which were being processed by the Commission, the President of the Republic of Guatemala, Alfonso Portillo, acknowledged the “institutional responsibility” of the Guatemalan State in the Maritza Urrutia case. He also acknowledged the facts that gave rise to the petition submitted to the Inter-American Commission, indicating that a friendly settlement procedure would be initiated. Despite this, the measures taken to achieve a friendly settlement failed and, on March 2, 2001, during the public hearing on this case, the petitioners requested the Commission to rule on its merits.

7. On October 1, 2001, having examined the positions of the parties and considering that the friendly settlement stage had concluded, the Commission adopted Report on merits No. 71/01, in the operative paragraphs of which, it recommended that:

1. A complete, impartial and effective investigation of the facts reported in the petition be undertaken in order to prosecute and punish the authors of the violations of the human rights of Maritza Urrutia García.

2. A genuine and impartial investigation be undertaken to establish the extent to which State officials took part in punishable conduct and/or disciplinary faults by covering up the arbitrary detention of Maritza Urrutia, and by failing to investigate the facts that gave rise to this report; and, if appropriate, apply the corresponding criminal and administrative sanctions.

3. The necessary measures be adopted so that Maritza Nineth Urrutia García receives adequate and prompt reparation for the violations established herein.

8. On October 9, 2001, the Commission forwarded this report to the State and granted it two months to comply with the recommendations. In a communication of December 13, 2001, the State advised that, in order to comply with the recommendation referring to the investigation of the facts, the Commission's report had been sent to the Office of the Attorney General (Ministerio Público) so that the actions it deemed pertinent could be initiated. With regard to the financial reparation, the State indicated that "it [was] evaluating the [...] case, in order to establish the compensation to be made to the beneficiary."

9. On January 8, 2002, in view of the failure of the State to comply with the recommendations, the Commission decided to submit this case to the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

10. The Inter-American Commission submitted the application to the Court on January 9, 2002, and, as evidence, forwarded 25 attachments containing 26 documents. [FN1]

[FN1] Cf. Attachments 1 to 25 of the application brief submitted by the Commission on January 9, 2002 (folios 1 to 169 of the file of attachments to the application).

11. In accordance with Article 22 of the Rules of Procedure, the Commission appointed Claudio Grossman and Santiago Cantón as Delegates. Likewise, in accordance with Article 33 of the Rules of Procedure, the Commission indicated the name and address of the alleged victim and her next of kin and advised that they would be represented by Frank La Rue and Susan Kemp of CALDH.

12. On January 22, 2002, after the President of the Court (hereinafter "the President") had made a preliminary examination of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, together with its attachments, and informed the State of the time limits for answering it and appointing its representatives for the proceeding. The same day, the Secretariat, on the instructions of the President, informed the State of its right to appoint a judge ad hoc to participate in the consideration of the case. The same day, in accordance with the provisions of Articles 35(1)(d) and 35(1)(e) of the Rules of Procedure, the application was notified to CALDH, in the persons of Frank La Rue and Susan Kemp, as the original petitioner and representative of the alleged victim, and it was informed that it had 30 days to submit a brief with requests, arguments and evidence.

13. On February 4, 2002, the State communicated that it had appointed Jorge García Laguardia, Ambassador of Guatemala to the Government of the Republic of Costa Rica, as Agent; Enrique D. Barascout García, First Secretary and Consul, as Deputy Agent, and Arturo Martínez Gálvez as Judge ad hoc .

14. On February 20, 2002, the representatives of the alleged victim submitted the brief with requests, arguments and evidence together with seven attachments containing seven documents. [FN2] In this brief, they requested the Court to declare that the State had violated Articles 1(1), 5, 7, 13, 8 and 25 of the American Convention, in accordance with the application submitted by the Commission, and also Article 11 of this Convention, because the alleged victim had been subjected to “arbitrary and abusive interference in her private life, in that of her family and in her correspondence [...]” They also requested the Court to declare that the State had violated Articles 1, 6 and 8 of the Inter-American Convention against Torture. They requested the corresponding reparations and the payment of costs and expenses. Lastly, in this brief, they advised that Maritza Urrutia had appointed Fernando Arturo López Antillón, in his capacity as CALDH legal adviser, as “lawyer-intervenor” before the Court.

[FN2] Cf. Attachments 1 to 7 of the brief of February 20, 2002, on requests, arguments and evidence of the representatives of the alleged victim (folios 92 to 101 of Tome I of the file on merits and possible reparations).

15. On March 18, 2002, the Inter-American Commission presented a brief with comments on the brief with requests, arguments and evidence of the representatives of the alleged victim, in which it noted the contents and reiterated the request that the Court declare that the State was responsible for violating Articles 7, 5, 13, 8 and 25 of the American Convention together with Article 1(1) thereof.

16. On March 21, 2002, the State presented a brief answering the application, in which it forwarded the declaration of the President of Guatemala of August 9, 2000, which referred to the acknowledgement of the “institutional responsibility of the State” (supra para. 6). The State also requested that an alternative friendly settlement mechanism be established and, if this was not possible, that the Court deliver the respective judgment without the need for hearings or any other type of formality; lastly, it made some observations on the reparations requested.

17. On November 8, 2002, the Secretariat, on the instructions of the President, requested the Commission and the representatives of the alleged victim to submit their final list of witnesses and expert witnesses for the public hearing to the Inter-American Court before November 21, 2002.

18. On November 20, 2002, the representatives of the alleged victim presented the final list of witnesses and the expert witness for the public hearing. Also, on December 3, 2002, the Inter-American Commission forwarded its final list of witnesses and one expert witness.

19. On November 30, 2002, the President issued an order in which he convened the parties to a public hearing to be held at the seat of the Court commencing on February 21, 2003, to receive their oral arguments on merits and possible reparations, and also the statements of the witnesses and the report of the expert witness proposed by the Commission and by the representatives of the alleged victim.

20. On February 20 and 21, 2003, the Court received the statements of the witnesses and the report of the expert witness and hear the final oral arguments of the parties.

There appeared before the Court:

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate, and
María Claudia Pulido, Principal Specialist

for the representatives of the alleged victim:

Fernando López, representative of CALDH
Frank La Rue, lawyer, CALDH

for the State of Guatemala:

Cruz Mungía Sosa, Deputy Executive Director of the Presidential Human Rights
Commission

witnesses proposed by the Inter-American Commission on Human Rights and by the
representatives of the alleged victim:

Maritza Ninette Urrutia García
Edmundo Urrutia Castellanos
María Pilar García de Urrutia
Daniel Robert Saxon, and
Edmundo Urrutia García;

expert witness proposed by the Inter-American Commission on Human Rights and by the
representatives of the alleged victim:

Carlos Joaquín Bethancourt Monzón.

21. On February 21, 2003, during the public hearing, the witness, Daniel Robert Saxon, presented five photographs related to the case. [FN3] The representatives of the alleged victim presented a copy of an undated, unsigned document that contained photographs and information on different individuals related to the case [FN4] and a videocassette entitled “Declaraciones y otras noticias sobre el caso Maritza Urrutia” [Statements and other information on the Maritza Urrutia case] [FN5].

[FN3] Cf. “Record of Reception of Documents” of February 21, 2003 (folios 214 to 219 of Tome II of the file on merits and possible reparations).

[FN4] Cf. “Record of Reception of Documents” of February 21, 2003 (folios 220 to 241 of Tome II of the file on merits and possible reparations).

[FN5] Cf. “Record of Reception of Documents” of February 21, 2003 (folios 242 to 243 of Tome II of the file on merits and possible reparations).

22. On May 16, 2003, the Secretariat, on the instructions of the President, granted the Commission, the representatives of the alleged victim, and the State until June 20, 2003, to present their the final written arguments.

23. On June 18, 2003, the Commission requested a one-month extension to present its final written arguments. The same day, the Secretariat, on the instructions of the President, granted an extension until July 16, 2003, to the Commission, the representatives of the alleged victim, and the State, since all the parties had been given the same time limit.

24. On July 15, 2003, the representatives of the alleged victim presented final written arguments and, the following day, they added 14 attachments with 32 documents [FN6]. In this brief, they alleged, for the first time, that Article 19 of the Convention had been violated to the detriment of the son, and nephew and niece of Maritza Urrutia, and presented new petitions regarding reparations. On July 17, 2003, the Commission presented final written arguments. The State did not present a brief with final arguments.

[FN6] Cf. Attachments A to N and N-0 to N-18 to the final arguments, presented by the representatives of the alleged victim on July 16, 2003 (folios 170 to 248 of the file of the attachments to the brief with final arguments of the representatives of the alleged victim).

25. On August 11, 2003, on the instructions of the President and in accordance with Article 44(1) of the Rules of Procedure, the Secretariat requested the Commission, the representatives of the alleged victim, and the State to provide additional helpful evidence concerning the minimum salary in force in Guatemala and the exchange rate. It also requested the Commission and the representatives to provide a certified document confirming the occupation or profession of Maritza Urrutia. On September 5, 2003, the Secretariat, on the instructions of the President, also requested the State, in accordance with this Article, to forward the “history” of the minimum salary of a teacher as evidence to help it reach its decision.

26. On August 21 and 26, 2003, the representatives of the alleged victim forwarded the documentation requested as helpful evidence [FN7]. On September 8 and 11, 2003, the Commission sent the documentation on the exchange rate and the minimum salary [FN8]. The State did not present the requested evidence.

[FN7] Cf. Folios 325 to 333 and 337 to 425 of Tome II of the file on merits and possible reparations.

[FN8] Cf. Folios 433 to 440 of Tome II of the file on merits and folios 444 to 534 of Tome III of the file on merits and possible reparations.

27. On October 6 and 8, 2003, on the instructions of the President and in accordance with Article 44(1) of the Rules of Procedure, the Secretariat requested the Commission, the representatives of the alleged victim, and the State to provide further helpful evidence. This consisted in: a copy of the proceedings relating to the writ of habeas corpus filed in favor of Maritza Urrutia, a copy of the administrative and judicial measures initiated by the Guatemalan authorities, and information on the allocated or average salary of a teacher, of a professor at a teacher training school, and of a university professor. On October 31 and November 4, 2003, the representatives of the alleged victim forwarded some of the requested documents [FN9]. On October 31, 2003, the Commission presented the copy of the writ of habeas corpus presented by the Guatemalan Archdiocesan Human Rights Office in favor of Maritza Urrutia [FN10]. The State did not present the requested evidence.

[FN9] Cf. Folios 555 to 559 of Tome III of the file on merits and possible reparations and folios 570 to 584 of Tome III of the file on merits and possible reparations.

[FN10] Cf. Folios 563 to 564 of Tome III of the file on merits and possible reparations.

V. ACKNOWLEDGEMENT OF RESPONSIBILITY

28. In this section, the Court will determine the scope of the State's acknowledgement of international responsibility in this case and, to this end, it will take into account the arguments of the Commission, the representatives of the alleged victim, and the State.

29. On August 9, 2000, while the case was being processed by the Commission, and in the context of the visit of the President of the Inter-American Commission to Guatemala, the President of the Republic "acknowledge[d] the institutional responsibility of the State arising from non-compliance [with the] provision of Article 1(1) of the American Convention that it respect and ensure the rights embodied in the Convention and Articles 1, 2 and 3 of the Guatemalan Constitution"; he also stated that "[...] in view of the foregoing, the Government of Guatemala acknowledge[d] that the facts that gave rise to the presentation of the petitions to the Inter-American Commission on Human Rights had occurred[...]" [FN11]

[FN11] Cf. "Declaration of the Government of the Republic of Guatemala regarding the cases submitted to the Inter-American Commission on Human Rights" of August 9, 2000, Presidency of the Republic, Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (file of attachments to the petition, attachment 14, folios 98 to 103).

30. In the answer to application, the State referred to this declaration and "acknowledge[d] the occurrence of the facts and institutional responsibility." The State also requested that:

an alternative to friendly settlement be established in this case; [and] should this proposal not be accepted [...], that the respective judgment be delivered without the need for hearings or any other type of proceeding, in order to apply the principles of procedural economy and promptness.

31. On February 20 and 21, 2003, during the public hearing held on this case, the witnesses, expert witness, the Commission, the representatives of the alleged victim, and the State referred to the merits of the case and to possible reparations.

32. On February 21, 2003, during the public hearing, the State emphasized that the “acknowledgement was based on the omission in which the State incurred as regards its obligation to ensure to all persons the enjoyment and respect of their fundamental rights in accordance with the Convention, its Constitution, and other international instruments signed by Guatemala.” At the same hearing, it repeated that “the Government of Guatemala acknowledge[d] that the facts that gave rise to the submission of [the] application to the Court had occurred.” The State also indicated that:

[...] the Government of the Republic of Guatemala, the representative of the National Unity Party, and the person who then presided the Inter-American Commission on Human Rights signed a statement in which, in representation of the State, its institutional responsibility was acknowledged; and, as the representative of the Commission has indicated, this gave rise to the non-compliance incurred by contravening Articles 1(1), 2 and 3 of the American Convention on Human Rights.

33. During the same public hearing, the State indicated that, although it was true that “at the time when the facts occurred, there was repressive political violence in Guatemala, in the absence of any other direct evidence, the mere verification of this practice was not enough to prove that it was agents of the State who tortured Maritza Urrutia. The statements heard lead us to surmise that it was probable, but it has not been proved.” The State also indicated that:

it has been shown in this Court that the facts that the State acknowledges as having occurred took place in a context of armed conflict, which, unfortunately, did not ensure security of any kind to any Guatemalan. The State cannot accept responsibility for its agents, if this has not been decided in a domestic court previously. A State cannot violate the rights of a Guatemalan citizen should he be convicted, or deprive him of his rights, if he has not previously been summonsed, heard and convicted in a trial. In the same way, a State may not violate its organizational structures by presenting an acknowledgement, if its Judiciary has not provided the corresponding justice previously. It would appear that this acknowledgement was not sufficient for the representatives of the alleged victims.

34. In the application, in the public hearing, and in the final written arguments, the Inter-American Commission indicated that the State’s acknowledgement of institutional responsibility for non-compliance with the obligations imposed in Article 1(1) of the Convention to the detriment of Maritza Urrutia, made by the President of Guatemala on August 9, 2000, had full legal effect in accordance with the principles of international law and, pursuant to the American Convention, bound the State to repair the violations committed. The Commission added that this “declaration confirms the State’s acknowledgement of the facts of the case” and:

it implies that, in this case, the Guatemalan State is internationally responsible for the violations of the rights to personal liberty, humane treatment and freedom of expression embodied in Articles 5, 7, and 13 of the American Convention. And also of the rights to a fair trial and effective judicial protection established in Articles 8 and 25 of this instrument.

35. At the public hearing, when referring to the State's acknowledgement of responsibility, the representatives of the alleged victim indicated that the State had:

acknowledged all the facts established in the application presented by the Inter-American Commission on Human Rights. The Guatemalan State acknowledged and did not contest the petitions established in the application. However, when the Guatemalan State was asked if it acquiesced fully to the application, it said that it did not. We believe that there is a nuance here and we do not understand completely the reasons for full acknowledgement of State responsibility and of the terms established in the application, but non-acquiescence to this application. We believe that it is important that the Court should establish in future, in the case not only of the Guatemalan State but of all States, the mechanisms for a State to be able to acknowledge its total or partial responsibility for facts that have been established. This is a nebulous issue that leaves us without any guidance when conducting this type of proceeding, and in order to establish the necessary reparations precisely.

36. Lastly, the representatives indicated in their brief with final arguments that the facts had been accepted by the State, first by the public acknowledgement made by the President of Guatemala on August 9, 2000, by recognizing State responsibility for failing to comply with the obligations imposed by Article 1(1) of the Convention to the detriment of Maritza Urrutia; and, second, in its oral arguments, when the Agent of the State affirmed that "the Government of Guatemala acknowledged that the facts which gave rise to the submission of the application had occurred."

Considerations of the Court

37. Article 52(2) of the Rules of Procedure establishes that :

If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case, the Court, after hearing the opinions of the other parties to the case whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

38. Article 54 of the Rules of Procedure state that:

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

39. With regard to the statements made by the State, the Courts observes that:

a) In the answer to the application, it referred to the acknowledgement of “institutional responsibility” made by the President of Guatemala on August 9, 2000. In this declaration, the State accepted the “institutional responsibility incurred owing to non-compliance [with] the obligations of Article 1(1) of the American Convention” because of the failure to respect and ensure the rights recognized therein (supra paras. 6 and 16);

b) It accepted that the facts which gave rise to the presentation of the petition to the Commission had occurred, according to the declaration made by the State on August 9, 2000 (supra paras. 6 and 16), and in the public hearing held on February 21, 2003, it indicated that it acknowledged the facts contained in the application (supra para. 32). However, at the same hearing, the State indicated that, in the absence of any other direct evidence, the mere verification that there was repressive political violence in Guatemala when the facts occurred, was insufficient to prove that agents of the State had tortured Maritza Urrutia; and

c) It did not submit any arguments, either in the brief answering the application or in its final oral arguments with regard to the violations of the rights embodied in Articles 5, 7, 13, 8 and 25 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture, alleged by the Commission and the representatives of the alleged victim, and about the violation of Article 11 of the American Convention, alleged autonomously by the representatives. Likewise, the State did not present any evidence for the defense at the procedural occasions indicated in Article 43 of the Rules of Procedure.

40. Based on the above, the Court understands that the State made a declaration whereby it partially acknowledged international responsibility for failing to respect and ensure the rights embodied in the American Convention, owing to non-compliance with Article 1(1) thereof to the detriment of Maritza Urrutia; and, in both the answer to the application and the final oral arguments, it accepted that “the facts that gave rise to the application had occurred.”

41. However, the State did not communicate expressly its acquiescence to the other claims as established in Article 52(2) of the Rules of Procedure, did not present evidence for the defense, and kept silent with regard to the violations of the rights embodied in Articles 5, 7, 11, 13, 8 and 25 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture, which had been alleged in the application and in the brief of requests, arguments and evidence, respectively. During the public hearing, the State asserted that there was no direct evidence to show that agents of the State were responsible for the violations committed against the victim. In this respect, the Court considers it appropriate to indicate that, in order to establish that there has been a violation of the rights embodied in the Convention, it is not necessary to determine, as it is under domestic criminal law, the guilt of the authors or their intention, nor is it necessary to identify individually the agents who are attributed with the violations. [FN12]

[FN12] Cf. The “Street Children” case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C, No. 63, Para. 75; and The “White Van” case (Paniagua Morales et al.), Judgment of March 8, 1998. Series C No. 37, para. 91.

42. The Court observes that the declarations of the State are ambiguous with regard to the scope of the international acknowledgement of the facts and their legal consequences. At this

point, the Court considers that it is appropriate to indicate that, in the international proceeding, the principle of good faith should rule, to avoid any ambiguous statement that could lead to confusion, [FN13] as has occurred in this case.

[FN13] Cf. Cantoral Benavides case. Preliminary objections. Judgment of September 3, 1998. Series C No. 40, para. 30.

43. Owing to the above, the Court takes note of the State's partial acknowledgement of international responsibility with regard to non-compliance with Article 1(1) of the American Convention, by failing to respect and ensure the rights recognized therein.

44. Likewise, with regard to the facts of the case sub judice and their legal consequences, the Court considers that, in the exercise of its authority under Article 54 of its Rules of Procedure, it is admissible to take into account other elements that allow the truth of the facts and thus their legal classification to be established; accordingly, it exercises its responsibility to protect human rights by applying the pertinent norms of international treaty law and general international law. Consequently, the Court will now examine and assess all the elements of evidence, according to the rule of sound judgment, to arrive at a decision on the alleged facts; it will examine the merits of the case to establish the alleged violations of Articles 5, 7, 11, 13, 8 and 25 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture; and it will establish the corresponding reparations in accordance with Article 63(1) of the American Convention.

VI. THE EVIDENCE

45. Before examining the evidence received, in light of the provisions of Articles 43 and 44 of the Rules of Procedure, the Court will draw some conclusions applicable to the specific case, most of which have been developed in its case law.

46. The adversarial principle which respects the right of the parties to defend themselves applies in matters pertaining to evidence; it is one of the principles of Article 43 of the Rules of Procedure concerning the time at which evidence should be submitted to ensure equality between the parties. [FN14]

[FN14] Cf. Bulacio case. Judgment of September 18, 2003. Series C No. 100, para. 40; Juan Humberto Sánchez case. Judgment of June 7, 2003. Series C No. 99, para. 28; and "Five Pensioners" case. Judgment of February 28, 2003. Series C No. 98, para. 64.

47. According to the consistent practice of the Court, at the beginning of each procedural stage, the parties must indicate the evidence they will offer, on the first occasion they are granted to present a written communication. Moreover, in exercise of its discretionary power under Article 44 of its Rules of Procedure, the Court may request the parties to provide additional

elements of evidence it considers helpful, although this does not provide another opportunity for expanding or complementing the allegations or offering new evidence, unless the Court allows it. [FN15]

[FN15] Cf. Bulacio case, supra note 14, para. 41; Juan Humberto Sánchez case. supra note 14, para. 29; and Las Palmeras case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 17.

48. Moreover, the Court has indicated previously, in the matter of receiving and weighing evidence, that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties [FN16]. Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided of making a rigid determination as to the quantum of evidence needed to support a judgment. [FN17] This criterion is especially true for international human rights courts, which have greater latitude to evaluate the evidence, although always in accordance with the principles of logic and on the basis of experience. [FN18]

[FN16] Cf. Bulacio case, supra note 14, para. 42; Juan Humberto Sánchez case, supra note 14, para. 30; and “Five Pensioners” case, supra note 14, para. 65.

[FN17] Cf. Bulacio case, supra note 14, para. 42; Juan Humberto Sánchez case, supra note 14, para. 30; and “Five Pensioners” case, supra note 14, para. 65.

[FN18] Cf. Bulacio case, supra note 14, para. 42; Juan Humberto Sánchez case, supra note 14, para. 30; and “Five Pensioners” case, supra note 14, para. 65.

49. Based on the foregoing, the Court will now proceed to examine and weigh all the element of the body of evidence in this case, according to the principle of sound criticism within the applicable treaty framework.

A) DOCUMENTARY EVIDENCE

50. The chapter on the proceeding before the Court contains the documentary evidence contributed by the parties (supra paras. 10, 14, and 24) and the evidence to help the Court reach a decision (supra paras. 26 and 27).

B) TESTIMONIAL AND EXPERT EVIDENCE

51. On February 20 and 21, 2003, the Court received the statements of the witnesses and the report of the expert witness offered by the Inter-American Commission and by the

representatives of the alleged victim (supra para. 20). The Court summarizes the relevant part of these statements below:

a. Testimony of Maritza Ninette Urrutia García, alleged victim [FN19]

At the time of the facts, she carried out political tasks for the revolutionary organization Ejército Guerrillero de los Pobres [the Guerrilla Army of the Poor] (hereinafter “EGP”) and collaborated with a psychologist, conducting tests in different nursery schools. Two years previously, she had separated from Esteban, who was an EGP companion with many years of affiliation, and the father of her son, Fernando Sebastián. She lived with her parents and every day, between 7:30 and 8 a.m., she took her son to school. The day before the abduction she noticed a “strange” movement of several men who were on the road to her son’s school.

On the morning of Thursday, July 23, 1992, she took her son to school and when she was walking back to her house, two men detained her very violently, they put her in a vehicle in which there were two other men, they “seized” her head and placed it between the legs of the man who was next to her and drove off rapidly. At once, they began to threaten her and called her by her EGP pseudonym. She felt the vehicle drive over a “túmulo”[mound] and it entered a large facility, a sort of large car park; however, she did not know where she was. On arriving at this place, they placed a hood made of newspaper over her head and transferred her to another vehicle, where they handcuffed her and began to question her. Her abductors pressured her to give them information, they threatened to kill her and said that they had her son in a room. She was very nervous and disturbed, particularly because she thought they had abducted her son.

During the interrogation, her captors showed her some photographs that they had taken of her and her family, three letters that Maritza had sent to her son’s father, through the EGP internal mail service, a cassette that she had recorded for Esteban with the voice of their son, and photographs of corpses that had been destroyed and mutilated at the war front, and they told her that this would happen to her if she did not collaborate. She was very frightened by all of this.

When it was almost 11 a.m., they transferred her to another vehicle and moved her to another part of the installations. They removed her from the vehicle and “took her to some blocks, like houses.” On the way, she could see military backpacks and firearms on the ground. She made the first telephone call to her parents, when she had to ask them to collect her son, and she told them not to worry, that she would be arriving soon. She knew then that they did not have her son. Subsequently, they took her back to the vehicle in which they had been questioning her. The threats and the interrogation continued until the afternoon, but this time with greater psychological pressure. Then she made two more telephone calls to her parents and, in the last one, she told them that she would not return home that night. When she had made the last telephone call, they went back to the place where they had been, but this time they did not stay in the vehicle; she was taken to a room, where they turned on the radio as loud as possible and continued the interrogation until the early morning. When the men went, they left the light and the radio on. During the night, people entered and left the room with a great deal of noise.

As of the Friday, the interrogation and the threats increased. She told her captors that she wanted the amnesty and it was then that they asked if she would be willing to film a video giving a statement about her participation in EGP and announcing her withdrawal from the organization. She said “yes.” Her abductors obliged her to tidy herself up to appear normal in the video. They gave her clothes and offered her make-up. Although she used little make-up usually, she decided to put on a lot of make-up and do her hair in a different way so that those who saw her would see

that she had changed, had a different aspect. They began to film the video the same day. Her captors wrote the text and she had to read it. She very much regretted having to say words that were not true. She knew that the companions that heard her would consider her a traitor.

They continued recording all of Saturday. On Sunday they did not record. That day, a man who was responsible for surveillance, entered the room where she was kept and ordered her to take off the hood and look at him, then he asked her if she recognized him, because he had been watching her. Then, they continued talking and he told her that the Army “had her,” he also told her that they had got hold of her letters during a confrontation in Chajul.

They continued to film the video on Monday and Tuesday. There were many problems during the filming, so that she continued to receive threats and pressure, because she did not remember the text and she always looked nervous and unnatural. On Wednesday, when they had finished recording the video, they took her out to make a telephone call. They obliged her to change her clothes and put her in a “pick up.” They took her to a place in Zone 7 and there she spoke to her father and told him that she was on her way back and not to worry. On the return journey, they again put her in the car violently, placed her head between the legs of the man next to her and left at high speed. It was one of the hardest moments because she believed that they were going to kill her.

On Thursday, they told her that they would let her go, but she must promise not to leave the country and she should never tell anyone what had happened, because, otherwise, they would kill her or some member of her family. They told her that she should go and request amnesty and, once she was there, call the Minister of Defense to ask for protection.

Lastly, after eight days’ captivity, they removed her from the room, they took her to a vehicle, they returned the 30 cents, the keys and the watch they had taken away from her and they left her near the Office of the Attorney General (Ministerio Público). Before she left the vehicle, they repeated to her “[d]on’t try and escape because the whole area here is watched, and you, (that is me) have to go and do what we have agreed.” When she reached the building of the Office of the Attorney General, she asked to speak with the Attorney General, Acisclo Valladares Molina, who came down almost immediately to receive her, with an attitude that was “too special.” She told him that she wanted to take advantage of the amnesty, communicate with the Minister of Defense and speak to her family. Subsequently, they made the respective telephone calls and they went to the court building to sign the amnesty agreement. They reached the office of the judge and she signed the amnesty agreement immediately. She noticed that the agreement did not show the time at which it was signed, but one or two hours before she appeared, which she thought strange. Neither the judge nor Acisclo Valladares asked her about her situation or about what had happened. She then returned to the Office of the Attorney General and met her family there.

She stayed at the Archdiocese for eight days while her departure from the country was being processed. Finally, she managed to travel to the United States. Even today, she continues to be afraid.

[FN19] She provided a statement on the circumstances in which the facts of the case occurred.

b. Testimony of Edmundo Urrutia Castellanos, father of the alleged victim [FN20]

During the time his daughter was abducted he received four telephone calls from her. His daughter's abduction broke the normal rhythm of the family. They did not wash, they did not change their clothes, and they did not sleep. His daughter's abduction affected his grandson, Sebastián, in particular, even though he was very young. He felt that he had aged ten years, owing to the anguish of not knowing the treatment his daughter was receiving and thinking that they could kill her. His daughter, Carolina, was also affected by Maritza's abduction, so that Carolina and her children had to have psychiatric treatment.

When he saw Maritza on television he was frightened and terrified for her. He had the impression that she was reading and under pressure, because his daughter appeared "heavily made-up" and she did not normally use make-up.

The day that Maritza was liberated, the family received a telephone call from their daughter and then from the Head of the Office of the Attorney General, Acisclo Valladares Molina, and, immediately, they went to the Office of the Attorney General, where they met her in a "room filled with the media." His daughter was with Acisclo and they told him to sit with them. His daughter looked very small, defenseless and alone among all the journalists. He could only think about what she must have endured while she was abducted; the physical and psychological torture that she might have suffered. At that moment, he could not communicate with his daughter. Later, in his son's vehicle, he went with his daughter to the Archdiocese and she told him how frightened she felt.

Following the abduction, he received a telephone call from a member of the Army who told him that his superior wanted to talk to him but he refused that meeting. After this call, he was summoned to a court to make a statement on the facts and he made the same statement for the Office of the Ombudsman and for the National Police. After making his statement, he was told that he would be summoned again, but in 11 years, this never happened.

While his daughter was abducted and when she was in the custody of the Archdiocese, the family made numerous international telephone calls. His daughter was exiled in Mexico for six years. He went to visit her four or five times. When he visited her, he observed that she had a minimal financial and social status. He believes that his daughter, Carolina, went to visit Maritza about 12 times and, on each trip, she gave her some financial assistance.

He feels insecure living in Guatemala nowadays. There are still daily assassinations and disappearances and there is a national situation of lack of security. His daughter's abduction continues to affect the family psychologically. He believes that his appearance at the hearing before the Court to give evidence could involve a risk.

[FN20] He provided a statement on the telephone calls made by Maritza Urrutia from the place where she was detained as well as other information related to the case.

c. Testimony of María Pilar García de Urrutia, mother of the alleged victim [FN21]

The family received three telephone calls from her daughter while she was abducted. During these calls, she felt that her daughter was a little anxious. From the time she was given the terrible news that her daughter had been abducted, she was distressed and her health deteriorated. She had always been healthy, but, since the events, she suffers from diabetes.

While her daughter was abducted, the family's largest expenses were the international and national telephone calls they made. At the time of the events, she had a small business selling clothes and, as a result of her daughter's abduction, her clients decided to stop buying from her. During the six years her daughter was in exile, she visited her about 20 times.

[FN21] She provided a statement on the telephone calls made by Maritza Urrutia from the place where she was detained as well as other information related to the case.

d. Testimony of Edmundo Urrutia García, brother of the alleged victim [FN22]

When he heard of his sister's abduction, he felt that he had lost her. He had little hope, owing to the unfortunate history of his country. He visited all the media in order to find his sister. He visited all the written press several times. He visited people he knew and who were important in the country. He made telephone calls to the United States, in order to mobilize the people he knew there, and he was in permanent contact with them. He also visited institutions such as the Guatemalan Archdiocesan Human Rights Office (ODHAG), the Universidad de San Carlos, and the Latin American Faculty of Social Sciences (FLACSO). He made a great effort to ensure that his sister's abduction was known in different national and international spheres in order to generate pressure so that she would be alive when she appeared. He did not take any steps with governmental institutions; he left this to his father who went to the Office of the Public Prosecutor (Procuraduría) and to the National Police. From the moment Maritza disappear, he did not return to his work.

When he saw the televised statement that his sister issued, he was at home with his wife. He had the very unpleasant surprise of hearing his sister mention his name with veiled insinuations that he was the person who had introduced her to subversive activities. It was obvious that the statements were unnatural. She looked very different, she was very stiff, and many of the things she said were inexact.

In the moments following his sister's liberation, he found her very much affected, traumatized and frightened. When they left the Office of the Attorney General, they took her to the Archdiocese and from there they initiated the process to get Maritza out of the country.

Since he was married to a United States citizen, an Embassy official, they came by his house that same day, after the statement had been broadcast, and took them to a hotel in Guatemala City, under heavy protection. They were there for several days because they felt very insecure. They did not return to their home and they did not go back to see the apartment they were building to live together, because they went into exile.

Returning to Guatemala in that situation meant living with fear, anxiety and uncertainty. One part of him agreed to go into exile, but the family and affective part of him told him that he should remain in Guatemala, because he had a 12-year old daughter and he considered that his presence was fundamental for her development. However, he remained in exile and this distressed him a great deal. From a professional point of view, he had to leave his activities, his professional relations and the career he was trying to build up in Guatemala. Nowadays he lives in Guatemala.

[FN22] He provided a statement on the measures adopted to find Maritza Urrutia and to take her out of Guatemala and also on other information related to the case.

e. Testimony of Daniel Robert Saxon, former official of the Archdiocese of Guatemala and now husband of the alleged victim [FN23]

He was an adviser to the Catholic Church in Guatemala in order to establish human rights offices in the country. On March 31, 1999, he married Maritza and they now live in Holland, together with the son of Maritza's first marriage, Fernando Sebastián Barrientos Urrutia.

In July 1992, he was working as legal adviser to the Guatemalan Archdiocesan Human Rights Office (ODHAG) and he was the principal lawyer who helped the Urrutia family during the search for Maritza and after she appeared on July 30, 1992. On Friday, July 24, 1992, Maritza's brother, Edmundo Urrutia, visited the Guatemalan Archdiocesan Human Rights Office (ODHAG) to request help. Together with another member of the office, he prepared a writ of habeas corpus that was sent by fax to the Supreme Court of Guatemala that same day; no reply to this was ever received.

He saw Maritza for the first time when she entered the room where the press conference was about to begin, in the Office of the Attorney General, and he had the impression that she was a woman who was suffering from severe stress and exhaustion. After the press conference, his colleague and he returned to the Archdiocese and then Maritza, her brother and her father arrived. Subsequently, they began to take steps to enable Maritza and her son to leave the country.

At that time, Maritza cried a great deal, and was evidently greatly affected. The fear expressed by Maritza and her family was not only legitimate, but absolutely normal. In his experience, those abducted in Guatemala generally do not appear, and nothing is known about them.

In 1994, he examined the political complexities of Maritza's case for his master's degree thesis. To this end, he interviewed representatives of the 1992 Guatemalan Government and the United States State Department, and representatives of national and international human rights organization who took part in the campaign to try and obtain Maritza's liberation. For example, he spoke with the former President of the Republic, Jorge Serrano Elías, with the Attorney General, Acisclo Valladares Molina, with the judge who granted the amnesty to Maritza, Lic. Secaira, and with the 1992 Ombudsman, Ramiro de León Carpio. The information he received in those interviews was often contradictory and, in general, he could determine that nothing had been done to clarify the case.

He also had access to file number 2038 of the Fourth Criminal Trial Court in Guatemala. There, he was able to read a report of July 24, 1992, prepared by Héctor Arnoldo Medrano Contreras, deputy head of the Criminal Investigations Department of the National Police of Guatemala, and Deputy Police Captain, addressed to the Eighth Criminal Magistrate. This report dealt with the police investigation of the abduction of Maritza Urrutia and the interview that the police had had with Edmundo Urrutia. The report says "that at approximately 8.30 a.m. on July 23, 1992, unknown men detained and arrested Maritza on 5th Avenue and 1st Street in Zone 13, Guatemala City, when she was returning from the Walt Disney School." They forced her to enter a white or gray vehicle. Then it says: "the victim left her left shoe, black with yellow and green stripes, at the place of the facts. The shoe was forwarded to this court." He believes that this report reveals considerable difference between what the highest legal authority, the Attorney

General, reported to the President of the Republic on August 19, 1992, and what appeared in the court file on the case.

Those responsible for abducting Maritza are still at liberty, which places the Urrutia García family at risk, both for having filed the complaint at that time and for submitting it again before the Inter-American Court, because Maritza is evidently disobeying the conditions imposed by her abductors in 1992.

During the years when he investigated the case, he was able to interview two members of the Guatemalan Army's intelligence units, who took part in Maritza's detention. They both said that it was a Guatemalan military intelligence unit that investigated Maritza and carried out the abduction, interrogations and liberation. These two individuals are free and never expressed any fear of being investigated, prosecuted or tried. It can be said that they operated with complete impunity, and this continues.

The fact that Maritza has received a legal amnesty in no way implies that she or the members of her family are free and safe. Owing to the threats she received from her abductors, she had to continue in contact with them, and to maintain a "relationship" with the members of the Guatemalan Army who had abducted and mistreated her during the week she disappeared. Accordingly, her family considered that the best option for Maritza and her son and for her brother Edmundo, was to try and leave Guatemala and go to a country where they could be safe and not subject to threats, pressure and possibly violence from the Guatemalan Army unit that had abducted her.

[FN23] He provided a statement on the measures taken to find Maritza Urrutia and take her out of the country, and also on the judicial proceedings following her liberation and on the psychological results of the traumas she suffered, among other information related to the case.

f. Expert report of Carlos Joaquín Bethancourt Monzón, doctor [FN24]

He met Maritza Urrutia on August 1, 1992, when he was called in as the consultant doctor of the Archdiocesan Human Rights Office. The examination he carried out consisted essentially of a series of questions, called a "case history" and a physical examination. The patient had no physical problem. He corroborated this information subsequently with a physical examination that only indicated the presence of some bruising on both ankles.

He observed that Maritza had undergone a period of intense stress and that, at a determined moment, she may have suffered a situation of panic, which resulted in constant agitation and insomnia. In addition, her heart rate and rate of breathing were increased, she had lost her appetite, she was sweating, and had a few other minor symptoms. Maritza was in a state of anguish which had appeared suddenly and this led to a syndrome of "reactive depression," in other words, simultaneous depression and anguish, with serious emotional disturbance. The patient was sad, insecure and frightened of what might happen in future. Accordingly he concluded that the patient presented a syndrome of anguish with a reactive depression component.

Psychological problems of an emotional type can lead to a state of exhaustion and cause more severe physiological problems if they are not treated in time. He recommended that Maritza should have a psychological examination and begin treatment with medication. Regarding her

convalescence, he noted that if Maritza sought psychological help and support immediately, she could almost return to normality. He emphasized that if the cause of the psychological trauma had been resolved, the patient would have recovered more rapidly.

[FN24] Doctor and surgeon, graduated from the Medical Sciences Faculty of the Universidad de San Carlos de Guatemala, with postgraduate studies in internal medicine in Guatemala and nephrology in Mexico City. Doctors are familiar with psychological problems through their private practice. He made his report on the psychological effects caused by the alleged torture inflicted on Maritza Urrutia, and other relevant aspects of the case.

C) ASSESSMENT OF THE EVIDENCE

Assessment of the documentary evidence

52. In this case, as in others, [FN25] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity, that were not contested or opposed, and whose authenticity was not questioned. Pursuant to Article 44 of the Rules of Procedure, the Court also accepts the helpful evidence presented by the Inter-American Commission and the representatives of the alleged victim, because it considers it useful for the decision in this case.

[FN25] Cf. Bulacio case, supra note 14, para. 57; Juan Humberto Sánchez case, supra note 14, para. 45; and “Five Pensioners” case, supra note 14, para. 84.

Assessment of the testimonial and expert evidence

53. Regarding the statement made by Maritza Urrutia in this case (supra para. 51(a)), which is credible, has not been challenged, and is supported by other elements, the Court accepts it insofar as it corresponds to the purpose of the questionnaire proposed by the Commission and the representatives of the alleged victim. In this respect, this Court considers that, as this is an alleged victim who has a direct interest in the case, her statements must be assessed together with all the evidence of the proceedings and not in isolation. In matters concerning merits and reparations, the statements of the alleged victims are useful insofar as they can provide more information on the consequences of the violations perpetrated. [FN26]

[FN26] Cf. Bulacio case, supra note 14, para. 66; Juan Humberto Sánchez case, supra note 14, para. 57; and “Five Pensioners” case, supra note 14, para. 85.

54. As regards the statements of the parents and brother of Maritza Urrutia and of Daniel Robert Saxon (supra paras. 51(b), 51(c), 51(d) and 51(e)), this Court considers that they are admissible, they do not contradict each other, and they are supported by other probatory

indications or elements; they are accepted insofar as they correspond to the purpose of the proposed questionnaire; and the Court assesses them among the whole body of evidence.

55. In relation to the report of the expert witness (*supra* para. 51(f)), which was not challenged or contested, the Court admits it and recognizes that it has probatory value.

56. As regards the documents requested by the Court based on Article 44 of the Rules of Procedure, which were presented by the parties (*supra* paras. 26 and 27), the Court incorporates them into the body of evidence in this case in application of the provisions of the first subparagraph of this norm. Likewise, the Report of the Commission for Historical Clarification, “Guatemala, memoria del silencio” (hereinafter the “CEH report”), the Report for the Recovery of the Historic Memory prepared by the Archdiocesan Human Rights Office, “Guatemala: Nunca más: los mecanismos del horror” (hereinafter the “REMHI Report”), the Agreement on a Firm and Lasting Peace between the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca of December 29, 1996, the Constitution of the Republic of Guatemala and the Code of Criminal Procedure in force at the time of the facts, are considered useful documentation in order to rule on this case, and are therefore added to body of evidence, in application of the provisions of Article 44(1) of the Rules of Procedure. Likewise, in application of the provisions of this article of the Rules of Procedure, the Court incorporates into the evidence, the five photographs presented by the witness, Daniel Robert Saxon, and the copy of the undated and unsigned document that contains photographs and information from different persons, the videocassette entitled “Declaraciones y otras noticias sobre el caso de Maritza Urrutia” [Statements and other information on the Maritza Urrutia case], and the 14 attachments to the final written arguments, submitted by the representatives of the alleged victim (*supra* paras. 21 and 24).

57. In view of the above, the Court will assess the probatory value of the documents, statements and expert report presented in writing or made before it. The evidence presented during all stages of the proceedings has been integrated into a single body of evidence, which will be assessed as a whole. [FN27]

[FN27] Cf. Bulacio case, *supra* note 14, para. 68; Juan Humberto Sánchez case, *supra* note 14, para. 60; and Las Palmeras case. Reparations, *supra* note 15, para. 34.

VII. PROVEN FACTS

58. Having examined the documents, the statements of the witnesses, the report of the expert witness and the statements of the Commission, the representatives of the alleged victim, and the State, the Court considers that the following facts have been proven.

General facts

58.1. When the facts related to this case occurred, Guatemala was immersed in an internal armed conflict and had initiated the peace negotiations process between the Government of

Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (hereinafter “URNG”); [FN28]

[FN28] Cf. The Agreement on a Firm and Lasting Peace between the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) of December 29, 1996.

58.2. During the negotiation process, among other initiatives, the Guatemalan Army undertook a series of actions to demoralize and weaken the position of the “enemy” factions (URNG). Among these actions, the Army conducted so-called psychological operations, during which they presented to the media alleged members of URNG, who were obliged to say that they wished to abandon the rebel groups and, to this end, requested the collaboration of the Armed Forces; [FN29]

[FN29] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome IV, p. 245 and Report of the Inter-Diocesan Project for the Recovery of the Historic Memory, “Guatemala: Nunca Más: los mecanismos del horror”, Tome II, pp. 198-199.

58.3. It was the Army’s practice to capture guerrillas and keep them in clandestine detention in order to obtain useful information for the Army, through physical and psychological torture; [FN30]

[FN30] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome II, pp. 21, 22 and 23 and Report of the Inter-Diocesan Project for the Recovery of the Historic Memory “Guatemala: Nunca Más: los mecanismos del horror”, Tome II, pp. 52 to 54.

Regarding the detention of Maritza Urrutia

58.4. On July 23, 1992, while walking along 5th Avenue of Zone 13 of Guatemala City, after leaving her son in school, Maritza Urrutia was abducted by three armed men, dressed in civilian clothes, who forced her to enter a white car with polarized windows, driven by a fourth individual. [FN31] The previous day, when she had been walking along the same avenue, Maritza Urrutia was watched and followed by unknown men; [FN32]

[FN31] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); and Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome

VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia” [Arbitrary detention and torture of Maritza Urrutia], pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

[FN32] Cf. Testimony of Maritza Urrutia to the Court on February 20, 2003; and sworn statement of Maritza Urrutia, made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31).

58.5. Once in the vehicle, Maritza Urrutia’s head was covered by a hood and she was transferred to the installations of the Guatemalan Army’s clandestine detention center known as “La Isla” [the Island], which is located behind the Ambulant Military Police, in 16th Avenue and 13th Street of Zone 6 of Guatemala City. She remained captive there for eight days. [FN33] At least eight Army experts and two officers, all members of the Guatemalan Army’s intelligence unit, took part in these acts; [FN34]

[FN33] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and statement of Maritza Urrutia García on the place where she was detained and document entitled “descripción del lugar donde estuve secuestrada” [description of the place where I was detained] (file of attachments to the application, attachment 4, folios 53 to 56).

[FN34] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and testimony of Daniel Robert Saxon before the Court on February 21, 2003.

Regarding the detention conditions of Maritza Urrutia

58.6. During the eight days that she was detained, Maritza Urrutia remained locked in a room, handcuffed to a bed, hooded and with the light on in the room and the radio always on at full volume. Maritza Urrutia could only leave that room when her captors ordered it. She was subjected to long and continuous interrogations regarding her link and that of her former husband to the Ejército Guerrillero de los Pobres (EGP), a member of the Unidad Revolucionaria Nacional Guatemalteca (URNG). During the interrogations, she was threatened with physical torture and that she or members of her family would be killed if she did not collaborate. On numerous occasions, she was warned that she would never see her son again. They showed her some letters that she had written to her son’s father, photographs of her son, her mother and other members of her family, her home and her car, as well as other photographs of guerrilla fighters who had been tortured and killed in combat, telling her that her family would find her in the same condition; [FN35]

[FN35] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); and Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

58.7. During the abduction, her captors obliged her to make telephone calls to her family and lie about her situation; [FN36]

[FN36] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003.

Regarding the filming of the video and the statements made by Maritza Urrutia

58.8. Maritza Urrutia was forced to make a filmed statement where she referred to her participation, and that of her former husband and her brother in the Ejército Guerrillero de los Pobres (EGP); she justified her disappearance as a way of abandoning this organization; she thanked all those who had helped her to do this; and she urged her companions to abandon the armed fight. To film the statement, Maritza Urrutia used the clothes and make-up that was provided to her and followed a script that had been drafted by her abductors. Then, she was obliged to communicate with the two television channels to ask them to broadcast the video that she would send. [FN37] On July 29, 1992, the video was broadcast at 10 p.m. by two news programs on Guatemalan television; [FN38]

[FN37] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and videocassette entitled “declaración y otras noticias sobre el caso de Maritza Urrutia” [statement and other news of the case of Maritza Urrutia].

[FN38] Cf. Videocassette entitled “declaración y otras noticias sobre el caso de Maritza Urrutia”; transcript of the video of Maritza Urrutia broadcast on “Notisiete” on July 29, 1992 (file of attachments to the application, attachment 10, folios 68 to 69) and Report of the Commission for

Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

58.9. On July 30, 1992, Maritza Urrutia was liberated near the building of the Office of the Attorney General in Guatemala City. Following the precise instructions of her abductors and under threat of death, she went to the offices of Acisclo Valladares, the Attorney General, who received her personally in his office and took her to the Fifth Criminal Trial Court so that she could request amnesty based on Decree 32-88 of the Congress of the Republic. There, she signed an act in which she claimed the amnesty before the corresponding judge, who never asked her about what had happened. Subsequently, Maritza Urrutia returned to the Office of the Attorney General and, following the instructions of her captors, gave a press conference in which she confirmed the content of the video; [FN39]

[FN39] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington, D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); amnesty act of July 30, 1992, granted before the Guatemalan Fifth Criminal Trial Judge (file of attachments to the application, attachment 8, folios 68 to 69); Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and testimony of Daniel Robert Saxon before the Court on February 21, 2003.

58.10. Maritza Urrutia then went with her family to a safe place, under the protection of the Guatemalan Archdiocesan Human Rights Office; [FN40]

[FN40] Cf. Testimony of Maritza Urrutia before the Court el February 20, 2003; Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); testimony of Edmundo Urrutia García before the Court on February 21, 2003 and testimony of Daniel Robert Saxon before the Court on February 21, 2003.

58.11. On August 7, 1992, Maritza Urrutia left Guatemala for the United States, because of the fear of attempts on her life. Then she went to Mexico, where she was given refugee status and where she lived for six consecutive years; [FN41]

[FN41] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; sworn statement of Maritza Urrutia made on February 24, 1993, before a public notary in Washington,

D.C., United States (file of attachments to the application, attachment 1, folios 01 to 31); testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003; testimony of María Pilar García de Urrutia before the Court on February 21, 2003; and Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

Regarding the measures taken by the next of kin of Maritza Urrutia and the investigation conducted by the organs of the State

58.12. When he heard about his daughter’s disappearance, Edmundo Urrutia Castellanos, father of Maritza Urrutia, filed the respective complaints before the competent national bodies, such as the Office of the Ombudsman and the National Police; [FN42]

[FN42] Cf. Record drawn up by the Office of the Guatemalan Ombudsman on the complaint filed by Edmundo Urrutia Castellanos on July 23, 1992 (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folios 251 and 252); report of July 24, 1992, of the preliminary investigation conducted by the Criminal Investigations Department of the National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 265); testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003; and testimony of Edmundo Urrutia García before the Court on February 21, 2003.

58.13. On July 23, 1992, when the report on the disappearance of Maritza Urrutia had been filed, the Office of the Ombudsman ordered an investigation into the reported facts and the preparation of a writ of habeas corpus in favor of Maritza Urrutia; [FN43]

[FN43] Cf. Record drawn up by the Office of the Ombudsman on the complaint filed by Edmundo Urrutia Castellanos on July 23, 1992 (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folios 251 and 252); and resolution of the Ombudsman of July 23, 2003 REF. EXP. GUA. 168-92/P Of. 5o.

58.14. On July 24, 1992, the Guatemalan Ombudsman filed a writ for habeas corpus in favor of Maritza Urrutia before the acting judge for criminal affairs; [FN44]

[FN44] Cf. Writ of habeas corpus filed on July 24, 1992, before the acting magistrate by the Office of the Guatemalan Ombudsman in favor of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio

284); and resolution of the Guatemalan Ombudsman of October 6, 1992, delivered in file number 168-92/P (file of attachments to the application, attachment 17, folios 120 to 126).

58.15. On July 24, 1992, the Guatemalan Archdiocesan Human Rights Office filed a writ of habeas corpus before the Supreme Court of Justice, in favor of Maritza Urrutia; [FN45]

[FN45] Cf. Writ of habeas corpus filed on July 24, 1992, by the Guatemalan Archdiocesan Human Rights Office before the Supreme Court of Justice of Guatemala in favor of Maritza Urrutia (file of attachments to the application, attachment 17, folio 104)

58.16. On July 24, 1992, the Criminal Investigations Department of the National Police informed the Eighth Criminal Court about the complaint relating to the abduction of Maritza Urrutia presented to this department by Edmundo Urrutia Castellanos, and about the circumstances in which it had allegedly occurred; [FN46]

[FN46] Cf. Official letter 0817/remg of July 24, 1992, from the deputy head of the Criminal Investigations Department of the National Police addressed to the Eighth Magistrate for Criminal Affairs (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 268); and report of October 5, 1992, on the preliminary investigation conducted by the Criminal Investigations Department of the National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folios 276 and 277).

58.17. On July 24, 26 and 28, 1992, officials of the Criminal Investigations Department of the National Police went to the residence of Maritza Urrutia to interview her parents and the neighbors and prepared the respective reports. On October 5, 1992, this department of the National Police issued an inconclusive report on the disappearance of Maritza Urrutia, in which it merely summarized the preliminary report on the interviews it had carried out; [FN47]

[FN47] Cf. Report of July 24, 1992, on the preliminary investigation conducted by the Criminal Investigations Department of the National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 265); report of July 26, 1992, on the preliminary investigation conducted by the Criminal Investigations Department of the National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 269); report of July 28, 1992, on the preliminary investigation conducted by the Criminal Investigations Department of the National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 270); and report of October 5, 1992, on the preliminary investigation conducted by the Criminal Investigations Department of the

National Police on the abduction of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folios 276 and 277).

58.18. On August 6, 1992, the Office of the Attorney General initiated an investigation regarding complaint No. 2038-92, which corresponded to the Fourth Criminal Trial Court; the latter summoned Maritza Urrutia to appear and make a statement on August 7 that year. The summons was delivered to the Office of the Attorney General and on August 6, the Attorney General delivered it to Edmundo Urrutia, father of the alleged victim. Maritza Urrutia did not present herself before the court; [FN48]

[FN48] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); and report of September 22, Special Affairs Department of the Ministry of Foreign Affairs of the Guatemalan Government, presented to the Inter-American Commission on Human Rights (file of attachments to the application, attachment 11, folios 70 to 81).

58.19. The same day, the President of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) and the Special Secretary for Political Affairs of the Presidency of the Republic went to the Guatemalan Archdiocesan Human Rights Office and requested an interview with Maritza Urrutia, in order to offer her the protection she had requested from the Attorney General. However, Maritza Urrutia refused to see them; [FN49]

[FN49] Cf. Note of August 6, 1992, presented to the Metropolitan Archbishop, Próspero Penados del Barrio by the President of the Presidential Human Rights Committee and the Special Secretary for Political Affairs of the Presidency of the Republic of Guatemala (file of attachments to the application, attachment 7, folio 61); and communication of August 9, 1992, from the President of the Republic of Guatemala addressed to the Ombudsman regarding the case of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 302); reports of September 22, 1992, from the Special Affairs Department of the Ministry of Foreign Affairs of the Government of Guatemala presented to the Inter-American Commission on Human Rights (file of attachments to the application, attachment 11, folios 70 to 81).

58.20. Before leaving the country, Maritza Urrutia reported the facts to an official of the Guatemalan Archdiocesan Human Rights Office and to the Ombudsman, Ramiro de León Carpio, asking for confidentiality and discretion, because her life and the lives of her next of kin were in danger; [FN50]

[FN50] Cf. Testimony of Daniel Robert Saxon before the Court on February 20, 2003; and resolution of the Guatemalan Ombudsman of October 6, 1992, delivered in file number 168-92/P Of. 5° (file of attachments to the application, attachment 17, folios 120 to 126).

58.21. On August 9, 1992, the President of the Republic requested the Ombudsman to collaborate by informing him about the information he had on the case. On August 13, 1992, the Ombudsman presented a report on the measures taken by his office in this case, omitting the information that Maritza Urrutia had given him confidentially. On October 6, 1992, the Ombudsman issued a resolution on this case, in which he stated that “the human rights to personal liberty, safety, integrity and freedom of movement [of Maritza Urrutia] had been violated, because she had been the victim of an enforced disappearance for eight days,” and held the Government of Guatemala responsible owing to “the lack of control over repressive groups who continue[d] to act outside the law”; [FN51]

[FN51] Cf. Communication of August 9, 1992 of the President of the Republic of Guatemala addressed to the Ombudsman regarding the case of Maritza Urrutia (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folio 302); report REF. SE-122-92/HA of August 13, 2003, of the Guatemalan Ombudsman addressed to the President of the Republic of Guatemala, Jorge Serrano Elías (file of attachments submitted by the representatives of the victims and their next of kin in the brief of November 5, 2003, folios 303 to 303); and resolution of the Guatemalan Ombudsman of October 6, 1992, delivered in file number 168-92/P Of. 5° (file of attachments to the application, attachment 17, folios 120 to 126).

58.22. Since June 19, 1995, the case file is in the hands of the Office of the Attorney General, and the investigation has not produced any results; [FN52]
Regarding Maritza Urrutia

[FN52] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37); testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003; and testimony of Daniel Robert Saxon before the Court on February 21, 2003.

58.23. Maritza Urrutia was born on November 28, 1958. [FN53] At the time of the facts she was 33 years of age, she lived with her parents in Guatemala City, together with her son, her sister, Carolina, and her niece and nephew. She had belonged to the rebel group, Ejército Guerrillero de los Pobres (EGP), which was a member of the Unidad Revolucionaria Nacional Guatemalteca (URNG). She was also a primary school teacher and collaborated with a psychologist, conducting tests in various elementary schools. She now lives in Holland; [FN54]

[FN53] Cf. Guatemalan identity card No. 598502 of Maritza Ninette Urrutia García (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment A, folios 170 to 173).

[FN54] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003.

Regarding the next of kin of Maritza Urrutia

58.24. Her son is Fernando Sebastián Barrientos Urrutia. [FN55] Her parents are Edmundo Urrutia Castellanos and María Pilar García de Urrutia. [FN56] Her siblings are Carolina Lissette and Edmundo, both Urrutia García. [FN57] Her husband is Daniel Robert Saxon;

[FN55] Cf. Consular birth certificate No. 281 of February 25, 1988, of Fernando Sebastián Barrientos Urrutia (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment F, folios 182 and 183).

[FN56] Cf. Guatemalan identity card No. 598502 of Maritza Ninette Urrutia García (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment A, folios 170 to 173).

[FN57] Cf. Birth certificate No. 2852 of August 24, 1954, of Carolina Lissette Urrutia García (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment D, folios 178 and 179); and birth certificate No. 2102 of May 19, 1952, of Edmundo René Urrutia García (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment E, folios 180 to 190).

Regarding the pecuniary and non-pecuniary damage caused to Maritza Urrutia

58.25. Maritza Urrutia has suffered psychological problems [FN58] as a result of the facts. She had to move to Mexico where she remained as a refugee for six years and her employment and financial situation deteriorated. [FN59] All of this has resulted in pecuniary and non-pecuniary damage;

[FN58] Cf. Expert report of Carlos Bethancourt Monzón before the Court on February 21, 2003.

[FN59] Cf. Testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003.

58.26 Maritza Urrutia continues to suffer because of the impunity that reigns in this case. [FN60]

[FN60] Cf. Testimony of Maritza Urrutia before the Court on February 20, 2003; testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003; and testimony of Daniel Robert Saxon before the Court on February 21, 2003.

Regarding the pecuniary and non-pecuniary damage caused to the next of kin of Maritza Urrutia

58.27 The social and employment relations of the next of kin of Maritza Urrutia were affected, so that they have suffered pecuniary and non-pecuniary damage; [FN61]

[FN61] Cf. Testimony of Edmundo Urrutia Castellanos before the Court on February 21, 2003; testimony of María Pilar García de Urrutia before the Court on February 21, 2003; and testimony of Edmundo Urrutia García before the Court on February 21, 2003.

Regarding the expenses incurred by the alleged victim and her next of kin

58.28. The next of kin of Maritza Urrutia incurred a series of expenses related to the different measures they took before various organizations; [FN62]

[FN62] Cf. Testimony of María Pilar García de Urrutia before the Court on February 21, 2003; and testimony of Edmundo Urrutia García before the Court on February 21, 2003.

Regarding the representation of Maritza Urrutia before the inter-American system for the protection of human rights and the expenses relating to her representation

58.29. Maritza Urrutia has been represented by the Centro para la Acción Legal en Derechos Humanos (CALDH) in the measures taken before the Commission and the Court, and this organization has incurred a series of expenses with regard to these measures. [FN63]

[FN63] Cf. Copy of the vouchers submitted to corroborate the expenses incurred by the representatives of the alleged victim (file of attachments to the brief with the final arguments of the representatives of the alleged victim, attachment N, folios 199 to 248).

VIII. VIOLATION OF ARTICLES 7 AND 1(1) (RIGHT TO PERSONAL LIBERTY AND OBLIGATION TO RESPECT RIGHTS)

Arguments of the Commission

59. With regard to Article 7 of the Convention, in relation to Article 1(1) thereof, the Commission alleged that:

a) It has been established that Maritza Urrutia was arbitrarily deprived of her freedom by agents of the State who used force to subdue her and arrest her on a main road in broad daylight,

and to keep her in clandestine detention and incommunicado in police installations. The State officials detained the alleged victim, without having been mandated by any judicial authority, and there was no arrest warrant against her, she was not informed of the charges against her, and she was not allowed to communicate with a lawyer, and never brought before a competent judge. All the above was carried out in violation of Guatemalan laws;

b) Regarding the legality of the detention, the Guatemalan Constitution establishes that no one may be detained or imprisoned, unless this is due to an offense or misdemeanor, and as a result of an order issued in accordance with the law by a competent judicial authority. As regards the formal aspect, the Guatemalan Code of Criminal Procedure in force at the time of the facts stipulated that any person detained must be taken immediately to the corresponding detention center, and the judge must be informed of this; and

c) The State has accepted expressly the characteristics of the detention indicated by the victim. This was acknowledged by the President of Guatemala in his declaration of August 9, 2000.

Arguments of the representatives of the alleged victim

60. With regard to the violation of Article 7 of the Convention in relation to Article 1(1) thereof, the representatives of the alleged victim argued, in addition to the aspects indicated by the Commission, that:

a) On August 9, 2000, the President of the Republic of Guatemala, acknowledged State responsibility for the facts on which the application is based and the allegations in this pleading before the Inter-American Court, which “is also equivalent to accepting that the unlawful deprivation of the freedom of Maritza Urrutia is the responsibility of the State”; and

b) The place where Maritza Urrutia was detained corresponded to a military installation, as has been confirmed by the Commission for Historical Clarification. Also, the liberation of the alleged victim directly to the Attorney General and the fact that he took her immediately to a court to sign an act claiming amnesty underscore the complicity of other State bodies, because none of the authorities questioned her about her abduction, although they are obliged ex officio to seek information on offenses.

Arguments of the State

61. The State did not present any specific argument on the alleged violation of Article 7 of the Convention.

Considerations of the Court

62. Paragraphs 1 to 6 of Article 7 of the American Convention stipulate that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.

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.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

63. It has been proved that Maritza Urrutia was abducted by State agents, introduced by force into a vehicle, her head was covered by a hood, and she was taken to a clandestine detention center, where she was held for eight days, without being informed of the motives for her detention and the charges attributed to her, she remained incommunicado and was not brought before a competent authority (*supra* paras. 58.4, 58.5 and 58.6). The Court will now determine whether these facts are compatible with the provisions of Article 7 of the Convention.

64. The Court has indicated that the protection of freedom safeguards “both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those detained of the minimum legal protection.” [FN64]

[FN64] Cf. Juan Humberto Sánchez case, *supra* note 14; Bámaca Velásquez case. Judgment of November 25, 2000. Series C No. 70, para. 141; and the “Street Children” case (Villagrán Morales et al.), *supra* note 12, para. 135.

65. Regarding detention, the Court has said, with regard to paragraphs 2 and 3 of Article 7 of the Convention, on the prohibition of unlawful or arbitrary detention or arrest, that:

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his personal 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. [FN65]

[FN65] Juan Humberto Sánchez case, *supra* note 14, para. 78; Bámaca Velásquez case, *supra* note 64, para. 139; and Durand and Ugarte case. Judgment of August 16, 2000. Series C No. 68, para. 85.

66. In this respect, the Court considers it necessary to invoke another measures designed to avoid arbitrariness or unlawfulness, namely:

prompt judicial control, taking into account that, under the rule of law, a judge must guarantee the rights of the person detained, authorize the adoption of precautionary or coercive measures, when these are strictly necessary and, in general, ensure treatment consequent with the presumption of innocence that protects the accused while his responsibility has not been established. “[A]nyone deprived of his freedom without any form of judicial control must be either released or brought promptly before a judge, because the essential content [of] Article 7 of the American Convention is the protection of the liberty of the individual from interference by the State.” [FN66]

[FN66] Bulacio case, *supra* note 14, para. 129; Juan Humberto Sánchez case, *supra* note 14, para. 84; and Castillo Petruzzi et al. case. Judgment of May 30, 1999. Series C No. 52, para. 108.

67. Article 6 of the Constitution of Guatemala in force since January 14, 1986, establishes that a person may only be deprived of his freedom “owing to an order issued in accordance with the law by a competent judicial authority” or should he be caught in flagrante delicto when committing an offense or a misdemeanor, and he must be brought “before the competent judicial authority within no more than six hours.” In this case, Maritza Urrutia was not caught in flagrante delicto but was detained when she was walking down the street, having left her son at school, and the causes and conditions established in the said article had not been met; moreover, she was not brought promptly before a judge. In this respect, the CEH Report stated that Maritza Urrutia was subjected to “arbitrary detention, contrary to Guatemalan legislation, carried out against the victim by State agents.” [FN67] This Court has indicated that situations, such as the one described endanger the observance of due process of law, [FN68] because the person detained is refused the right to the protection of the law and there is no judicial control.

[FN67] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

[FN68] Cf. Bulacio case, *supra* note 14, para. 127.

68. In view of the above, the unlawful detention of Maritza Urrutia constitutes a violation of Article 7(2) of the American Convention.

69. With regard to Article 7(3) of the Convention, this Court considers that the detention of Maritza Urrutia falls within the State agents' practice of abducting, interrogating, torturing and threatening the lives of the victims or their next of kin, without any judicial control in order to demoralize the rebel groups (*supra* paras. 58(2) and 58(3)).

70. Owing to the above, this Court considers that the detention of Maritza Urrutia was arbitrary and constitutes a violation of Article 7(3) of the Convention.

71. Paragraphs 4, 5 and 6 of Article 7 of the American Convention establish obligations of a positive nature that impose specific requirements on both State agents and third parties who act with the tolerance and agreement of the former and who are responsible for carrying out detentions. [FN69]

[FN69] Cf. Juan Humberto Sánchez case, *supra* note 14, para. 81.

72. This Court has established that Article 7(4) of the Convention includes a mechanism to avoid unlawful or arbitrary conduct from the moment of the deprivation of freedom and to guarantee the defense of the person detained, so that the latter and those who represent him or have legal custody of him have the right to be informed of the reasons for his detention when this occurs and of the rights of detainees. [FN70] Article 7 of the Guatemalan Constitution establishes that "any person detained must be notified immediately, orally and in writing, of the reasons for his detention, the authority who ordered it, and the place where he will be detained." In this case, it has been proved that, at the time of her detention, neither Maritza Urrutia nor her family were informed of the criminal conduct attributed to her, of the reasons for the detention and of her rights as a detainee, all of which constitute a violation of Article 7(4) of the Convention to the detriment of Maritza Urrutia.

[FN70] Cf. Bulacio case, *supra* note 14, para. 128; and Juan Humberto Sánchez case, *supra* note 14, para. 82.

73. Article 7(5) of the Convention establishes that any person detained shall be brought promptly before a judge, as the appropriate measure of control to avoid arbitrary or unlawful detention. Both the Inter-American Court and the European Court of Human Rights [FN71] have accorded special importance to the prompt judicial supervision of detentions in order to prevent arbitrary and unlawful acts. A person deprived of his freedom without type of judicial supervision must be released or immediately brought before a judge. The European Court of Human Rights has stated that although the word "immediately" should be interpreted according to the special characteristics of each case, no situation, however serious, grants the authorities the power to unduly prolong the period of detention, because this would violate Article 5(3) of the European Convention. [FN72] That Court emphasized "that the detention of a person, which is not acknowledged by the State, constitutes a complete negation of these guarantees and one of the most serious forms of violation of Article 5 of the European Convention. [FN73]

[FN71] Cf. Juan Humberto Sánchez case, supra note 14, para. 84; Bámaca Velásquez case, supra note 64, para. 140; the “Street Children” case (Villagrán Morales et al.), supra note 12, para. 135; Eur. Court HR, Aksoy v. Turkey, judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, para. 76; and Eur. Court H.R., Brogan and Others, judgment of 29 November 1988, Series A No. 145-B, para. 58.

[FN72] Cf. Juan Humberto Sánchez case, supra note 14, para. 84; Bámaca Velásquez case, supra note 64, para. 140; Castillo Petruzzi et al. case, supra note 66, para. 108; Eur. Court H.R., Brogan and Others, judgment of 29 November 1988, Series A No. 145-B, para. 58-59, 61-62; and Eur. Court H.R., Jong, Baljet and van den Brink, judgment of 22 May 1985, para. 52.

[FN73] Cf. Juan Humberto Sánchez case, supra note 14, para. 84; Bámaca Velásquez case, supra note 64, para. 140; the “Street Children” case (Villagrán Morales et al.), supra note 12, para. 135; Eur. Court HR, Kurt v. Turkey, judgment of 25 May 1998, Reports of Judgments and Decisions 1998 III, para. 124, Eur. Court HR, Nuray Sen v. Turkey, judgment of 17 June 2003, para. 123; and Eur. Court HR, Orhan v Turkey, judgment of 18 June 2002, para. 367.

74. Maritza Urrutia was detained by State agents without a judicial order and was not brought before a competent authority; she did not have the possibility of filing a simple and effective remedy against this act, by herself, and the writs of habeas corpus filed in her favor were ineffective. It has been shown that, when detaining Maritza Urrutia, the State agents did not have the intention of bringing her before the judge, but rather they hid her detention and avoided all judicial control, taking her to a clandestine detention center.

75. The Court considers that the conduct of the State which has been described is incompatible with the provisions of Article 7(5) of the Convention.

76. In the same way, the Court refers to Chapter XI of this judgment, which relates to Articles 8 and 25 of the Convention (infra para. 116), to the effect that the remedies filed in favor of the alleged victim were not effective and it considers that there was therefore a violation of Article 7.6 of the Convention, to the detriment of Maritza Urrutia.

77. Consequently, the Court declares that the State violated Article 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Maritza Urrutia García.

IX. VIOLATION OF ARTICLES 5 AND 1(1) (RIGHT TO HUMANE TREATMENT AND OBLIGATION TO RESPECT RIGHTS) AND OF ARTICLES 1 AND 6 OF THE INTER-AMERICAN CONVENTION AGAINST TORTURE

Arguments of the Commission

78. With regard to the right to humane treatment, the Commission requested the Court to declare that there had been a violation of Article 5 of the American Convention in relation to Article 1(1) thereof, and of Articles 1 and 6 of the Inter-American Convention against Torture, because:

- a) In the declaration acknowledging institutional responsibility, the State accepted the facts that gave rise to the instant case, so that it accepted: that the “treatment to which the [alleged] victim was subjected during her detention was equivalent to torture, cruel, inhuman and degrading treatment”; that Maritza Urrutia remained incommunicado for eight days; and that she was kept handcuffed to a bed, with a hood on her head, in a room where the light was kept on and also the radio at full volume;
- b) During her arbitrary detention, Maritza Urrutia was deliberately subjected to psychological torture arising from the threat and continual possibility of being assassinated, physically tortured or raped, of losing her young son, and that violent acts would be carried out against her family; in addition to the application, by military intelligence agents, of methods tending to obliterate or diminish her personality, such as sleep deprivation, exposure to constant noise, incessant interrogation and recordings;
- c) The methods employed by the State agents were intended to break the physical and psychological resistance of the alleged victim, in order to extract information on the organization of which she was a member and force her to issue a statement; and
- d) In the terms of the international norms prohibiting torture, this can be either physical or psychological.

Arguments of the representatives of the alleged victim

79. The representatives of the alleged victim requested the Court to declare the violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, and of Articles 1 and 6 of the Convention against Torture, because:

- a) On August 9, 2000, the President of the Republic of Guatemala acknowledged the State’s responsibility for the facts on which the application and the arguments in this pleading before the Inter-American Court are based, which “is also equivalent to acknowledging that the torture, cruel, inhuman and degrading treatment to which Maritza Urrutia was subjected were the responsibility of the State”;
- b) Of what the Commission has alleged with regard to her detention, solitary confinement, psychological torture, and the cruel, inhuman and degrading treatment to which she was subjected by State agents, as well as the other conditions under which she was kept for eight days of clandestine detention. In addition, they mentioned that a lack of contact with the external world, as a result of the solitary confinement to which the victim was subjected, necessarily causes the person enduring this, the anguish that arises from not knowing what is happening to one’s loved ones, which was aggravated by the threats that the victim or her family would suffer harm;
- c) Even though the alleged victim was not attacked physically, the acts to which she was subjected were intended to cause mental suffering, and they are included in the different definitions of torture that are nationally and internationally accepted. Moreover, the means by which Maritza Urrutia was tortured correspond to the substantive element of the acts typical of torture according to Article 2 of the Inter-American Convention against Torture; and
- d) The next of kin of Maritza Urrutia also suffered psychological torture as a result of her disappearance, at the hands of the security forces, who generally kill those they capture in this way.

Arguments of the State

80. The State did not present any specific argument on the alleged violation of Article 5 of the Convention.

Considerations of the Court

81. Article 5 of the Convention establishes that:

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

82. Articles 1 and 6 of the Inter-American Convention against Torture establish that:

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

[...]

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

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

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

[...]

83. Article 2 of the Inter-American Convention against Torture, defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The same article adds that:

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

84. In the previous chapter, it was concluded that the State violated the right to personal liberty of Maritza Urrutia by unlawfully and arbitrarily detaining her and keeping her outside

judicial control. It is now necessary to determine whether, during the period of her detention, the right of Maritza Urrutia to humane treatment was violated, in accordance with Article 5 of the American Convention and Articles 1 and 6 of the Inter-American Convention against Torture.

85. With regard to the treatment that the State officials afforded to Maritza Urrutia while she was unlawfully and arbitrarily detained, the Court has considered proven that the alleged victim's head was covered by a hood, she was kept handcuffed to a bed, in a room with the light on and the radio at full volume, which prevented her from sleeping. In addition, she was subjected to very prolonged interrogations, during which she was shown photographs of individuals who showed signs of torture or had been killed in combat and she was threatened that she would be found by her family in the same way. The State agents also threatened to torture her physically or to kill her or members of her family if she did not collaborate. To this end, they showed her photographs of herself and her family and correspondence from her to her former husband (*supra* para. 58.6). Lastly, Maritza Urrutia was obliged to film a video, which was subsequently broadcast by two Guatemalan television channels, in which she made a statement against her will, the contents of which she was forced to ratify at a press conference held after her release (*supra* paras. 58.8 and 58.9).

86. In this respect, the CEH Report concluded “that Maritza Urrutia suffered [the] violation of her right to humane treatment, owing to the torture committed by members of the Army, who inflicted psychological suffering on her and applied methods designed to obliterate or diminish her personality.” [FN74]

[FN74] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

87. On other occasions, the Court has established that a “person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated.” [FN75] It has also stated that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and of the right of any detainee to respect for his inherent dignity as a human being.” [FN76] Solitary confinement produces moral and psychological suffering in the detainee, placing him in a particularly vulnerable position. [FN77] The Court has also indicated that even if the unlawful detention has only lasted a short time, it is sufficient to constitute a violation of physical and moral integrity according to the standards of international human rights law, [FN78] and that, in the presence of these circumstances, it is possible to infer, even when there is no other evidence in this respect, that the treatment received during solitary confinement is inhuman and degrading. [FN79]

[FN75] Cf. Juan Humberto Sánchez case, supra note 14, para. 96; Bámaca Velásquez case, supra note 64, para. 150; and Cantoral Benavides case. Judgment of August 18, 2000. Series C No. 69, para. 90.

[FN76] Cf. Bámaca Velásquez case, supra note 64, para. 150; Cantoral Benavides case, supra note 75, para. 83; and Fairén Garbi and Solís Corrales case. Judgment of March 15, 1989. Series C No. 6, para. 149.

[FN77] Cf. Bámaca Velásquez case, supra note 64, para. 150; Cantoral Benavides case, supra note 75, para. 84; and Castillo Petruzzi et al. case, supra note 66, para. 195.

[FN78] Cf. Juan Humberto Sánchez case, supra note 14, para. 98; Bámaca Velásquez case, supra note 64, para. 128; and Cantoral Benavides case, supra note 75, paras. 82 and 83.

[FN79] Cf. Juan Humberto Sánchez case, supra note 14, para. 98; Bámaca Velásquez case, supra note 64, para. 150; and Cantoral Benavides case, supra note 75, paras. 83, 84 and 89.

88. In view of the foregoing, the Court considers that the unlawful and arbitrary deprivation of freedom of Maritza Urrutia, subjecting her to the above-mentioned detention conditions, constitutes cruel and inhuman treatment and, consequently, the State violated Article 5(2) of the American Convention to her detriment.

89. Regarding the allegations of the Commission and the representatives of the alleged victim that Maritza Urrutia was a victim of torture, the Court must determine whether the acts referred to constitute such treatment. The Court has indicated that torture is strictly prohibited by international human rights law. [FN80]The prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such a 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.

[FN80] Cf. Cantoral Benavides case, supra note 75, para. 95.

90. According to Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, torture means:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

91. The Court also underscores that, the elements of the concept of torture established in Article 2 of the Inter-American Convention against Torture include methods to obliterate the personality of the victim in order to attain certain objectives, such as obtaining information from

a person; or intimidation or punishment, which may be inflicted through physical violence or through acts that produce severe mental or moral suffering in the victim. [FN81]

[FN81] Cf. Cantoral Benavides case, supra note 75, para. 100.

92. An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and, with regard to the latter, it has been recognized that the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered “psychological torture.” [FN82]. The absolute prohibition of torture, in all its forms, is now part of international jus cogens.

[FN82] Cf. Cantoral Benavides case, supra note 75, para. 102.

93. Likewise, the Court considers that, according to the circumstances of each particular case, some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself. [FN83]

[FN83] Cf. Cantoral Benavides case, supra note 75, para. 104.

94. In the case sub judice, it has been proved that Maritza Urrutia was subjected to acts of mental violence by being exposed intentionally to a context of intense suffering and anguish, according to the practice that prevailed at that time (supra para. 58.4, 58.5 and 58.6). The Court also considers that the acts alleged in this case were prepared and inflicted deliberately to obliterate the victim’s personality and demoralize her, which constitutes a form of mental torture, in violation of Article 5(1) and 5(2) of the Convention to the detriment of Maritza Urrutia.

95. This Court has already had the occasion to apply and declare State responsibility for the violation of the Inter-American Convention against Torture. [FN84] In the instant case, it will exercise its material competence to apply this Convention, which entered into force on February 28, 1987. Articles 1 and 6 of this treaty oblige the States Parties to take all effective measures to prevent and punish all acts of torture within their jurisdiction.

[FN84] Cf. The “Street Children” case (Villagrán Morales et al.), supra note 12, para. 249; and the “White Van” case (Paniagua Morales et al.), supra note 12, para. 136.

96. The State did not prevent these acts and it did not investigate or punish effectively the torture to which Maritza Urrutia was subjected. Consequently, the State failed to comply with the commitments assumed in the above-mentioned articles of the Inter-American Convention against Torture (infra para. 128).

97. As regards the claim of the representatives of the alleged victim, in relation to the alleged violation of Article 5 of the Convention to the detriment of the next of kin of Maritza Urrutia, the Court recognizes that the situation they endured owing to the abduction and unlawful and arbitrary detention of Maritza Urrutia, caused them suffering and anguish, and, therefore, it will take this circumstance into consideration when establishing reparations.

98. In light of the foregoing, the Court declares that the State violated Article 5 of the American Convention, in relation to Article 1(1) thereof, and the obligations established in Articles 1 and 6 of the Inter-American Convention against Torture, to the detriment of Maritza Urrutia.

X. ARTICLE 13 (FREEDOM OF THOUGHT AND EXPRESSION)

Arguments of the Commission

99. The Commission requested the Court to declare the violation of Article 13 of the Convention in relation to Article 1(1) thereof, which had also been acknowledged by the State, and indicated that:

- a) The right to freedom of expression includes the right to speak and to remain silent. Within this broad concept of freedom of expression, the individual has the right to express his opinions publicly or keep them to himself;
- b) The right to freedom of expression of Maritza Urrutia was violated by the State when she was obliged by State agents, under threat of torture and death, to record a statement that she had not written, which contained opinions that she did not share and false information about her abduction, with the express intention of covering up the crimes perpetrated by her abductors. The video was shown on two television programs, thereby forcing Maritza Urrutia to express publicly false information and opinions, which seriously harmed her self-respect;
- c) The individual dimension of the right to freedom of expression may be violated both when a person's right to express himself freely is restricted and when he is obliged, through unlawful acts, to express himself publicly against his will. The act of forcing a person to make public statements against his will, harms human dignity, by denying a person the right to his own thoughts and to the exercise of his freedom of expression. In its social dimension, freedom of expression is inhibited both when information is restricted and when false declarations, which are the product of State coercion, are broadcast intentionally. Broadcasting information obtained through unlawful acts misleads society as a whole, because it presents the victim of coercion as the author of false information; and
- d) The right not to speak, or the right to remain silent, derives from the right to freedom of expression, because an enforced statement affects a person's autonomous right to express himself freely. Restrictions to the free circulation of ideas and opinions, the arbitrary imposition

of information and the creation of obstacles to the free flow of information, violate the right to freedom of expression.

Arguments of the representatives of the alleged victim

100. The representatives of the alleged victim alleged that the State is responsible for violating Article 13 of the Convention in relation to Article 1(1) thereof, and indicated that:

- a) On August 9, 2000, the President of the Republic of Guatemala acknowledged the State's responsibility for the facts on which the application and the arguments contained in this pleading before the Inter-American Court are based, which "is also equivalent to accepting that the violations of the right to freedom of thought and expression of Maritza Urrutia are the State's responsibility";
- b) The dual dimension of Article 13 of the Convention should be taken into consideration; a positive dimension, which is freedom to seek, receive and impart information and ideas of all kinds; and a negative dimension, according to which no one is obliged to make public what he does not wish to. They also affirmed that the social or individual function of the said article should also be considered and, to this end, they referred to concepts indicated in the application;
- c) The disappearance of Maritza Urrutia, in July 1992, was front-page news in Guatemala, so that her appearance on newscasts imparting false information on her whereabouts, was an attack against the right of the alleged victim to self-respect and the right of the Guatemalans to receive true and objective information; and
- d) According to the statements made by Maritza Urrutia, when she was liberated, she was obliged, under threat, to reiterate what she had said in the video. This fact again violated Article 13 of the Convention to the detriment of the victim and the public.

Arguments of the State

101. The State did not present any specific arguments about the alleged violation of Article 13 of the Convention.

Considerations of the Court

102. Paragraphs 1 and 2 of Article 13 of the American Convention establish that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.

103. With regard to the arguments put forward by Commission and the representatives of the alleged victim concerning the violation of Article 13 (Freedom of Thought and Expression) of

the American Convention to the detriment of Maritza Urrutia, this Court observes that State agents forced the alleged victim to express publicly, against her will, opinions that were not her own and false information about her abduction, using coercive measures (supra para. 85). Accordingly, the Court considers that the juridical scope of these facts is subsumed in the previously established violation of Articles 5 (Right to Humane Treatment), and 8(2) and 8(3) (Right to a Fair Trial) of the American Convention (supra para. 98 and infra para. 130).

XI. VIOLATION OF ARTICLES 8, 25 AND 1(1) (RIGHT TO A FAIR TRIAL AND JUDICIAL PROTECTION AND OBLIGATION TO RESPECT RIGHTS, AND NON-COMPLIANCE WITH ARTICLE 8 OF THE INTER-AMERICAN CONVENTION AGAINST TORTURE)

Arguments of the Commission

104. The Commission alleges that the State violated the right to a fair trial [Note: judicial guarantees in Spanish] and to effective judicial protection embodied in Articles 8 and 25 of the American Convention, in relation to the obligation to respect and ensure the rights imposed by Article 1(1) thereof, and the provisions of Articles 1, 6 and 8 of the Inter-American Convention against Torture, because:

- a) Given that the alleged victim, whose disappearance was feared, could not obtain judicial protection on her own behalf, this right was transferred to her next of kin. This remedy, which must be simple and rapid, is designed to require an urgent official response in case of unlawful detention;
- b) It has been established that the next of kin of Maritza Urrutia, through the Archdiocesan Human Rights Office, filed a writ of habeas corpus the day after her abduction. Likewise, independently, the Guatemalan Ombudsman filed a writ of habeas corpus in favor of the victim. However, the next of kin of the alleged victim received no response from the State to either recourse. The liberation of Maritza Urrutia was not the result of jurisdictional control over her detention, but part of a complex plan contrived by the State, in which the judicial authorities prepared the victim's amnesty even before she had requested it officially, and granted it to her without even asking her about where and in whose hands she had been during the preceding days, the treatment to which she had been subjected or, at least, whether she was under any kind of pressure;
- c) The victim and/or her next of kin have the right to a judicial investigation by a criminal court to determine who were responsible for the violations and punish them. The result of the investigation should not be the product of the mechanical execution of certain procedural formalities, but the State must seek the truth effectively and, to this end, must demonstrate that it has conducted an immediate, exhaustive, genuine and impartial investigation. The State must also identify and punish the perpetrators of the corresponding crimes; to the contrary, Article 1(1) of the Convention will also have been violated;
- d) The State justified the freezing of the investigation owing to the impossibility of hearing the victim's statement; this is unacceptable, considering the lines of investigation that were open to the Judiciary and which were never exhausted. The obligation to investigate cannot depend on the decision of the victim; and

e) With regard to torture, the State acquired a series of special obligations when the Inter-American Convention against Torture entered into force; among the most important are the obligation to investigate and punish torture, pursuant to Articles 1, 6 and 8 of the Convention. Although more than ten years have elapsed since the facts occurred, the perpetrators of the violations have not been investigated or punished; nor has the State repaired the damage caused to the victim.

Arguments of the representatives of the alleged victim

105. Regarding the violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof, and the violation of Articles 1, 6 and 8 of the Inter-American Convention against Torture, the representatives of the alleged victim added the following to the arguments presented by the Commission:

a) On August 9, 2000, the President of the Republic of Guatemala acknowledged the State's responsibility for the facts on which the application and the arguments contained in this pleading before the Inter-American Court are based, which "is also equivalent to accepting that the violations of the right to judicial guarantees and judicial protection of Maritza Urrutia and non-compliance with the obligations to investigate, prosecute and punish are the State's responsibility";

b) Maritza Urrutia was denied the right to be informed of the reason for her detention, to communicate with a lawyer, and to be heard by a competent authority;

c) The simple, rapid and effective recourse to which Maritza Urrutia had a right, when she was unlawfully deprived of her freedom by State agents, corresponded to the remedy of habeas corpus, according to Articles 263 and 264 of the Guatemala Constitution. This recourse is regulated so that the search for a person should be continuous, and the mere filing of the recourse constitutes notification of a crime, so that the judge who hears it must initiate an investigation de officio. In this case, the next of kin of the victim filed a writ of habeas corpus through the Guatemalan Archdiocesan Human Rights Office and another one was filed by the Guatemalan Ombudsman;

d) The victim's release was not the result of the recourses filed in her favor, but was effected by her captors. Following her release, the Attorney General took the alleged victim to the Fifth Criminal Trial Court to sign an act of amnesty which had been drawn up previously. In other words, neither of the two officials complied with their obligation to investigate the facts de officio, based on the complaints. Even though, at that time, the authorities might have believed that the absence of the victim was due to personal reasons, when she had explained the facts, they should have reinitiated investigations;

e) No investigation of the case has been undertaken, the victim has been denied the right to obtain judicial protection, and there has been no proceeding to hold the perpetrators responsible;

f) The State has the obligation to investigate, prosecute and punish those responsible and this cannot be the result of procedural measures taken by the victims, as the State has suggested. When the consistent exercise of this obligation is not effective, it results in a situation of impunity and vulnerability for the persons subject to its jurisdiction. Even though the State had sufficient elements to investigate the unlawful detention of the victim, the authorities who collaborated in the case were not those responsible for doing this. Nor is it true, as the State

affirms, that the instigation of the criminal proceedings depends on the Judiciary, because the Office of the Attorney General was already in charge of the investigation; and

g) The viewpoints expressed by the State reflect its lack of political will to curb the impunity of the members of the armed forces, and reveals the failure of the authorities to protect Maritza Urrutia and her next of kin, thereby violating Articles 8(1) and 25 in relation to Article 1(1) of the Convention.

Arguments of the State

106. The State did not present any specific argument related to the alleged violation of Articles 8 and 25 of the Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture.

Considerations of the Court

107. Article 8 of the American Convention establishes that:

1. 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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g) the right not to be compelled to be a witness against himself or to plead guilty;

and
h) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice

108. Article 25 of the American Convention stipulates that:

1. 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.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted

109. Article 8 of the Inter-American Convention against Torture establishes:

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 the State.

110. In this chapter, the Court will examine first the effectiveness of the habeas corpus recourses that were filed in favor of the victim while she was arbitrarily and unlawfully deprived of her freedom. Then it will examine the circumstances of the judicial investigation that was initiated in order to clarify the facts related to the detention and torture of Maritza Urrutia, and to identify and punish those responsible for these facts.

111. With regard to habeas corpus, the Court has indicated on repeated occasions that, among the essential judicial guarantees, this recourse represents the effective means to guarantee the freedom, and control respect for the life and safety of persons, prevent their disappearance or the concealment of their place of detention, as well as to protect them from torture and other cruel, inhuman and degrading treatment or punishment. [FN85]

[FN85] Cf. Juan Humberto Sánchez case, *supra* note 14, para. 122; *Bámaca Velásquez* case, *supra* note 64, para. 192; and *Cantoral Benavides* case, *supra* note 75, para. 165.

112. In Guatemala, the appropriate recourse to recover the freedom of individuals detained in violation of judicial guarantees is the recourse known as “*exhibición personal*” (habeas corpus), embodied in Articles 263 and 264 of the Guatemalan Constitution. [FN86]

[FN86] Article 263 of the Guatemalan Constitution: “Whosoever shall be unlawfully imprisoned, detained or restrained in any way from the enjoyment of his individual freedom, or threatened with losing it, or shall suffer ill-treatment, even though his imprisonment or detention be lawful, has the right to request that he be brought immediately before the courts of justice, either so that his freedom may be recovered or guaranteed, or that the ill-treatment should be made to cease or that the coercion to which he was subjected should be terminated.” And Article 264: “[t]he authorities who order the concealment of the detainee or who refuse to bring him before the respective court, or who, in any way circumvent this guarantee, and also the executing agents, shall commit the offense of abduction and shall be punished in accordance with the law. If, as a result of the measures taken, the person in whose favor the writ of habeas corpus (exhibición) was filed is not found, the court, de officio, shall order immediately the necessary investigation of the case, until it has been clarified fully.”

113. It has been proved that on July 24, 1992, two writs of habeas corpus were filed (supra paras. 58.14 and 58.15, one by the Guatemalan Archdiocesan Human Rights Office and another by the Guatemalan Ombudsman in order to discover the whereabouts of Maritza Urrutia. However, this did not obtain any results from the competent judicial authorities, so that these recourses were ineffective.

114. Maritza Urrutia was released on July 30, 1992, near the building of the Office of the Attorney General of Guatemala and, following the instructions of her captors, she went to the office of the then Attorney General, who received her and subsequently took her to the Fifth Criminal Trial Court, where she requested and signed a document in which she claimed amnesty. The court officials who attended the alleged victim did not ask about her situation or abduction (supra para. 58.9).

115. In this respect, the CEH Report indicated that “none of the judicial authorities investigated the legality of [the] detention” of Maritza Urrutia and that “the judge of the Fifth Trial Court did not question Maritza Urrutia about her capture and the detention conditions, or about her political affiliation. The victim states that the document which granted the amnesty had been drawn up before she came before the judge.” [FN87]

[FN87] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

116. This Court has also established that Maritza Urrutia was in the power of State agents, so that the State was “obliged to create the necessary conditions for any recourse to be effective.” [FN88] As we have seen, the two writs of habeas corpus filed in favor of the alleged victim were ineffective. In this respect, the Court has indicated that “[t]hose recourses that, due to the general situation of the country or even the particular circumstances of any given case, prove illusory, cannot be considered effective.” [FN89] Accordingly, the State also violated Article 7(6) of the American Convention, in keeping with Article 25 thereof, to the detriment of Maritza Urrutia.

[FN88] Cf., Bulacio case, supra note 14, para. 127. Juan Humberto Sánchez case, supra note 14, para. 85; and Bámaca Velásquez case, supra note 64, para. 194.

[FN89] Cf. Juan Humberto Sánchez case, supra note 14, para. 121; “Five Pensioners” case, supra note 14, para. 126; and Las Palmeras case. Judgment of December 6, 2001. Series C No. 90, para. 58.

117. The Court has also established that it is not sufficient that the recourses exist formally, but they must provide results or responses to the human rights violations, in order to be considered effective. In other words, all persons must have access to a simple and rapid recourse before competent judges or courts that protect their fundamental rights. [FN90] This guarantee “is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society, in the sense set forth in the Convention.” [FN91]

[FN90] Cf. Juan Humberto Sánchez case, supra note 14, para. 121; Cantos case. Judgment of November 28, 2002. Series C No. 97, para. 52 and the case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001, para. 111.

[FN91] Cf. Juan Humberto Sánchez case, supra note 14, para. 121; Cantos case, supra note 90, para. 52; and the case of the Mayagna (Sumo) Awas Tingni Community, supra note 90, para. 112.

118. With regard to the rights embodied in Article 8 of the Convention, the Court has established, inter alia, based on Article 8(1), that all the requirements that “are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof” must be complied with; in other words, the conditions necessary to ensure the adequate representation or management of the interests or claims of those whose rights or obligations are under judicial consideration. [FN92]

[FN92] Cf. Juan Humberto Sánchez, supra note 14, para. 124; Hilaire, Constantine and Benjamin et al. case. Judgment of June 21, 2002. Series C No. 94, para. 147; and The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 118.

119. As regards the instant case, this implies that, as a result of the complaint filed by the victim’s immediate family, the State should have conducted a genuine, impartial and effective investigation to clarify the facts relating to the abduction, detention and torture to which Maritza Urrutia was subjected and, in particular to identity and punish those responsible.

120. In relation to the guarantees contained in Article 8(2) and 8(3) of the American Convention, the Court observes that although it appears that they are limited to the protection of

persons subject to judicial proceedings (Article 8(2)) or found guilty during the proceeding (Article 8(3)), the Court considers that they must be respected in proceedings or procedures before or accompanying the judicial proceedings, which, should these guarantees not be respected, could have an unfavorable and unjustified impact on the juridical status of the person in question.

121. The foregoing leads us to consider that, in this case, the said Articles 8(2) and 8(3) of the Convention have been violated, because the victim was obliged to incriminate herself in the context of procedures that might have entailed unfavorable procedural consequences.

122. The Guatemalan Ombudsman issued a resolution on October 6, 1992, in which he urged that a judicial investigation of the facts that affected Maritza Urrutia should be initiated [FN93]. At this juncture, it is appropriate to examine the Resolution of the Ombudsman, in which he stated:

I) That the human rights to personal liberty, safety, integrity and free movement of Maritza Nineth Urrutia García were violated, because she was the victim of an enforced disappearance for eight days. II) That the Government of the Republic of Guatemala is responsible for the lack of control over repressive groups which continue to act outside the law. III) That the Government must conduct an effective investigation and clarify the facts promptly, so that the authors of the facts are brought before the courts of justice and impunity is thereby combated effectively. IV) That the Government of the Republic, through the corresponding authorities, must provide the respective protection, in order to guarantee the life, safety and integrity of the next of kin of Maritza Nineth Urrutia García. [...]

[FN93] In this Resolution the Guatemalan Ombudsman indicated that, based on the complaint filed by Edmundo Urrutia Castellanos on July 23, 1992, the same day “he ordered the opening of the file, requesting reports from the Minister of the Interior and the Director General of the National Police, for the immediate investigation and clarification of the case, and to date [of this Resolution] they have not replied.”

123. It has been established that on August 6, 1992, an investigation was opened before the Fourth Criminal Trial Court and the court summoned the alleged victim to make a statement on August 7 that year. The summons was made through the Attorney General to the father of the victim, who was not in communication with her. Maritza Urrutia did not appear to make a statement. In view of her failure to appear, the State officials abstained from initiating the criminal proceeding to investigate the facts, so that there have been no results to date.

124. On this point, the CEH Report indicated that “since June 19, 1995, judicial file No. 2038-92, Fifth Official in charge of the Fourth Criminal Court corresponding to this case, has been in the hands of the Office of the Attorney General, and, to date, no measure has been taken in accordance with the provisions of the Code of Criminal Procedure.” [FN94] It also added that “the authorities of the State of Guatemala failed seriously in their obligation to investigate and punish these human rights violations, disregarding the right to due judicial protection of the

victim and of justice,” [FN95] a situation that was aggravated by “the fact that the State, through its agents in the Office of the Attorney General and the courts, protected the authors and collaborated with them, covering up the nature of their actions and responding to the illegal and pernicious influence that the Executive, in particular the Armed Forces, still exercised over other bodies and officials of the State in 1992.” [FN96]

[FN94] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

[FN95] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

[FN96] Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, “Privación arbitraria de libertad y tortura de Maritza Urrutia”, pp. 245 to 250 (file of attachments to the application, attachment 2, folios 02 to 37).

125. By not investigating the human rights violations effectively for more than 11 years, and not punishing those responsible, the State violated the obligation to respect the rights established in the Convention and to guarantee their free and full exercise to the victim. [FN97]

[FN97] Cf. Juan Humberto Sánchez case, supra note 14, para. 134; Bámaca Velásquez case, supra note 64, para. 129; and Trujillo Oroza case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 109.

126. Therefore, the Court considers that the State has not investigated effectively the facts that affected Maritza Urrutia and, consequently, has not identified the person or persons criminally responsible for the unlawful facts, so that they remain unpunished. In this respect, the Court has understood that impunity is the overall lack of investigation, tracing, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention, and that the State is obliged to combat this situation by all available legal means. Impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin. [FN98]

[FN98] Cf. Bulacio case, supra note 14, para. 120; Juan Humberto Sánchez case, supra note 14, paras. 143 and 185; and Las Palmeras case. Reparations, supra note 15, para. 53.a).

127. Without prejudice to the above, in this case it has been proved that Maritza Urrutia was tortured, a situation that imposes a special obligation on the State to investigate. In this respect, as indicated in the proven facts, the administrative and judicial authorities abstained from adopting any formal decision to initiate a criminal investigation of the alleged perpetration of the

crime of torture, even though the Resolution of the Guatemalan Ombudsman of October 6, 1992, concluded that, among other rights, the right of Maritza Urrutia to humane treatment had been violated (supra para. 58.21) and demanded from the Government “an effective investigation and a prompt clarification of the facts.”

128. Article 8 of the Inter-American Convention against Torture establishes expressly the State’s obligation to proceed, *de officio*, and immediately in cases such as this, regardless of the inactivity of the victim. In this respect, the Court has stated that “in proceedings on human rights violation, the State’s defense cannot rest on the impossibility of the plaintiff to produce evidence that, in many cases, cannot be obtained without the cooperation of the State.” [FN99] In the instant case, the State did not act in accordance with these provisions.

[FN99] Cf. The “Street Children” case (Villagrán Morales et al.), supra note 12, para. 251; Gangaram Panday case. Judgment of November 21, 1994. Series C No. 16, para. 49; and Godínez Cruz case. Judgment of January 20, 1989. Series C No. 5, para. 141.

129. The fact that the State did not investigate the acts of torture effectively and allowed them to remain unpunished, means that it has omitted to take effective measures to avoid acts of this nature being repeated within its jurisdiction, disregarding the provisions of Article 6 of the Inter-American Convention against Torture.

130. In view of the foregoing, the Court concludes that the State violated Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof and the obligations established in Article 8 of the Inter-American Convention against Torture, to the detriment of Maritza Urrutia García.

XII. ARTICLE 11 (RIGHT TO PRIVACY)

Arguments of the representatives of the alleged victim

131. The representatives of the alleged victim requested the Court to declare that the State is responsible for violating Article 11 of the Convention to the detriment of Maritza Urrutia and of her next of kin, because, during her detention, she was subjected to arbitrary and abusive interference in her private life and that of her family, and in her correspondence. In this respect they alleged that:

a) While the victim and her family were being watched, they and their property were photographed; the correspondence of the alleged victim with her former husband was violated; and her captors prevented her from communicating freely with her family, because she was forced to lie about the real situation, which implied interference in her private life. The right to privacy of the victim was also violated by State agents when they insulted the victim affecting her self-esteem, and when she was obliged to make public declarations containing false facts about herself, which entailed the risk of her reputation being discredited; and

b) At no time did the alleged victim enjoy the protection of the State to clarify the abuse to which she was subjected, owing to the absence of an investigation to prosecute and punish those responsible.

Arguments of the Inter-American Commission on Human Rights

132. The Commission did not refer to violation of Article 11 of the Convention, alleged by the representatives.

Arguments of the State

133. The State did not present any specific argument with regard to the alleged violation of Article 11 of the Convention.

Considerations of the Court

134. Since this case is being processed under the Rules of Procedure that entered into force on June 1, 2001, this Court refers to what was established in the “Five Pensioners” case, regarding whether the representatives may allege facts or rights that are not included in the application. In that case the Court stated:

Regarding the incorporation of rights other than those included in the application filed by the Commission, the Court considers that the petitioners may invoke such rights. They are the holders of all the rights embodied in the American Convention and, if this were not admissible, it would be an undue restriction of their condition of subjects of international human rights law. It is understood that the foregoing, with regard to other rights, refers to facts that are already contained in the application. [FN100]

[FN100] “Five Pensioners” case, supra note 14, para. 155.

135. Article 11 of the Convention establishes that:

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.
3. Everyone has the right to the protection of the law against such interference or attacks.

136. Regarding the alleged violation of Article 11 (Right to Privacy) of the American Convention to the detriment of Maritza Urrutia, alleged by the representatives of the alleged victim, this Court considers that the facts have given rise to issues that have been included in the previously established violation of Article 5 (Right to Humane Treatment) of the American Convention (supra paras. 85 and 98).

XIII. ARTICLE 19 (RIGHTS OF THE CHILD)

Arguments of the representatives of the alleged victim

137. In its brief with final arguments, the representatives of the alleged victim alleged the violation of Article 19 of the Convention, to the detriment of the son and the nephew and niece of Maritza Urrutia, with whom she lived at the time of the abduction and with whom she had a close loving relationship. It was foreseeable that the sudden disappearance of the alleged victim, mother and aunt, respectively, would harm these children, affecting their self-confidence and feeling of well-being.

Arguments of the Inter-American Commission on Human Rights

138. The Commission did not refer to the violation of Article 19 of the Convention alleged by the representatives of the alleged victim.

Arguments of the State

139. The State did not present any specific argument on the alleged violation of Article 19 of the Convention.

Considerations of the Court

140. With regard to the alleged violation of Article 19 of the Convention, introduced by the representatives of the alleged victim, which was not included in the brief of requests, arguments and evidence, but only in the brief with final arguments, the Court considers that this allegation is time-barred; however, it is not prevented from examining it, in accordance with the *iuri novit curia* principle. [FN101] In the instant case, the Court has acknowledged that the situation experienced by Fernando Sebastián Barrientos Urrutia, owing to the abduction and detention of his mother, occasioned him suffering and anguish; it will therefore take this circumstance into consideration when establishing pertinent reparations (*infra paras. 169.a and 170*).

[FN101] Cf. “Five Pensioners” case, *supra* note 14, para. 156; Cantos case, *supra* note 90, para. 58; and Hilaire, Constantine and Benjamin et al. case, *supra* note 92, para. 107.

XIV. APPLICATION OF ARTICLE 63(1)

141. As stated in the preceding chapters, the Court has found that the facts of this case violate Articles 5, 7, 8, and 25 of the American Convention, in relation to Articles 1(1) thereof and Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Maritza Urrutia. The Court has established in its consistent case law that it is a principle of international law that any violation of an international obligation that has caused damage gives rise to a new obligation: to remedy the damage caused adequately. [FN102] To this end, the Court has based itself on Article 63(1) of the American Convention, according to which:

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

[FN102] Cf. Bulacio case, supra note 14, para. 70; Juan Humberto Sánchez case, supra note 14, para. 147; and “Five Pensioners” case, supra note 14, para. 173.

142. Article 63(1) of the American Convention contains a norm of customary law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN103]

[FN103] Cf. Bulacio case, supra note 14, para. 71; Juan Humberto Sánchez case, supra note 14, para. 148; and “Five Pensioners” case, supra note 14, para. 174.

143. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, this international Court must order the adoption of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation is paid for the damage caused. [FN104]The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law. [FN105]

[FN104] Cf. Bulacio case, supra note 14, para. 72; Juan Humberto Sánchez case, supra note 14, para. 149; and Las Palmeras case. Reparations, supra note 15, para. 38.

[FN105] Cf., *inter alia*, Bulacio case, supra note 14, para. 72; Juan Humberto Sánchez case, supra note 14, para. 149; Cantos case, supra note 90, para. 68; Las Palmeras case. Reparations, supra note 15, para. 38; El Caracazo case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 77; Hilaire, Constantine and Benjamin et al. case, supra note 92, para. 203; Trujillo Oroza case. Reparations, supra note 97, para. 61; Bámaca Velásquez case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 39; Cantoral Benavides case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, para. 41; Cesti Hurtado case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para. 34; the “Street Children” case (Villagrán Morales et al.). Reparations (Art. 63(1) of the American

Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 61; the “White Van” case (Paniagua Morales et al.). Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 77; and Blake case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 32.

144. In relation to the violation of rights, such as the right to personal freedom and humane treatment, judicial guarantees and judicial protection, *restitutio in integrum* is not possible and, bearing in mind the nature of the right involved, the reparation is made, *inter alia*, pursuant to the practice of international case law, by fair pecuniary or non-pecuniary compensation. To this should be added the positive measures that the State must adopt to ensure that there is no repetition of the harmful facts, such as those of this case. [FN106]

[FN106] Cf. Bulacio case, *supra* note 14, para. 73; Juan Humberto Sánchez case, *supra* note 14, para. 150; and Trujillo Oroza case. Reparations, *supra* note 97, para. 62.

XV. BENEFICIARIES

Arguments of the Inter-American Commission on Human Rights

145. The Commission indicated that, owing to the nature of this case, the beneficiaries of the possible reparations that the Court may order as a result of the human rights violations perpetrated by the State are: Maritza Urrutia, victim; Fernando Sebastián Barrientos Urrutia, the victim’s son; Edmundo Urrutia Castellanos and María Pilar García de Urrutia, the victim’s parents; and Edmundo and Carolina Lisette, both Urrutia García, the victim’s siblings.

Arguments of the representatives of the victim

146. The representatives endorsed the indications of the Commission as regards the beneficiaries of the reparations. However, in the brief with final arguments, they included as beneficiaries: María Gabriela Escobar Urrutia and Rene Estuardo Escobar Urrutia, niece and nephew of Maritza Urrutia, the children of her sister, Carolina Urrutia.

Arguments of the State

147. The State did not submit any specific argument with regard to the beneficiaries.

Considerations of the Court

148. The Court will now proceed to determine who should be considered an “injured party” in the terms of Article 63(1) of the American Convention. Since the violations of the Convention were committed against Maritza Urrutia, she must be considered to be included in this category and be owed the reparations established by the Court. Moreover, since the victim’s immediate

next of kin also suffered owing to the violation of her rights, the provisions of Article 2(15) of the Rules of Procedure should be underscored, [FN107] to the effect that “the next of kin” of the victim should be understood as a broad concept that embraces all the persons who are closely related, including parents, children and siblings, who may have the right to compensation, provided they satisfy the requirements established by the case law of this Court. [FN108]

[FN107] According to Article 2 of the Rules of Procedure, the term “next of kin” refers to the “immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable.”

[FN108] Cf. Bulacio case, supra note 14, para. 78; Juan Humberto Sánchez case, supra note 14, para. 156; and Las Palmeras case. Reparations, supra note 15, para. 54 and 55.

149. There is no dispute with regard to the status as beneficiaries of Fernando Sebastián Barrientos Urrutia, the victim’s son, and of Edmundo Urrutia Castellanos and María Pilar García de Urrutia, the victim’s parents. The son and parents of Maritza Urrutia must be considered beneficiaries according to the consistent case law of this Court, which presumes that the closest members of the family, particularly those who have been in close affective contact with the victim, [FN109] suffer a damage that must be repaired. With regard to Edmundo and Carolina Lissette, both Urrutia García, the victim’s siblings, they were not indifferent to their sister’s suffering [FN110] and, therefore, should also be the beneficiaries of a reparation.

[FN109] Cf. Bulacio case, supra note 14, para. 98; Juan Humberto Sánchez case, supra note 14, para. 175; and Las Palmeras case. Reparations, supra note 15, paras. 54 and 55.

[FN110] Cf. Cantoral Benavides case. Reparations, supra note 105, para. 37; the “Street Children” case (Villagrán Morales et al.). Reparations, supra note 105, para. 68; and the “White Van” case (Paniagua Morales et al.). Reparations, supra note 105, para. 110.

150. In the corresponding section, the Court will examine entitlement to the right to receive reparations, according to the evidence submitted by the parties submitted.

XVI. REPARATIONS FOR PECUNIARY AND NON-PECUNIARY DAMAGE

151. In accordance with the probative elements submitted at the different stages of the proceeding and in light of the criteria that the Court has established, the Court will now examine the claims submitted by the parties at this stage of the proceeding, to determine measures relating to pecuniary and non-pecuniary damage and other forms of reparation.

A) PECUNIARY DAMAGE

Arguments of the Inter-American Commission on Human Rights

152. With regard to pecuniary damage, the Commission indicated the following:

a) The victim traveled to Mexico with the financial support of Amnesty International and remained in this country for “five” years. The victim’s parents made four trips a year from Guatemala. Given the difficulties to document the expenses incurred, the Commission requested the Court to establish, in fairness, the amount of the compensation corresponding to indirect damages, in addition to the 16.000,00 quetzales that the victim’s family had to pay for international telephone calls and the approximately 20 trips they made to visit her in Mexico, without prejudice to the claims presented by the representatives of the victim at the procedural opportunity; and

b) With regard to loss of earnings, at the time of the facts, Maritza Urrutia was a primary school teacher and carried out some other productive work, such as giving private classes, in addition to her political activities. When she was forced to leave her country, she could not find work in Mexico as a teacher, so that she had to work as a cleaner and then found employment as a receptionist in a engineering company. The Commission requested the Court to calculate, in fairness, this element of the compensation, without prejudice to the specific claims submitted by the representatives of the victim.

Arguments of the representatives of the victim

153. The representatives of the victim endorsed the indications of the Commission with regard to reparation for the harm suffered by Maritza Urrutia and her next of kin and, with regard to pecuniary damage, stated that:

a) The next of kin of Maritza Urrutia took various measures to ensure her safety, while she was abducted and immediately after her release; this precluded the members of her family from carrying out their normal activities, which harmed their income. Therefore, they requested the Court to establish the corresponding compensation, in accordance with the evidence submitted at the appropriate procedural opportunity;

b) While the alleged victim was in Mexico, her next of kin incurred expenditure related to the telephone calls and travel of her parents and siblings, which should be fairly compensated. In the brief with final arguments, they provided the details of the expenditure incurred by each member of the family of the victim; this is itemized as follows: Maritza Urrutia, US\$2,950.00 (two thousand nine hundred and fifty United States dollars) for plane tickets; Edmundo Urrutia Castellanos, US\$698.00 (six hundred and ninety-eight United States dollars) for plane tickets; María Pilar García de Urrutia, US\$13,178.00 (thirteen thousand one hundred and seventy-eight United States dollars) for plane tickets, telephone calls and medical treatment; Edmundo Urrutia García, US\$8,600.00 (eight thousand six hundred United States dollars) for plane tickets, losses resulting from the sale of vehicles for less than their value, giving up his apartment and losing his rental deposit; loss of furniture; and telephone calls, and plane tickets for his daughter, Camila Urrutia Azurdía; and Carolina Urrutia García, US\$16,676.00 (sixteen thousand six hundred and seventy-six United States dollars) for plane tickets and expenses for psychological treatment for herself and her two children, René Estuardo and María Gabriela, both Escobar Urrutia, and financial support to Maritza Urrutia; and

c) For “loss of earning”, they requested for the victim, who worked as the assistant to a psychologist and received a monthly salary of US\$500.00 (five hundred United States dollars), the sum of US\$36,000.00 (thirty-six thousand United States dollars) for the time when she did

not work. In their brief with final arguments, the representatives also requested compensation for María del Pilar Urrutia García and Edmundo Urrutia García, because the former had to neglect her business in order to find her daughter and the latter lost his employment as a political analyst when he also had to leave the country.

Arguments of the State

154. The State did not refer to pecuniary damage.

Considerations of the Court

155. This Court will determine the pecuniary damage, which presumes the loss of or harm to the income of the victim and, when applicable, her next of kin, and the expenditure incurred as a result of the facts of the case sub judice. [FN111] In this regard, it will establish a compensatory amount that seeks to compensate the patrimonial consequences of the violations declared in this judgment.

[FN111] Cf. Juan Humberto Sánchez case, supra note 14, para. 162; Trujillo Oroza case. Reparations, supra note 97, para. 65; and Bámaca Velásquez case. Reparations, supra note 105, para. 43.

156. This Court also observes that, at the public hearing and, extemporaneously, in their brief with final arguments, the representatives of the victim provided a detailed list and requested a fair compensation for pecuniary damage (indirect damage and loss of earnings) for the victim, her parents and siblings. The compensation requested by the representatives is not the same as the compensation requested originally and includes other beneficiaries, such as María Gabriela Escobar Urrutia and René Estuardo Escobar Urrutia, Maritza Urrutia's niece and nephew.

a) Loss of income

157. The representatives of the victim and the Inter-American Commission requested compensation for the loss of earning of Maritza Urrutia and, to this end, they indicated that, at the time of the facts, she carried out political tasks for the Ejército Guerrillero de los Pobres and was a primary school teacher, and carried out "other productive work such as giving private classes; she also worked "up until the facts, as a research assistant on child psychology." The representatives indicated that Maritza Urrutia received a monthly salary of US\$500.00 (five hundred United States dollars). Moreover, in her statement before the Court on February 21, 2003, the victim indicated that:

[a]t that time, [she] was working with Elizabeth de Ruano. She is a psychologist and I helped her to conduct tests in different nursery schools. At that time, I was also connected with the revolutionary organization "Ejército Guerrillero de los Pobres."

158. In view of the foregoing, the Court observes that there are no suitable vouchers in the file confirming the salary the victim received for her activities at the time of her abduction and detention. Moreover, the victim was forced to leave Guatemala for the United States, where she remained for several days and she then moved to Mexico, where she lived for six years. In the latter country, she carried out miscellaneous tasks and received an income. For loss of earning, the Court establishes, in fairness, the sum of US\$5,000.00 (five thousand United States dollars) as compensation in favor of Maritza Urrutia García.

b) Indirect damage

159. Based on the information received, the case law of the Court and the facts of the case, the Court declares that the compensation for pecuniary damage should also include:

a) A sum of money corresponding to the expenditure incurred by the victim in order to purchase plane tickets to travel to the United States and to Mexico, and also for telephone calls. In this respect, the Court considers it pertinent to establish, in fairness, the sum of US\$1,000.00 (one thousand United States dollars) as compensation;

b) A sum of money corresponding to the expenditure incurred by Edmundo Urrutia Castellanos for plane tickets to visit his daughter. In this respect, the Court considers it pertinent to establish, in fairness, the sum of US\$1,000.00 (one thousand United States dollars) as compensation;

c) A sum of money corresponding to the expenditure incurred by María Pilar García de Urrutia in order to visit her daughter and for telephone calls. In this respect, the Court considers it pertinent to establish, in fairness, the sum of US\$1,000.00 (one thousand United States dollars) as compensation;

d) A sum of money corresponding to the expenditure incurred by Edmundo Urrutia García for plane tickets. The Court considers it pertinent to establish, in fairness, the sum of US\$1,000.00 (one thousand United States dollars) as compensation; and

e) A sum of money corresponding to the expenditure incurred by Carolina Urrutia García in order to visit her sister, accompanied by her two children. In this respect, the Court considers it pertinent to establish, in fairness, the sum of US\$1,000.00 (one thousand United States dollars) as compensation;

160. Based on the foregoing, the Court will establish the following amounts as compensation for the pecuniary damage resulting from the violations declared in this judgment:

Reparation for Pecuniary Damage			
	Loss of income	Travel and telephone calls	Total
Maritza Urrutia	US\$5,000.00	US\$1,000.00	US\$6,000.00
Edmundo Urrutia Castellanos		US\$1,000.00	US\$1,000.00
María Pilar García de Urrutia		US\$1,000.00	US\$1,000.00
Edmundo Urrutia García		US\$1,000.00	US\$1,000.00
Carolina Urrutia García		US\$1,000.00	US\$1,000.00
TOTAL	US\$10,000.00		

B) NON-PECUNIARY DAMAGE

161. The non-pecuniary damage may include the suffering and affliction caused to the direct victims and to their next of kin and the impairment of values that are very significant for a person, such as changes, of a non-pecuniary nature, in the living conditions of the victim or his next of kin. This damage may only be compensated by delivering a cash sum, which the Court determines by the rational application of judicial discretion. [FN112]

[FN112] Cf. Bulacio case, supra note 14, para. 90; Juan Humberto Sánchez case, supra note 14, para. 168; and El Caracazo case. Reparations, supra note 105, para. 94.

Arguments of the Commission

162. In relation to non-pecuniary damage, the Commission indicated that:

- a) The Court has established a presumption in relation to the non-pecuniary damage suffered by the victims of human rights violations and their next of kin;
- b) During her clandestine captivity, Maritza Urrutia experienced profound psychological suffering; she felt that she was under the constant threat of being physically tortured, raped or assassinated, or that her son would be assassinated. Furthermore, she was subjected to measures designed to obliterate her personality such as forced insomnia and a state of absolute defenselessness and vulnerability, which caused her gastric and intestinal problems. The effects of the psychological torture to which she was subjected continued for a considerable time. During the first years following her release, the victim suffered from fear, nightmares, and a permanent feeling of vulnerability because she had been identified by members of a State agency, who had “abused” her, protected by the cloak of impunity. Nowadays, Maritza Urrutia continues to suffer the effects of the trauma, manifested by periods of anxiety; and
- c) The Commission estimates non-pecuniary damage in the symbolic sum of US\$55,000.00 (fifty-five thousand United States dollars), in consultation with the victim and her representatives.

Arguments of the representatives of the victim

163. The representatives of the victim stated that they endorsed the indications of the Commission concerning reparation for the non-pecuniary damage suffered by the victim. However, in the brief with final arguments they presented a list of the amounts requested for this concept, as follows:

- a) Maritza Urrutia should be compensated with US\$15,000.00 (fifteen thousand United States dollars) for the treatment she received during her captivity and solitary confinement. This includes compensation for psychological torture, unlawful and arbitrary detention, infringement of her privacy and that of her family when she was shown photographs of the latter and discovered that she was being watched, pressure to lie to her next of kin and to public opinion

and mislead public opinion through the media, in violation of Articles 5, 8, 7, 11, 13 and 25 of the Convention and Articles 1 and 6 of the Convention against Torture. In addition, the representatives requested US\$20,000.00 (twenty thousand United States dollars) for the aftereffects of the said violations for the victim, which still continue;

b) Fernando Sebastián Barrientos Urrutia, the victim's son, should be compensated with US\$12,000.00 (twelve thousand United States dollars), because it must be presumed that the victim's suffering affected her son, who was separated from his mother, and knew and shared her suffering. They added that the fact that Fernando Sebastián has lived alone with his mother, traumatized and far from his next of kin, means that, in some way, he has shared the problems she suffers. Since he is a minor, he merits special treatment from the State, owing to the violation of Articles 1, 5, 11, 13, 19, 8 and 25 of the Convention;

c) Edmundo Urrutia Castellanos and María del Pilar García, the victim's parents, should each be compensated with US\$10,000.00 (ten thousand United States dollars), as compensation, based on the presumption that a victim's parents incur non-pecuniary suffering owing to the fate of their child, as understood in the Court's case law. They also considered that the victim's parents should be compensated for the abduction and arbitrary detention of their daughter, the surveillance of the house before and after the detention, and the photographs that were taken of their daughter, as well as the harm to their reputation when the video with the false statement of Maritza Urrutia was broadcast in the media, the fact of having heard lies about her whereabouts and opinions, and her father having been obliged to publish a note thanking the Guatemalan Army for the appearance of his daughter in the media and to assume the responsibility for liberating her, all in violation of Articles 1, 5, 11, 13, 8 and 25 of the Convention;

d) Edmundo and Carolina, both Urrutia García, the victim's siblings, should each be compensated with US\$10,000.00 (ten thousand United States dollars), as compensation, based on the fact that it may be presumed that the victim's suffering affected her siblings, who cannot be indifferent to the grave affliction of their sister. The victim's brother also assumed the responsibility for liberating Maritza Urrutia and was forced to leave the country for fear of becoming a victim of the State agents, because, during the interrogation of his sister, they asked her about his activities; this caused problems in his private, family and professional life. The victim's sister was affected psychologically, to such an extent that she had to attend a specialist for about two years, all in violation of Articles 1, 5, 11, 13, 8 and 25 of the Convention; and

e) René Estuardo and María Gabriela, both Escobar Urrutia, nephew and niece of the victim, should each be compensated with US\$8,000.00 (eight thousand United States dollars), as compensation, because they were affected psychologically and had to attend a specialist. They lived with the victim and, because they are minors, they merit special treatment from the State. Consequently, Articles 1, 5, 11, 13 and 19 of the Convention were violated;

f) The victim was obliged to change her way of life radically, she was separated from her family and performed less skilled work, so that the quality of life of herself and her son deteriorated. Consequently, they requested as reparation for the damage to the life project of the victim, a study grant for her son in the amount of US\$2,000.00 (two thousand United States dollars) a year for five years, so that he could conclude his high school certificate at The Hague International School and another grant of US\$10,000.00 (ten thousand United States dollars) a year, for four years, so that he could carry out university studies. The study grants for Fernando Sebastián Barrientos Urrutia totaled US\$50,000.00 (fifty thousand United States dollars).

Arguments of the State

164. The State did not refer to non-pecuniary damage.

Considerations of the Court

165. With regard to non-pecuniary damage, this Court observes that, in the application, the Commission requested a symbolic sum for the victim. In their brief with requests, arguments and evidence, the representatives of the victim expressed their agreement with this request. However, extemporaneously, in the brief with final arguments, they provided a detailed list in which they requested compensation, in fairness, for the concept of non-pecuniary damage in favor of the victim, her son, her parents, her siblings, and her niece and nephew.

166. International case law has established repeatedly that the judgment constitutes, per se, a form of reparation. [FN113] However, owing to the circumstances of the instant case, the sufferings that the facts caused to the victim and her next of kin, the change in the living conditions of the victim, and the other consequences of a non-pecuniary nature that they suffered, the Court considers that, in fairness, payment of compensation for non-pecuniary damage is pertinent. [FN114]

[FN113] Cf. Bulacio case, supra note 14, para. 96; Juan Humberto Sánchez case, supra note 14, para. 172; and “Five Pensioners” case, supra note 14, para. 180.

[FN114] Cf. Bulacio case, supra note 14, para. 96; Juan Humberto Sánchez case, supra note 14, para. 172; and El Caracazo case. Reparations, supra note 105, para. 99.

167. Both the Commission and the representatives of the victim have referred to the different types of non-pecuniary damage, such as the physical and mental suffering endured by the victim, the effect on the conditions of her family life and the sufferings of the victim’s son, parents and siblings.

168. As has been proved, Maritza Urrutia was abducted, illegally and arbitrarily detained and, consequently, subjected to harsh detention conditions. It is inherent in human nature that a person subjected to arbitrary detention endures profound suffering. [FN115] In addition, she was tortured psychologically; she was subjected to cruel, inhuman and degrading treatment; she suffered anguish, fear of dying and being physically tortured. Moreover, she received other kinds of pressure to record a video and make a statement against her will, which was broadcast by two television channels. This caused her anguish and suffering. She also felt fear after her release. She was diagnosed with a “syndrome of anguish with reactive depression.” The facts related to her abduction and detention have not been investigated, neither have those related to the torture to which she was subjected and, consequently, those responsible enjoy impunity. It is evident to the Court that the facts of this case resulted in a change in the normal course of Maritza Urrutia’s life, because, following the facts, she was forced to leave the country and remain far from her family, which caused her anguish and sadness.

[FN115] Cf. Bulacio case, supra note 14, para. 98; Juan Humberto Sánchez case, supra note 14, para. 174; and Trujillo Oroza case. Reparations, supra note 97, para. 85.

169. It is reasonable to conclude that the afflictions that the victim suffered extend to the closest members of her family, particularly those who had close affective contact with the victim. No evidence is required to reach this conclusion. [FN116] In view of the foregoing, and in order to establish compensation for non-pecuniary damage, the Court considers that:

- a) Fernando Sebastián Barrientos Urrutia, the victim's son, must be compensated. In this case, it applies the presumption that a son suffers non-pecuniary damage owing to the sufferings of his parents. [FN117] Moreover, the Court presumes that Fernando Sebastián suffered from the absence of his mother and, when she was released, he was aware of her suffering and shared it with her when they had to leave the country and be separated from their immediate family, all of this associated with the fact that, at the time, he was only 4 years of age; and
- b) With regard to Edmundo Urrutia Castellanos and María Pilar García de Urrutia, the Court reiterates that it is not necessary to demonstrate non-pecuniary damage with regard to the victim's parents. [FN118] Moreover, it is clear that, when they did not know the whereabouts of their daughter and with the well-founded fear that she might disappear or be assassinated, the victim's parents assumed the responsibility of finding her, sharing the physical and psychological suffering that she endured during her abduction and detention and, once liberated, protecting her from the threats against her life. Furthermore, their daughter had to leave the country, and her parents had to be separated from her and their grandchild. Given these circumstances, the parents must be compensated for non-pecuniary damage;
- c) With regard to Edmundo Urrutia García and Carolina Urrutia García, the victim's siblings, they also experienced their sister's suffering at first hand. As a result of the facts of this case, the former had to leave the country for fear of being persecuted by the State authorities and, therefore, was separated from his family for a time, and his family and professional sphere changed. Carolina Urrutia García suffered the effects of what happened to her sister, with whom she was living at the time of the facts. She also experienced psychological problems. In addition, the Court reiterates that it can be presumed, as in the case of the parents, that the siblings of victims of human rights violations are not insensitive to their suffering, but share it. [FN119] Consequently, the said siblings must also be compensated for non-pecuniary damage.

[FN116] Cf. Bulacio case, supra note 14, para. 98; Juan Humberto Sánchez case, supra note 14, para. 175; and El Caracazo case. Reparations, supra note 105, para. 50 e).

[FN117] The "White Van" case (Paniagua Morales et al.). Reparations, supra note 105, para. 125.

[FN118] Cf. Cantoral Benavides case. Reparations, supra note 105, para. 61 a); the "Street Children" case (Villagrán Morales et al.). Reparations, supra note 105, para. 66; and the "White Van" case (Paniagua Morales et al.). Reparations, supra note 105, para. 108.

[FN119] Cf. Trujillo Oroza case. Reparations, supra note 97, para. 88 d); Cantoral Benavides case. Reparations, supra note 105, paras. 37 and 61 d); and the "Street Children" case (Villagrán Morales et al.). Reparations, supra note 105 para. 68.

170. Bearing in mind the different aspects of the non-pecuniary damage caused, the Court establishes, in fairness, the value of the compensation for non-pecuniary damage as follows:

Reparation for Non-pecuniary Damage	
Victim and next of kin	Amount
Maritza Urrutia	US\$20,000.00
Fernando Sebastián Barrientos Urrutia	US\$10,000.00
Edmundo Urrutia Castellanos	US\$ 6,000.00
María Pilar García de Urrutia	US\$ 6,000.00
Edmundo Urrutia García	US\$ 1,000.00
Carolina Urrutia García	US\$ 1,000.00
TOTAL	US\$44,000.00

XVII. OTHER FORMS OF REPARATION

171. The Court will now consider other harmful effects of the facts, which are not of a financial or patrimonial nature, and which could be repaired by carrying out official acts, including the investigation and punishment of those responsible for the facts of the instant case.

Arguments of the Commission

172. The Commission indicated that although the State acknowledged its “institutional responsibility” in the declaration of August 9, 2000, which, in itself, constitutes a transcendental act of satisfaction duly assessed by the Commission, 18 months after this acknowledgement, it has not complied with the obligation to investigate, prosecute and punish those responsible for the violations committed by its agents against Maritza Urrutia. Consequently, the Commission requested the Court to order the State, as a measure of satisfaction and guarantee of non-repetition, to undertake a genuine investigation of the facts and to prosecute and punish those responsible.

Arguments of the representatives of the victim

173. The representatives of the victim stated that the acknowledgement of the facts made by the President of the Republic is not sufficient, “because it did not directly hold the country’s Army responsible,” since more than “ten” years have elapsed since the facts occurred and the investigation has not been effective. Accordingly, they requested the Court to order the State to implement the following measures of reparation:

- a) A public apology for the arbitrary detention and torture of Maritza Urrutia, committed by the Army, so that this will have national transcendence; to this end, they requested that the apology should be made by the same media in which the victim was obliged to make her statement; and
- b) The obligation to conduct a genuine investigation of the facts and punish those responsible; this case could set an important precedent in the fight against impunity in Guatemala.

Arguments of the State

174. The State indicated that it was open to the possibility of a friendly settlement and, should this not be possible, that the Court take into account that:

- a) The declaration of the President of the Republic of August 9, 2000, constitutes, in itself, an acceptance of the facts and a way of presenting an apology to the victims of the cases indicated at that time, which was reiterated on December 10, 2001, when delivering the reparations in the “Aldea las Dos Erres” case. Consequently, the request for an apology proposed by the representatives is unnecessary; and
- b) Regarding the other measures of satisfaction, the Peace Agreements are the principal guarantee of non-repetition of these facts, because they have allowed Guatemalan society to end the armed conflict.

Considerations of the Court

175. The Court will examine other forms of reparation relating to the violation of Articles 1(1), 5, 7, 8 and 25 of the American Convention and non-compliance with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention against Torture.

Investigation and punishment of those responsible

176. The Court observes that, at the time of this judgment, more than eleven years after the facts of the instant case occurred, those responsible for the abduction, detention, torture, and cruel, inhuman or degrading treatment committed against Maritza Urrutia have still not been identified, prosecuted and punished; therefore there is a situation of impunity (*supra* para. 129), which constitutes a violation of the State’s obligation that harms the victim, her next of kin, and the whole of society, and encourages chronic repetition of the human rights violations in question. [FN120]

[FN120] Cf. Bulacio case, *supra* note 14, para. 120; Juan Humberto Sánchez case, *supra* note 14, para. 185; and Las Palmeras case. Reparations, *supra* note 15, para. 53 a).

177. The State must conduct an effective investigation of the facts of this case, identify those responsible for them, both the intellectual authors and the perpetrators, as well as possible accessories, and punish them administratively and criminally, as applicable. [FN121] The respective domestic proceedings should relate to the violations of the right to humane treatment and to personal liberty, referred to in this judgment. The victim should have full access and capacity to act at all stages and in all instances of the investigation and the corresponding trial, in accordance with domestic law and the norms of the American Convention. The results of the trial must be published.

[FN121] Cf. Bulacio case, supra note 14, para. 121; Las Palmeras case. Reparations, supra note 15, para. 66; and El Caracazo case. Reparations, supra note 105, para. 118.

178. In relation to the public apology requested by the representatives of the victim and, considering the allegations made by the State, the Court reiterates that this judgment constitutes, per se, a form of reparation and satisfaction for the victim. In the same way, the Court also observes that, on August 9, 2000, the President of the Republic of Guatemala made an “institutional acknowledgement” of the State’s responsibility with regard to several cases being processed before the Inter-American Commission, including the Maritza Urrutia case.

XVIII. COSTS AND EXPENSES

Arguments of the representatives of the victim

179. In their final written arguments, the representatives of the victim indicated that they had incurred expenses amounting to US\$32,816.00 (thirty-two thousand eight hundred and sixteen United States dollars); this includes administrative expenses, disbursements related to the public hearings held in 1999 and 2001 in Washington D.C. and expenses relating to the public hearing held in San José in 2003.

Arguments of the Commission

180. The Commission indicated that the State is obliged to reimburse the expenses and costs incurred by CALDH for the measures it has taken in the international sphere by processing the case before the Commission and the Court.

Arguments of the State

181. The State did not refer to the payment of costs and expenses.

Considerations of the Court

182. As the Court has indicated on previous occasions, [FN122] it should be understood that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the measures taken by the victim, his successors or his representatives to accede to international justice imply expenditure and commitments of a financial nature that must be compensated. Regarding reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction and also those incurred during the proceedings before the inter-American system, taking into account verification of the expenses incurred, the circumstances of the specific case, and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of fairness and by evaluating the expenses indicated by the parties, providing the amount is reasonable. [FN123]

[FN122] Cf. Bulacio case, supra note 14, para. 150; Juan Humberto Sánchez case, supra note 14, para. 193; and Las Palmeras case. Reparations, supra note 15, para. 82.

[FN123] Cf. Bulacio case, supra note 14, para. 150; Juan Humberto Sánchez case, supra note 14, para. 193; and “Five Pensioners” case, supra note 14, para. 181.

183. This Court has stated previously that the concept of costs should include those corresponding to the stage of access to justice at the national level and those relating to justice at the international level, before the Commission and the Court. [FN124]

[FN124] Cf. Bulacio case, supra note 14, para. 150; Juan Humberto Sánchez case, supra note 14, para. 193; and Las Palmeras case. Reparations, supra note 15, para. 75.

184. To this end, since sufficient evidence was not submitted to support these expenses, the Court considers that it is fair to recognize to the victim and to her representative, the Centro para la Acción Legal en Derechos Humanos (CALDH), the sum of US\$6,000.00 (six thousand United States dollars) as reimbursement for the expenses and costs incurred before the inter-American system.

XIX. METHOD OF COMPLIANCE

Considerations of the Court

185. To comply with this judgment, the State must effect the payment of the compensation, the reimbursement of costs and expenses, and the adoption of the other measures ordered, within one year of notification of the judgment.

186. The payment of the compensations established in favor of the victim and her next of kin, shall be made directly to them, as applicable. If any of them shall have died, the payment shall be made to their heirs.

187. The payments corresponding to the reimbursement of costs and expenses arising from the measures taken by the representatives of the victim during the international proceeding before the inter-American system for the protection of human rights shall be made in favor of those representatives (supra para. 184).

188. If, for any reason, it is not possible for the beneficiaries of the compensation to receive them within the indicated period of one year, the State shall place the amounts in their favor in an account or a deposit certificate in a solvent Guatemalan banking institute, in United States dollars or the equivalent in Guatemalan currency, under the most favorable financial conditions allowed by legislation and banking practice. If, after ten years, the compensation has not been claimed, the amount shall be returned to the State, with the interest earned.

189. In the case of the compensation ordered in favor of the child, Fernando Sebastián Barrientos Urrutia, the State must apply the amount to a banking investment in the name of the child, in a solvent Guatemalan institute, in United States dollars or the equivalent in national currency. The investment shall be made within one year, under the most favorable financial conditions allowed by legislation and banking practice. It may be withdrawn by the beneficiary when he reaches his majority. If, ten years from the date on which he attains his majority, this compensation is not claimed, the amount shall be returned to the State with the interest earned.

190. The State may comply with its obligations by making the payments in United States dollars or the equivalent in Guatemalan currency, using for the respective calculation, the exchange rate of both currencies in force on the New York, United States, market, the day before the payment.

191. The payments ordered in this judgment shall be exempt from any current or future tax.

192. Should the State delay in making the payments, it shall pay interest on the amount owed, corresponding to bank interest on arrears in Guatemala.

193. In accordance with its consistent practice, the Court reserves the authority inherent in its attributes to monitor full compliance with this judgment. The case shall be closed when the State has complied fully with the decisions of the judgment. Within one year from notification of this judgment, the State must provide the Court with a first report on the measures taken to comply with the Judgment.

XX. OPERATIVE PARAGRAPHS

194. Therefore,

THE COURT,

DECLARES THAT:

unanimously,

1. That the State violated the right to personal liberty embodied in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Maritza Urrutia García, in the terms of paragraphs 63 to 77 of this judgment.

unanimously,

2. That the State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, and the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Maritza Urrutia García, in the terms of paragraphs 84 to 98 of this judgment.

unanimously,

3. That the State violated the rights to a fair trial and to judicial protection embodied in Articles 8 and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, and the obligations established in Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Maritza Urrutia García, in the terms of paragraphs 110 to 130 of this judgment.

unanimously,

4. That this judgment constitutes, per se, a form of reparation for the victim, in the terms of paragraph 178 of this judgment.

AND DECIDES THAT:

unanimously,

5. That the State shall investigate effectively the facts of this case, which resulted in the violations of the American Convention on Human Rights and non-compliance with the obligations of the Inter-American Convention to Prevent and Punish Torture; identify, prosecute and punish those responsible, and also publish the results of the respective investigations, in the terms of paragraph 177 of this judgment.

by six votes to one,

6. That the State shall pay a total of US\$10,000.00 (ten thousand United States dollars), or the equivalent in Guatemalan currency, in compensation for pecuniary damage, in the terms of paragraph 160 of this judgment, distributed as follows:

a) To Maritza Urrutia, the sum of US\$6,000.00 (six thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraphs 158, 159(a) and 160 of this judgment;

b) To Edmundo Urrutia Castellanos, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 159(b) and 160 of this judgment;

c) To María Pilar García de Urrutia, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 159(c) and 160 of this judgment;

d) To Edmundo Urrutia García, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 159(d) and 160 of this judgment; and

e) To Carolina Urrutia García, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 159(e) and 160 of this judgment.

Judge Martínez Gálvez partially dissenting

by six votes to one,

7. That the State shall pay the sum of US\$44,000.00 (forty-four thousand United States dollars), or the equivalent in Guatemalan currency, in compensation for non-pecuniary damage, in the terms of paragraph 170 of this judgment, distributed as follows:

- a) To Maritza Urrutia, the sum of US\$20,000.00 (twenty thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraphs 168 and 170 of this judgment;
- b) To Fernando Sebastián Barrientos Urrutia, the sum of US\$10,000.00 (ten thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 169(a) and 170 of this judgment;
- c) To Edmundo Urrutia Castellanos, the sum of US\$6,000.00 (six thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 169(b) and 170 of this judgment;
- d) To María Pilar García de Urrutia, the sum of US\$6,000.00 (six thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 169(b) and 170 of this judgment;
- e) To Edmundo Urrutia García, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 169(c) and 170 of this judgment; and
- f) To Carolina Urrutia García, the sum of US\$1,000.00 (one thousand United States dollars), or the equivalent in Guatemalan currency, in the terms of paragraph 169(c) and 170 of this judgment.

Judge Martínez Gálvez partially dissenting

by six votes to one,

8. That the State shall pay the sum of US\$6,000.00 (six thousand United States dollars) or the equivalent in Guatemalan currency, for costs and expenses, in the terms of paragraph 184 of this judgment.

Judge Martínez Gálvez partially dissenting

unanimously,

9. That the State shall pay the total amount of the compensation ordered for pecuniary damage, non-pecuniary damage, and costs and expenses established in this judgment, and none of the components may be subject to any current or future tax or charge.

unanimously,

10. That the State shall comply with the measures of reparation ordered in this judgment within one year of notification of the judgment, in the terms of paragraph 185 of this judgment.

unanimously,

11. That, should the State delay in making the payments, it shall pay interest on the amount owed corresponding to bank interest on arrears in Guatemala, in the terms of paragraph 192 of this judgment.

unanimously,

12. That the Court shall monitor compliance with this judgment and shall close the instant case when the State has complied fully with the operative paragraphs. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply, in the terms of paragraph 193 of this judgment.

Judge Cançado Trindade informed the Court of his Concurring Opinion, Judge García Ramírez of his Reasoned Concurring Opinion, Judge De Roux Rengifo of his Separate Opinion, and Judge Martínez Gálvez of his Reasoned and Partially Dissenting Opinion, which are attached to this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on November 27, 2003.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Máximo Pacheco-Gómez
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Arturo Martínez-Gálvez
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE*

* This translations is awaiting its final revision by the author.

1. I have voted in favor of this judgment that the Inter-American Court of Human Rights has just adopted in *Maritza Urrutia v. Guatemala* and, in this Separate Opinion, I would like to add some brief personal observations in firm support of the Court's characterization of the absolute prohibition of torture, in all its forms (including psychological) as belonging to the sphere of international jus cogens. This characterization is rooted in the evolution of the most lucid contemporary juridical thought, which – among the progress made in recent years towards combating particularly serious human right violations – has even led to the emergence of a real international juridical regime against torture.

2. This juridical regime is composed of the different international instruments and procedures for the prohibition of torture. To the United Nations Conventions (of 1984 and its Optional Protocol of 2002) and the Inter-American Convention (1985) on this issue, must be added the European Convention for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment (1987), the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment (since 1985) of the United Nations Commission on Human Rights, and the Working Group on Arbitrary Detention (since 1991) of the same Commission on Human Rights (attentive to the prevention of torture). The three co-existing conventions to combat torture – that of the United Nations of 1984, the Inter-American of 1985, and the European of 1987 – more than simply being compatible, are complementary.

3. The first two (that of the United Nations and the Inter-American) include a definition of torture, while the third (the European) abstains from defining it. In this judgment in *Maritza Urrutia v. Guatemala*, the Court refers to the elements that constitute the definition of torture in both Conventions – that of the United Nations and the Inter-American (para. 90-91) – when establishing, in this case, the occurrence of psychological torture against the victim, in violation of Article 5(1) and (2) of the American Convention. The Court has stated clearly 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” (para. 89).

4. The Inter-American Court's observation is opportune, because, even for States that have not ratified the American Convention or any of the three conventions against torture (supra), it would be inadmissible to try and elude or relativize the peremptory or absolute nature of the prohibition of torture (even in the so-called “fight against terrorism,” or any other crime). In *Soering v. United Kingdom* (Judgment of July 7, 1989), the European Court of Human Rights affirmed categorically that the absolute prohibition – even in time of war and other national emergencies – of torture and of inhuman or degrading treatment or punishment or treatment, in the terms of article 3 of the European Convention on Human Rights, revealed that this provision incorporated one of the “fundamental values of democratic societies,” [FN1]

[FN1] This value is also embodied in similar terms in other international instruments, such as the International Covenant on Civil and Political Rights of the United Nations and the American Convention on Human Rights, and is “generally recognized as an internationally accepted standard”; European Court of Human Rights, *Soering v. United Kingdom*, judgment of July 7, 1989, p. 26, para. 88.

5. In *Cantoral Benavides v. Peru* (Judgment of August 18, 2000), when establishing a violation of Article 5 of the American Convention, the Inter-American Court considered that certain acts that, in the past, were classified as “inhuman or degrading treatment,” could, subsequently, with the passage of time, come to be considered torture, since the growing demand for protection must be accompanied by a prompt and more vigorous response in dealing with infractions of the basic values of democratic societies (para. 99). The ineluctable fight against torture – “a form of hell that has accompanied our civilization” – and other grave human rights violations represents, in the final analysis, the daily fight to “ensure that the principles of humanity prevail.” [FN2]

[FN2] A. Cassese, *Inhuman States - Imprisonment, Detention and Torture in Europe Today*, Cambridge, Polity Press, 1996, pp. 59-61.

6. The categorical and absolute prohibition of torture under any circumstance, which falls within the sphere of international *jus cogens* [FN3], is a definitive conquest of civilization. Indeed, the way in which the public authorities treat those who are detained is an infallible criterion for measuring the degree of civilization attained by any country (whether or not it is a party to the human rights treaties). This is what F.M. Dostoevsky had already observed in the nineteenth century, in *Notes from the House of the Dead* (1862) [FN4]; he considered that the degree of civilization attained by any society could be assessed by visiting its prisons.

[FN3] Cf. M. Nowak and W. Suntinger, “International Mechanisms for the Prevention of Torture”, in A. Bloed et alii (eds.), *Monitoring Human Rights in Europe - Comparing International Procedures and Mechanisms*, Dordrecht, Nijhoff, 1993, pp. 145-168.

[FN4] Cf. F. Dostoevsky, *Souvenirs de la maison des morts*, Paris, Gallimard, 1997 (re-edition), pp. 35-416.

7. In actual fact, the definition of the crime of torture, which today is found in two of the three co-existing conventions against torture (article 1 of the 1984 United Nations Convention, and article 2 of the 1985 Inter-American Convention) owes its content to international human rights case law, and not to the classification of the crime of torture in domestic law. The elements that constitute torture in the definition found in the two conventions mentioned above – severe physical or mental suffering, inflicted intentionally, to obtain information or a confession, with the consent or acquiescence of the authorities or other persons acting in an official capacity – is a

result of the case law of the former European Commission on Human Rights in the Greek case (1967-1970), elaborated subsequently by the European Commission and Court in Ireland v. United Kingdom (1971-1978) [FN5].

[FN5] A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, tomo II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, pp. 37-38.

8. In this respect, international case law preceded and influenced international legislation in the sphere of the protection of human rights. Manifesting itself formally in the sphere of international human rights law through either case law or legislation, the absolute prohibition of torture arises from the supreme material source of law, the universal juridical conscience. The recognition and expansion of the sphere of international jus cogens also derives from the latter.

9. In this respect, in my Separate Opinion on the Inter-American Court' Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (of September 17, 2003), I indicated that:

“(...) In the A. Furundzija case (Judgment of December 10, 1998) the International Criminal Tribunal for the former Yugoslavia (Trial Chamber) stated that the absolute prohibition of torture, decreed by international law – both treaty law (under various human rights treaties) and common law – had the character of a jus cogens norm (...). This was so owing to the importance of the values protected (...). This absolute prohibition of torture, the Tribunal added, imposed obligations erga omnes on States (...); the jus cogens character of this prohibition ‘makes it one of the most fundamental standards of the international community’, incorporating ‘an absolute value from which no one shall deviate’ (...).

Indeed, the concept of jus cogens is not limited to treaty law; it belongs also to the law on the international responsibility of States. (...) In my opinion, it is in this pivotal chapter of international law, on international responsibility (perhaps more than in the chapter on treaty law), that jus cogens reveals its real, broad and profound dimension, covering all juridical acts (even unilateral ones) and (even beyond the sphere of State responsibility) influencing the very foundations of a truly universal international law” (paras. 69-70)

10. Today, there is a movement towards establishing a continuous monitoring mechanism of a preventive nature within the framework of the international juridical regime against torture. [FN6] Under the 1987 European Convention, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carries out preventive inspections in detention establishments in the States Parties (article 2). [FN7] In the same way, the recent Optional Protocol (2002) of the United Nations Convention against Torture authorizes the Sub-Committee on the Prevention of Torture (created by this Convention) to conduct preventive visits to detention establishments in the States Parties and make recommendations to them (articles 4 and 11).

[FN6] Cf., see, in general, N.S. Rodley, *The Treatment of Prisoners under International Law*, Oxford, Clarendon Press, 1987, pp. 1-374; and cf. J. Donnelly, "The Emerging International Regime against Torture", 33 *Netherlands International Law Review* (1986) pp. 1-23.

[FN7] Cf. Council of Europe, *Explanatory Report of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, Strasbourg, C.E., 1989, pp. 5-23, esp. pp. 10-11 and 21; D. Rouget, "La Convention Européenne pour la Prévention de la Torture et des Peines ou Traitements Inhumains ou Déggradants - Un outil essentiel de promotion de la dignité des personnes privées de liberté", 2 *Cahiers de l'Institut des Droits de l'Homme - De la prévention des traitements inhumains et dégradants en France - Lyon* (1996) pp. 17-31; Comité Européen pour la Prévention de la Torture et des Peines ou Traitements Inhumains ou Déggradants, *Contexte historique et principales caractéristiques de la Convention*, Strasbourg, Conseil de l'Europe, [1991], pp. 1-4.

11. These developments have ended one of the last remaining strongholds of State sovereignty, by allowing scrutiny of the *sancta sanctorum* of the State – including its prisons and detention establishments, police stations, military prisons, detention centers for foreigners, and psychiatric institutions – and of its administrative practices and legislative measures, in order to determine their compatibility with international human rights standards. [FN8] This has been achieved in the name of superior common values, embodied in the prevalence of the fundamental rights inherent in the human being.

[FN8] A. Cassese, *op. cit. supra* n. (2), pp. 1 and 131-133.

12. This judgment of the Inter-American Court is framed in this noteworthy juridical and civilizing evolution. Even before *Maritza Urrutia v. Guatemala*, the Court had ruled on the violation of the right to psychological integrity (in *Loayza Tamayo v. Peru*, Judgment of September 17, 1997, paras. 57-58) and on "psychological torture" (in *Cantoral Benavides v. Peru*, Judgment of August 18, 2000, para. 102). In the instant case, the Court once again rules on the latter, amidst its categorical affirmation of the absolute prohibition of torture in all its forms. In the apt words of the Court:

"An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and, with regard to the latter, it has been recognized that the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered 'psychological torture.' The absolute prohibition of torture, in all its forms, is today part of international *jus cogens*" (para. 92).

There is no alternative to this juridical development motivated by the human conscience; if this were not so, we would return to barbarism.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ TO THE
JUDGMENT IN THE MARITZA URRUTIA CASE, OF NOVEMBER 27, 2003

1. In the judgment on merits and reparations in this case, the Inter-American Court of Human Rights has examined some relevant issues that it also considered in the judgment in the Mack Chang case, delivered on November 26, 2003. This is particularly true with regard to the State's acknowledgement of institutional or international responsibility in relation to certain facts or specific claims set out in the Inter-American Commission's application. In the case in point, the State acknowledged its institutional responsibility with regard to the violation of Article 1(1) of the American Convention, without, at the same time, making any express acknowledgement concerning the facts, the "occurrence" of which it was accepting.

2. I do not consider it necessary to examine in detail the arguments and the scope of the acknowledgement of responsibility made by the State in this concurring reasoned opinion. It would be difficult to accept responsibility for the violation of Article 1(1), referring to the general obligation to respect and ensure the exercise of the rights and obligations established in the American Convention and, at the same time, admit "that the facts had occurred," without extending this acknowledgement to the nature and characteristics of such facts, from which the so-called institutional responsibility arises. It would appear that the State was only referring to the general function of protection that is incumbent on a State with regard to all persons subject to its jurisdiction, without taking into account the other concurrent elements in this specific case. If this is so, the ultimate consequence would be the acknowledgement of institutional responsibility for any facts, without distinguishing their source, that affect persons or property subject to the protection of the State in the terms of the American Convention.

3. In any case, we are again faced with the problem that arises from the acknowledgement by the defendant State of facts, claims and/or responsibilities, when that State does not fully identify itself with a plain acceptance of the facts and an acquiescence to the claims that the conclusion of the case on merits and the transfer to the reparations stage may involve, if the international court considers it pertinent. In the instant case, the Court had to evaluate the scope of the State's acknowledgement, as it did more extensively in the judgment in the Mack Chang case. Therefore, I refer to what I stated in my concurring reasoned opinion to the judgment in that case.

4. I consider that it is important to emphasize the Court's analysis of the treatment inflicted on Maritza Urrutia by State agents, who violated her right to physical and moral integrity, protected by Article 5 of the Convention. This treatment amounted to torture in the terms of this Article. Consequently, there was a violation of both the Pact of San José and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture. In its respective considerations, which I fully endorse, the Court emphasized that the prohibition of torture encompasses all possible forms of torture, and that this absolute prohibition forms part of international jus cogens.

5. I believe that it is important that the Court has rejected emphatically any form of torture, and also the alleged explanation of torture – it cannot be called justification – arising from the need to combat some of the most serious types of criminality. These inadmissible arguments give rise once again to the false dilemma between respect for human rights, on the one hand, and public safety or national security, on the other hand. This dangerous and unacceptable dilemma is, today, a reference point for the most relevant political, ethical and legal debate, and the effective preservation of the democratic system depends largely on its results.

6. Obviously, the State must ensure public safety and national security, since this protection is one of the State's fundamental obligations. However, it is no less obvious that this obligation should be fulfilled without violating either the rule of law or scrupulous respect for human rights, which are also fundamental obligations of the public authorities; because, as has been affirmed since the historic declarations on rights of the eighteenth century – which are the source of the contemporary concept of human rights, and the origin and foundations of the modern state – the protection of human rights is the purpose of government. The energetic fight against crimes that harm society and endanger its very subsistence and its highest values should not be waged in violation of the rule of law, the democratic system, and the essential rights of the people.

7. Some of the facts set out in the instant case and the concepts of violation examined in this regard, have been re-examined by the Court in the context of other violations declared in the judgment. The existence of the facts is not denied, but it was considered more appropriate to examine them as violations of different Articles to those invoked in the application. This is especially true of the presentation to the public of audiovisual recordings made by the victim, which were widely broadcast in the media, and the interference in specific aspects of her private life. Both facts have been acknowledged in the judgment as violating human rights, although they have been given a different classification to the one set forth in the application.

8. I believe that the treatment of these statements made by the victim is especially relevant; they were obtained under intense pressure and transmitted to the public by television. In these declarations, among other matters, Maritza Urrutia acknowledged facts that harmed her and stated points of view that did not correspond to those she really held. The Inter-American Court understands that this entails a violation of various paragraphs and subparagraphs of Article 8 of the American Convention, since the accused has the right “not to be compelled to be a witness against himself or to plead guilty (Article 8(2)(g)) and “a confession of guilt by the accused shall be valid only if it is made without coercion of any kind” (Article 8(3)).

9. Article 8, entitled “Judicial Guarantees” [in Spanish – “Right to a Fair Trial” in English] includes a series of rights that correspond, substantially, to “due process of law.” Here, as in Article 25 on “Judicial Protection,” access to justice is guaranteed, and conditions are established so that this access is not reduced to its formal dimension (the possibility of presenting a petition, evidence and arguments before a competent, independent and impartial court), but also extends to its material dimension (the possibility of obtaining a fair judgment). In this respect, the provisions of both Articles are a valuable instrument for the protection and defense of the individual in the face of acts or omissions of the State that violate or attempt to violate any of the rights embodied in the American Convention.

10. In other cases, the Court has made considerable progress in the understanding of the judicial guarantees established in Article 8, considering that the rules of due process of law apply also to proceedings before authorities that are explicitly administrative. All the guarantees included in Article 8 are relevant in any proceeding designed to determine the rights and obligations of a person, and not only in criminal proceedings. Consequently, the extended formula included in the first paragraph, a formula that sets out principles and objectives of a general scope, makes the application of the measures established in the remaining paragraphs binding, when this is pertinent for the case in question. This is so, because the instruments, rights or guarantees set out in the remaining paragraphs of Article 8 correspond to the procedural defense system which ensures that those rights and obligations are determined fairly, and they are obviously not restricted to criminal matters, but involve all areas of the social life of the individual in which, therefore, petitions and disputes can be submitted that must be resolved by different State bodies with jurisdictional or para-jurisdictional attributes, or their subsidiary organs.

11. It is relevant that the judgment in the Maritza Urrutia case should make a significant contribution to the understanding of Article 8, when we consider that the guarantees included in its second and third paragraph, which are directly related to the facts of this case, should be observed both in legal proceedings, strictly speaking, and in non-legal proceedings and procedures, or those that are not related to a legal action, but precede or are concomitant with it and that may have an unfavorable and unjustified impact on the juridical status of the person participating in the action. This applies, of course, to investigations prior to the prosecution of an accused person and to other acts relating to the prosecution or that can cause relevant effects for the judicial or extrajudicial determination of the rights and obligations of an individual, as was seen in the case in question.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE DE ROUX RENGIFO

The Court abstained from declaring that Maritza Urrutia's right to freedom of expression, as established in Article 13 of the American Convention, had been violated. I do not share this position, but as the judgment does not include an operative paragraph in this regard, from a procedural point of view, this opinion cannot be of a dissenting nature, but rather of a separate line of reasoning.

Article 13 begins with a generic formula: "Everyone has the right to freedom of thought and expression." It then establishes that "this right includes the freedom to seek, receive, and impart information and ideas of all kinds", by any means. As this provision is drafted, the latter elements illustrate, but do not exhaust, the scope of the right to freedom of expression.

Consequently, I consider that, in general, the arguments of the Commission and the representatives of the victims on this matter are pertinent. Indeed: if freedom of expression is violated when a person is prevented from disseminating his opinions, the same occurs, a fortiori, if: a) a person is obliged to make a public statement when he wishes to remain silent, and b) a person is obliged to give a meaning or content to a public statement that they do not wish to give to their words. The right to freedom of expression means the possibility of having a choice between acting or not acting in the sphere of disseminating ideas and information, between speaking or remaining silent, and of having the possibility of speaking only in order to say what one wants. If someone is forced to speak when they do not want to, or to say what they do not want to say, their freedom of expression is impaired.

The Court considered that, in this case, the alleged violation of Article 13, was subsumed in the violation of Article 5 of the Convention, which refers to the right to humane treatment. In agreement with this position, let us admit that the conducts capable of entailing a violation of the right to humane treatment can assume the most diverse forms and means. But, the point is that, if such conducts, in their specificity, correspond to the premises de facto of another norm of the Convention, the Court must also declare that the latter norm has been violated.

By not establishing the violation of Article 13, the Court failed to apply a normative device that is adapted to certain very relevant aspects of the facts of the case. Maritza Urrutia was not only obliged to make statements that she did not want to make, within the enclosed installations of the security agencies. What she said, against her will, was widely broadcast, also against her will, by the media, specifically by two television channels. Her words were widely disseminated, and undoubtedly entered the sphere of the dissemination of ideas and information. Hence, since Article 13 of the Convention protects the specific rights of the individual in relation to third parties, the Court should have declared that there was a violation of this provision to the detriment of Maritza Urrutia.

Carlos Vicente de Roux-Rengifo
Judge

Manuel E. Ventura-Robles
Secretary

REASONED AND PARTIALLY DISSENTING OPINION OF JUDGE ARTURO MARTÍNEZ GÁLVEZ

As Judge ad hoc in the Maritza Urrutia case, deriving from an application submitted by the Inter-American Commission on Human Rights against the State of Guatemala, I would like to state the following:

I. In the chapter of the judgment that assesses the evidence, the Court bases itself on the reports of the Historical Clarification Commission and the Inter-Diocesan Project for Recovery of the Historical Memory. However, I consider that these documents do not, in themselves, constitute evidence of the facts they relate, while acknowledging that the Court has granted them value as evidence in previous judgments. Moreover, the procedural act of the State's

acquiescence does not, in itself, accord them the category of probatory documents on which a judgment that is unfavorable to the defendant may be founded.

II. With regard to the operative paragraphs of the judgment, I consider that the amounts to be paid for compensation are very high, bearing in mind that the State of Guatemala has a rather high budgetary deficit and that there is widespread poverty in the country. The financial outlays made by the plaintiff during the proceedings are evident, but it is also fair to take into account that the compensations should bear a relation to the financial situation of the State, and of the taxpayer, who has to bear the tax burden.

Arturo Martínez Gálvez
Judge ad hoc

Manuel E. Ventura-Robles
Secretary